TEXAS REGISTER

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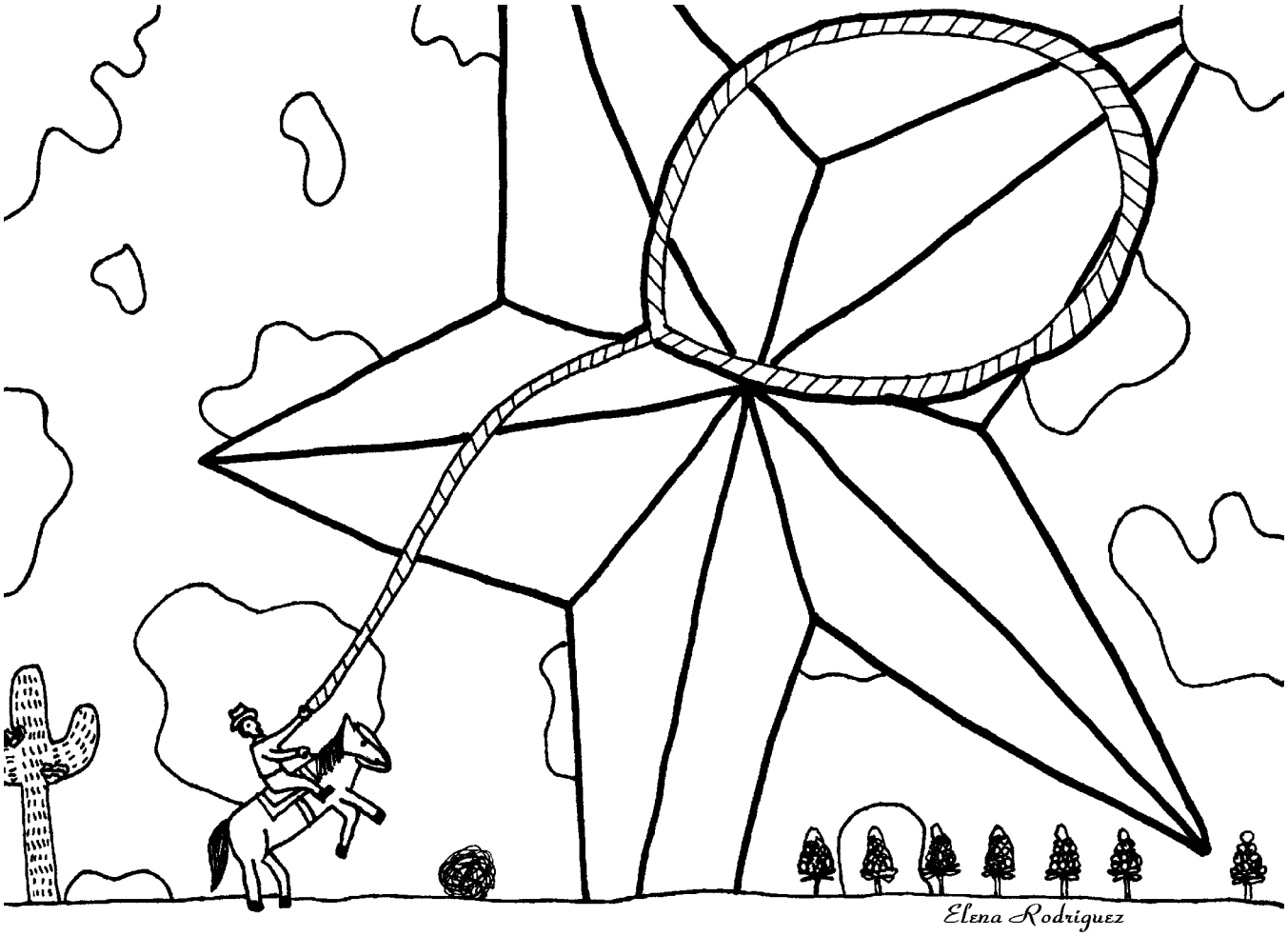

****Special Notice to Subscribers Following Table of Contents****

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

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

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IN ADDITION

The Office of the Secretary of State is pleased to announce that an agreement has been reached to continue the print version of the *Texas Register*. Beginning with the September 9, 2005 issue, LexisNexis Matthew Bender & Company will take over the printing and distribution of the print *Texas Register*. The Secretary of State remains responsible for editorial content in the *Texas Register*. Free Internet publication of the *Texas Register* has resulted in fewer paying subscribers to the print version. This shortfall prompted the Secretary of State to seek alternatives to continue the print service without increasing costs to subscribers or the State of Texas. The agreement with Matthew Bender & Company accomplishes this goal for at least four years, as well as improving the paper quality of the publication.

Current print subscribers will see no interruption in delivery of the weekly *Texas Register*. Current subscribers will receive a renewal invoice from Matthew Bender & Company at the end of their subscription term. The new yearly subscription rate for second-class mail subscribers will be $211, a discount of $29 off the current rate. This new yearly subscription rate is valid for the next four years.

To contact the LexisNexis Matthew Bender & Company Customer Support Department, please call 1-800-833-9844, Monday - Friday, 7 a.m. to 7 p.m. CST.

If you have any questions regarding this matter or regarding your subscription, please feel free to contact the Texas Register at 463-5561 (in Austin) or 800-226-7199. You may email questions to subadmin@sos.state.tx.us.

THE GOVERNOR

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

Appointments

Appointments for August 19, 2005

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, David Guajardo Nance of Austin.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Pike Powers of Austin.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Alan Abbott of El Paso.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, C. Thomas Caskey, M.D. of Houston.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Phillip M. Drayer of Dallas.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Walter Ulrich of Pearland.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Clyde A. Higgs of Fort Worth.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Johannes M. C. Stork, Ph.D. of Allen.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, William Edward Morrow of Spring Branch.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, William C. Sproull of Richardson.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Bernard A. Paulson of Corpus Christi.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Sada Cumber of Austin.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Lynda Y. de la Vina, Ph.D. of San Antonio.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, David a Spencer of San Antonio.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Cesar Maldonado of Harlingen.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Pamela A. Eibeck, Ph.D. of Lubbock.

Appointed to the Texas Engineering Technology Committee, pursuant to HB 1765, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Grant Alan Billingsley of Midland.

Appointments for August 22, 2005

Appointed to the Texas State Board of Medical Examiners for a term to expire April 13, 2011, Lawrence LaZelle Anderson, M.D. of Tyler (replacing Joyce Roberts, MD of Mt. Vernon whose term expired).

Appointed to the Texas State Board of Medical Examiners for a term to expire April 13, 2011, Jose Manuel Benavides, M.D. of San Antonio (Dr. Benavides is being reappointed).

Appointed to the Texas State Board of Medical Examiners for a term to expire April 13, 2011, David Eduardo Garza, M.D. of Laredo (Dr. Garza is being reappointed).

Appointed to the Texas State Board of Medical Examiners for a term to expire April 13, 2011, Paulette Barker Southard of Alice (Ms. Southard is being reappointed).

Appointed to the Texas Municipal Retirement System Board of Trustee for a term to expire February 1, 2011, Pat Hernandez of Plainview (Ms. Hernandez is being reappointed).

Appointed to the Texas Municipal Retirement System Board of Trustee for a term to expire February 1, 2011, Roel Rodriguez of Harlingen (replacing Connie Green of Belton whose term expired).

Appointed to the Texas Commission of Licensing and Regulation for a term to expire February 1, 2011, Lilian Norman-Keeney of Taylor Lake Village (replacing Patricia Stout whose term expired).

Appointed to the State Preservation Board for a term to expire February 1, 2007, Jocelyn Levi Straus of San Antonio. Ms. Straus is being reappointed.

Appointed as Texas Commissioner of Health and Human Services for a term to expire February 1, 2007, Albert Hawkins, III of Austin. Mr. Hawkins is being reappointed.

Appointed as Judge of the 99th Judicial District Court, Lubbock County, for a term until the next General Election and until his successor shall be duly elected and qualified, William Charles Sowder of Shallowater. Mr. Sowder is replacing Judge Mackey Hancock who has been appointed to the 7th Court of Appeals.

Appointed as Justice of the Third Court of Appeals of Texas, Place 2, for a term until the next General Election and until his successor shall be duly elected and qualified, G. Alan Waldrop of Austin. Mr. Waldrop is replacing Justice Mack Kidd who is deceased.

Appointed as Judge of the 408th Judicial District Court, Bexar County, for a term until the next General Election and until his successor shall be duly elected and qualified, Richard Edward Price of San Antonio. Mr. Price is replacing Judge Rebecca Simmons who was appointed to the 4th Court of Appeals.

Rick Perry, Governor

TRD-200503662

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Budget Execution Proposal

Pursuant to Texas Government Code §317.002, I make the following budget execution proposal:

I find that the following constitute an emergency:

Insufficient budget authority at the Texas Education Agency to purchase additional textbooks recommended by Proclamation 2002 and to carry out other agency operation and statutory requirements.

Insufficient funding at the Department of Aging and Disability Services to increase nursing home rates and increase the personal needs allowance.

Insufficient funding to honor the state's commitment to provide funding to The University of Texas at Dallas for the construction of the Natural Science and Engineering Research Building.

Insufficient funds for the National Biocontainment Laboratory at The University of Texas Medical Branch at Galveston.

Insufficient funds for operations of The Texas Tech University Health Science Center's medical school in El Paso and the Irma Rangel College of Pharmacy.

Insufficient funds for The University of Texas at Dallas Center for Values in Medicine and Technology to evaluate issues relating to medical ethics and technology.

Insufficient funds for the transfer of responsibilities of the Texas Military Facilities Commission to the Adjutant General's Department.

Insufficient funds for information resource staff at the Commission on the Arts.

Insufficient authority at the Health and Human Services Commission to enhance the Umbilical Cord Blood Bank.

Insufficient funds at the Department of State Health Services to honor the state's commitment to enhance our EMS and Trauma Care system.

Finally, insufficient authority at the Department of Information Resources to compensate the Chief Technology Officer at currently authorized levels.

I therefore propose that:

1. From appropriations made to the Texas Education Agency in House Bill 10, 79th Legislature, Regular Session, 2005, Senate Bill 1, 79th Legislature, Regular Session, 2005, and House Bill 1, 79th Legislature 1st Called Session 2005, in addition to the amounts the Texas Education Agency (TEA) is authorized by these acts to transfer between items of appropriation, the TEA is also authorized to transfer up to $294,519,371 from any items of appropriation for fiscal year 2007 to Strategy A.1.1 FSP-Equalized Operations for the fiscal year ending August 31, 2006, to meet the emergency related to the funding of textbooks described in State Board of Education Proclamation 2002, and up to $25,000,000 from any item of appropriation for either fiscal year of the biennium as necessary to execute agency operations and statutory requirements.

2. From appropriations:

a. made in Senate Bill 1, 79th Legislature, Regular Session, 2005, Article IX, Section 13.18, the amount of $68,951,196 from the general revenue fund for fiscal year 2006, and the amount of $131,048,804 for fiscal year 2007 be transferred to the Department of Aging and Disability Services, Strategy A.6.1 Nursing Facility Payments, to increase payments to nursing homes.

b. made in Senate Bill 1, 79th Legislature, Regular Session, 2005, Article IX, Section 13.18, the amount of $13,000,000 from the general revenue fund for the fiscal biennium beginning September 1, 2005 be transferred to the Department of Aging and Disability Services, Strategy A.6.1 Nursing Facility Payments, for the purposes necessary to meet the emergency related to the personal needs allowance.

3. From appropriations:

a. made in Senate Bill 1, 79th Legislature, Regular Session, 2005, Article IX, Section 13.18, the amount of $15,000,000 from the general revenue fund be transferred to The University of Texas at Dallas, Item of Appropriation 1, Educational and General State Support, to fund the Natural Science and Engineering Research Building for the fiscal biennium beginning September 1, 2005 for the purposes necessary to meet this emergency.

b. made in Senate Bill 1, 79th Legislature, Regular Session, 2005, Article IX, Section 13.18, the amount of $4,969,530 from the general revenue fund for fiscal year 2007 be transferred to The University of Texas Medical Branch at Galveston, Item of Appropriation 1, Educational and General State Support, for the fiscal year ending August 31, 2007, for the purposes necessary to meet this emergency.

c. made in Senate Bill 1, 79th Legislature, Regular Session, 2005, Article IX, Section 13.18, the amount of $38,547,875 from the general revenue fund for fiscal year 2007 be transferred to Texas Tech University Health Science Center, Item of Appropriation 1, Educational and General State Support, to fund the operation of the El Paso Medical School for the fiscal biennium beginning September 1, 2005 for the purposes necessary to meet this emergency.

d. made in Senate Bill 1, 79th Legislature, Regular Session, 2005, Article IX, Section 13.18, the amount of $10,000,000 from the general revenue fund for fiscal year 2007 be transferred to Texas A&M University-Kingsville, Item of Appropriation 1, Educational and General State Support, to fund the Irma Rangel College of Pharmacy for the fiscal biennium beginning September 1, 2005 for the purposes necessary to meet this emergency.

e. From appropriations made in Article IX, Section 13.18 of Senate Bill 1, 79th Legislature, Regular Session, 2005, the amount of $150,000 from general revenue for fiscal year 2006 be transferred to the University of Texas at Dallas, Item of Appropriation 1 General and State Support, Informational Strategy C.3.1, to be used for the Center for Values in Medicine for purposes specified in Article III, University of Texas at Dallas, Rider 3, of Senate Bill 1, 79th Legislature, Regular Session, 2005.

4. From appropriations in Article IX, Section 13.18 of Senate Bill 1, 79th Legislature, Regular Session, 2005, the amount of $1,337,808 from the general revenue fund for fiscal year 2006 and $1,651,690 from the general revenue fund for fiscal year 2007 be transferred to the Adjutant General's Department for the biennium ending August 31, 2007, for the purposes necessary to meet this emergency.

5. From appropriations in Article IX, Section 13.18 of Senate Bill 1, 79th Legislature, Regular Session, 2005, the amount of $156,261 from the general revenue fund for fiscal year 2006 and $156,261 from the general revenue fund for fiscal year 2007 be transferred to the Texas

Commission on the Arts to strategy C.1.2. Information Resources for the biennium ending August 31, 2007, for the purposes necessary to meet this emergency.

6. From appropriations made in Article IX, Section 14.33 of Senate Bill 1, 79th Legislature, Regular Session, 2005, the maximum amount of total funding which may be allocated for the purposes specified in the rider is increased from $1,000,000 to $2,500,000 for the biennium beginning September 1, 2005.

7. To the extent that trauma funds collected in fiscal year 2006 and/or 2007 exceed the amounts specified in the Department of State Health Services method of finance, from appropriations made in Article IX, Section 13.18 of Senate Bill 1, 79th Legislature, Regular Session, 2005, an amount not to exceed $27,626,493 from the general revenue fund for fiscal year 2006 and $48,575,493 from the general revenue fund for fiscal year 2007 shall be transferred to the Department of State Health Services, Strategy B.3.1. EMS and Trauma Care Systems, for the purposes necessary to meet the emergency related to trauma facility and EMS services. However in no event shall the amount transferred from Section 13.18 by this provision exceed the amount by which deposits to Trauma Facility/ERS Account No. 5111 exceeds $31,792,507 each year of the biennium.

8. From appropriations made in Senate Bill 1, 79th Legislature, Regular Session, 2005, to the Department of Information Resources and notwithstanding the "Schedule of Exempt Positions" the Department is authorized to pay an average monthly salary of $14,583 to the Chief Technology Officer.

I hereby certify that this proposal has been reviewed by legal counsel and found to be within my authority.

Issued in Austin, Texas on August 22, 2005

Rick Perry

Governor

TRD-200503604

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Executive Order

RP 47

Relating to a comprehensive financial accountability and reporting system to ensure transparency and fiscal efficiency in school district operations.

WHEREAS, the Commissioner of Education is required under Subchapter I, Chapter 39, Texas Education Code, to develop and implement a financial accountability rating and reporting system for school districts in this state; and

WHEREAS, establishing a robust fiscal accountability rating and reporting system is essential to maintaining public confidence in our state's education system; and

WHEREAS, the clearly defined performance indicators and comprehensive scope of our state's academic performance accountability and reporting system have successfully raised the expectations and achievements of Texas schools; and

WHEREAS, the current financial accountability and rating system does not provide the information and incentives necessary to increase the efficiency with which public education funds are expended; and

WHEREAS, in order to maximize the academic achievement of Texas students, it is necessary to maximize the percentage of school funds that are directed toward instructional purposes; and

WHEREAS, Texans deserve a comprehensive financial accountability and reporting system that identifies funds expended on all significant categories of expenditures;

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

Creation. The Commissioner of Education shall create and implement a comprehensive financial accountability and reporting system to ensure transparency and fiscal efficiency in school district operations.

System Design. By the authority granted to the commissioner under Subchapter I, Chapter 39, Education Code, the commissioner shall design a financial accountability and reporting system.

Reporting Indicators and Requirements. The financial accountability and reporting system shall include an indicator establishing a requirement that 65 percent of school district funds be expended for instructional purposes as defined by the National Center for Education Statistics.

The financial accountability and reporting system shall include indicators of school district efficiency, including the use of shared-services agreements and consolidation of administrative functions.

The financial accountability and reporting system shall include a requirement for clear and concise accounting of school district expenditures, including amounts expended on the following:

· Funds used for school district operations not related to direct instruction including counseling services, technology, nursing, and social services.

· Funds used for maintenance, repair, and construction of school district facilities.

· Funds used for professional development and related purposes and how those funds relate to core academic areas required under state curriculum standards and as measured by state assessments.

· Dues or contributions to a non-instructional club, committee, or organization.

· Funds provided to any person or organization for the purpose of lobbying.

· Funds expended for consulting services, media, and public relations services.

· Funds expended for legal services, including legal fees spent on lawsuits against the state.

· Funds available in school district fund balances.

Investigations and Actions. The commissioner shall, in accordance with authority granted under Subchapter D, Chapter 39, Texas Education Code, conduct special accreditation investigations of school districts exhibiting poor financial management and may take appropriate action under Subchapter G, Chapter 39, Texas Education Code; or lower a school district's accreditation rating as deemed appropriate by the commissioner; or both.

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

Given under my hand this the 22nd day of August, 2005.

Rick Perry, Governor

TRD-200503663

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THE ATTORNEY GENERAL

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

Request for Opinions

RQ-0371-GA

Requestor:

The Honorable Jon Lindsay

Chair, Nominations Committee

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Exemption from tuition for students enrolled in fire science courses under the authority of section 54.208, Education Code (RQ-0371-GA)

Briefs requested by September17, 2005

RQ-0372-GA

Requestor:

Ms. Michele L. Henricks, Director

Court Reporters Certification Board

Post Office Box 13131

Austin, Texas 78711-3131

Re: Whether court reporting firms that are not registered in Texas may practice in this state (RQ-0372-GA)

Briefs requested by September 17, 2005

RQ-0373-GA

Requestor:

The Honorable Dan W. Heard

Calhoun County Criminal District Attorney

Post Office Box 1001

211 South Ann Street

Port Lavaca, Texas 77979

Re: Whether a substitute teacher may receive compensation for serving as a member of a city council (RQ-0373-GA)

Briefs requested by September 17, 2005

RQ-0374-GA

Requestor:

The Honorable Jim Pitts

Chair, Appropriations Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Requestor:

Dr. Raymund A. Paredes

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Whether, under section 61.222, Education Code, the Higher Education Coordinating Board may permit an institution that lacks accreditation identical to that of a Texas public institution of higher education to participate in the Tuition Equalization Grant program (RQ-0374-GA)

Briefs requested by September 17, 2005

RQ-0375-GA

Not published - Request was combined with RQ-374-GA

RQ-0376-GA

Requestor:

The Honorable Eddie Arredondo

Burnet County Attorney

Burnet County Courthouse

220 South Pierce

Burnet, Texas 78611

Re: Whether a county may continue to collect fines and court costs after a term of deferred adjudication has expired (RQ-0376-GA)

Briefs requested by September 18, 2005

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

TRD-200503645
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: August 24, 2005

♦ ♦ ♦

Opinions

Opinion No. GA-0346

Mr. Dale Burnett

Executive Director

Texas Structural Pest Control Board

Post Office Box 1927

Austin, Texas 78767-1927

Re: Whether the Structural Pest Control Board may regulate the removal of vertebrate animals from the vicinity of structures (RQ-0314-GA

S U M M A R Y

Irrespective of whether any of the animals about which you inquire is a "rodent," an "obnoxious or undesirable animal that may infest households . . . or other structures," or a "pest[] of trees, shrubs, or other plantings" adjacent to a "residence, business establishment, industrial plant, institutional building, or street," pursuant to the language of section 1951.003, Texas Occupations Code, it must nevertheless be one that "infests" for the Texas Structural Pest Control Board to have regulatory authority over the licensing of those engaged in the business of its removal. Because fact considerations are involved in determining whether these animals infest, defining and construing the term as it pertains to vertebrate animals is a task for the legislature or the Board.

Opinion No. GA-0347

The Honorable Leticia Van de Putte, R. Ph.

Chair, Committee on Veteran Affairs and Military Installations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Correct interpretation of the Texas citizenship requirement in Education Code section 54.203 (RQ-0309-GA)

S U M M A R Y

The phrase "citizen of Texas" in section 54.203(a) of the Education Code refers to a person who is a United States citizen and who resides in Texas. Thus, on its face, section 54.203(a) exempts from the payment of higher-education tuition and certain fees a veteran who (1) was a United States citizen and a Texas resident at the time he or she entered the service and (2) has resided in Texas for at least 12 months "before the date of registration" in an institution of higher education.

Opinion No. GA-0348

The Honorable Richard J. Miller

Bell County Attorney

Post Office Box 1127

Belton, Texas 76513

Re: Whether a county commissioner may simultaneously hold the position of municipal judge of a city located within his county (RQ-0317-GA)

S U M M A R Y

Neither Article XVI, section 40, nor Article II, section 1 of the Texas Constitution prohibits a county commissioner from simultaneously serving as a municipal judge for a municipality within the county. Similarly, the common-law doctrine of incompatibility does not bar the contemplated dual service. While Canons 5(3) and 4H of the State Code of Judicial Conduct do not prevent a municipal judge from holding the office of county commissioner, other canons might, and the question as to whether other canons preclude such service is a matter for the State Commission on Judicial Conduct.

Opinion No. GA-0349

The Honorable Joe R. Smith

Tyler County Criminal District Attorney

Courthouse Annex

Woodville, Texas 75979

Re: Whether a constable has countywide jurisdiction to investigate a criminal offense not committed within the constable's view (RQ-0318-GA)

S U M M A R Y

Pursuant to a constable's countywide jurisdiction as a peace officer, a constable generally has authority to investigate a criminal offense that was not committed within the constable's view.

Opinion No. GA-0350

The Honorable Bart E. Medley

Jeff Davis County Attorney

Post Office Box 201

Fort Davis, Texas 79734

Re: Whether the county attorneys of Jeff Davis and Presidio counties may, by "reciprocal arrangement," appoint each other assistant county attorneys of their own counties (RQ-0319-GA)

S U M M A R Y

The Jeff Davis and Presidio County Commissioners Courts each must approve creating an assistant county attorney position in its county, even if the assistant will not receive a salary. The commissioners court also must approve reimbursing travel expenses for that position. If the appropriate county commissioners court approves creating the position, the Jeff Davis County Attorney may appoint the Presidio County Attorney as the Jeff Davis assistant county attorney, and vice versa. Neither article XVI, section 40 of the Texas Constitution nor the common-law doctrine of incompatibility precludes the two county attorneys from serving as each other's assistant.

Opinion No. GA-0351

Mr. John D. White, Chair

Board of Regents

The Texas A&M University System

Post Office Box C-1

College Station, Texas 77843

Re: Legal status of a state university's contract with a law firm when an individual who became a member of the university's board of regents after the contract was awarded subsequently became a partner in the law firm (RQ-0320-GA)

S U M M A R Y

Common-law conflict of interest rules do not invalidate a contract formed before the conflict arose. When The Texas A&M University System had previously contracted with a law firm, the fact that a university regent was appointed after contract formation and subsequently joined the law firm as a partner did not invalidate the contract. Common-law conflict of interest rules do not prevent the university from paying for services that the law firm provided under the pre-existing contract after the regent was appointed to the board and joined the law firm. The Texas A&M University System may not enter into another contract with the law firm while a regent is a partner in the firm.

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

TRD-200503650
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: August 24, 2005

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EMERGENCY RULES

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

TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.208, §535.209

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to §535.208, concerning Application for a License, and new §535.209, concerning Professional Inspector Corporations and Limited Liability Companies. The amendments and new rule are adopted on an emergency basis to comply with new legislation that included revisions to Texas Occupations Code, Chapter 1102, enacted during the 79th Legislative Session, Regular Session, by Senate Bill 810. The effective date of Senate Bill 810 is September 1, 2005. The adoption of the emergency amendments and new rule permits TREC to comply with the effective date required by Senate Bill 810.

Chapter 1102 was revised to require licensing and renewal of corporations and limited liability companies that engage in professional home inspecting for buyers and sellers in Texas. The amendments to §535.208 adopt by reference two new application forms to be used by corporations and limited liability companies applying for a professional inspector license. New §535.209 further clarifies licensing requirements for resident and non-resident corporations and limited liability corporations that act as professional inspectors in Texas. Certain foreign corporations and limited liability companies that are licensed as professional inspectors or the equivalent in another state may apply for a Texas professional inspector license as long as the designated person is a licensed professional inspector.

The amendments and new rule are being simultaneously proposed for permanent adoption in accordance with the Texas Government Code, Chapter 2001, §2001.034. The proposed rules are published in the Proposed Rules section of this issue of the *Texas Register*.

The amendments and new rule are adopted on an emergency basis under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

§535.208. Application for a License.

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

(c) The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

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

(3) Application for a License as a Real Estate Inspector, Form REI 4-9; [~~and~~]

(4) Application for a License as a Professional Inspector, Form REI 6-9;[~~.~~]

(5) Application for a License as Professional Inspector by a Corporation, Form REI 7-0; and

(6) Application for a License as Professional Inspector by a Limited Liability Company, Form REI 8-0.

(d) - (f) (No change.)

§535.209. Professional Inspector Corporations and Limited Liability Companies.

(a) For the purposes of qualifying for, maintaining, or renewing a license, a corporation or limited liability company must designate one person holding an active Texas professional inspector license to act for it. The corporation or limited liability company may not act as a professional inspector during any period in which it has not designated a person to act for it who holds an active Texas professional inspector license. A professional inspector may not act as a designated person at any time while the professional inspector's license is inactive, expired, suspended or revoked.

(b) A corporation or limited liability company formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of Chapter 1102, Texas Occupations Code if it is qualified to do business in Texas; its officers or managers, its principal place of business and all of its assets are located in Texas; and all of its officers and directors or managers and members are Texas residents.

(c) Pursuant to §1102.112, Texas Occupations Code, a limited liability company created under the laws of another state or a corporation chartered in a state other than Texas may apply for a Texas professional inspector license if the entity meets one of the following requirements.

(1) The entity is licensed as a professional inspector or equivalent by the state in which it was created or chartered.

(2) The entity is licensed as a professional inspector or equivalent in a state in which it is permitted to engage in real estate brokerage business as a foreign limited liability company or corporation.

(3) The entity was created or chartered in a state that does not license limited liability companies or corporations, as the case may be, and the entity is lawfully engaged in the practice of inspecting homes for buyers or sellers in another state and meets all other requirements for applications for a license in Texas.

(d) The word "state" refers to the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.

(e) Foreign corporations and limited liability companies also must be permitted to engage in business in this state to receive a Texas professional inspector license.

(f) A consent to service of legal process must be filed with the commission by a broker or salesperson who moves to another state.

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

Filed with the Office of the Secretary of State on August 15, 2005.

TRD-200503406
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective Date: August 15, 2005
Expiration Date: December 12, 2005
For further information, please call: (512) 465-3900

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §351.504

The Texas Health and Human Services Commission (HHSC) proposes new §351.504, concerning caseload reduction plan for adult protective services, in its Coordinated Planning and Delivery of Health and Human Services chapter. Senate Bill 6 of the 79th Legislature requires the Executive Commissioner of HHSC to adopt rules establishing a caseload management reduction plan for the Adult Protective Services (APS) Division of Department of Family and Protective Services (DFPS). The new rule defines the purpose of the caseload management reduction plan and outlines the components to be considered in developing the plan.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also 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 that caseloads for adult protective services caseworkers will be reduced, thereby increasing the quality of services provided to vulnerable adults. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Marc Mullins at (512) 438-5505 in DFPS's Adult Protective Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-334, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed new section does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

The new section is proposed under Government Code, §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Government Code §531.055, which authorizes the executive commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The new section implements the Government Code, §531.048, as amended by §2.18 of Senate Bill 6, 79th Legislature.

§351.504. Caseload Reduction Plan for Adult Protective Services.

(a) Applicability. This section applies to the development by the executive commissioner of HHSC of a Caseload Reduction Plan (the Plan) for the Adult Protective Services (APS) Division of the Department of Family and Protective Services as required by §531.048, Government Code.

(b) Purpose of the Plan. The purpose of the Plan is to reduce caseloads for adult protective services caseworkers to a level that does not exceed professional caseload standards recommended by the National Adult Protective Services Association by more than five cases per worker by January 1, 2011. The Plan must include annual targets for caseload reduction.

(c) Components of the Plan. The Plan will include:

(1) APS program description.

(2) Assessment of program and demographic data using historic and forecasted information.

(3) Internal and external influences and impact of those influences.

(4) APS policy and operational factors influencing caseloads.

(5) Identification of options to reduce caseloads.

(6) Program impact of caseload reduction options.

(7) Resource needs and cost impact for caseload reduction options.

(8) Consultation with stakeholders.

(d) Report. Beginning in 2006, not later than December 31 of each even numbered year, a report will be prepared on the APS Caseload Reduction Plan including the amount of funding necessary in

the next biennium to fully implement the Plan. The report will be provided to the governor, lieutenant governor, speaker of the house of representatives, and the presiding officer of each house and senate standing committee having jurisdiction over adult protective services.

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

Filed with the Office of the Secretary of State on August 18, 2005.

TRD-200503459
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 43. TUBERCULOSIS

The Texas Animal Health Commission (commission) proposes to repeal Chapter 43, Subchapter A, entitled, "Tuberculosis", §§43.1 - 43.3. The Commission also proposes new §§43.1 - 43.5.

In order to ensure that all interested parties have adequate time to review and comment, the Commission will accept comments for sixty days from date of publication in the *Texas Register*.

USDA adopted new Uniform Methods and Rules (UM&R) on January 20, 2005. They were established for the maintenance of tuberculosis-free accredited herds of cattle and bison and provide the minimum standards for the maintenance of a State's or zone status in the U.S. Department of Agriculture's (USDA) tuberculosis eradication program. These minimum standards do not preclude the adoption of more stringent standards by any State or zone. By statute the commission may cooperate with the USDA in a cooperative program for the eradication of tuberculosis among cattle and the establishment of areas based on prevalence of the disease. As part of a cooperative program, the commission or its representative may examine, test, and retest any cattle in this state as necessary to maintain an area of this state as a tuberculosis modified accredited advanced area or to establish or maintain each area of this state as a tuberculosis free area under the uniform methods and rules of the United States Department of Agriculture and the rules of the commission. The commission or its representative may test or retest all or part of a herd of cattle at intervals considered necessary or advisable by the commission to control and eliminate tuberculosis in animals.

The current rules for Tuberculosis were primarily located in Section 43.1 and entitled "Cattle". The Commission is repealing the existing rule for Tuberculosis in Cattle as found in Subchapter A of this chapter and proposing the new requirements in an expanded format to better place the rules into more manageable Sections. The rules as proposed contain five (5) sections. The five sections are organized as follows:

Section 43.1, Definition; This contains definitions for terms that are used in Subchapter A. The commission is including some of the definitions from the CFR that will help in explaining the application of the requirements. The Commission also provided definitions of specific terms used by the Commission in establishing specific state standards.

Section 43.2, General Requirements; This section contains the following subsections:

(a) Tuberculosis: This section provides that the Subchapter is established for the prevention, surveillance, control, management and eradication of bovine tuberculosis in Texas.

(b) Movement Restrictions: This section provides that whenever the Commission has reason to believe that any livestock or exotic livestock have been exposed to or is infected with tuberculosis, that premises and all livestock and exotic livestock thereon shall have movement restricted, using either a "hold order" or "quarantine", and subject to a determination or results of tuberculosis test.

(c) Official Tests: This section provides that all official tuberculosis's tests shall be conducted by a designated personnel employed by the Commission, or the United States Department of Agriculture (USDA) or by an accredited veterinarian designated to perform approved tuberculosis test by the Executive Director.

(d) Reporting: This section provides that all official tests shall be reported on VS Form 6-22 and continuation sheet VS Form 6-22B and mailed to the Commission within seven days of reading the results.

(e) Identification. This section provides that all animals tested must be permanently individually identified by an official identification device, an official registration tattoo or an official registration brand as specifically recognized or authorized by the Commission.

(f) Tuberculin Test Interpretation, Classification, and Reporting Requirements. This section provides for how a veterinarian administers a tuberculin test and the reporting to the Commission.

(g) Disposition of Suspects and Reactors This section provides how suspects and reactors to the tuberculin test are handled.

(h) Requirements on Dealer Recordkeeping: This section provides that any dealer must maintain records of livestock and exotic livestock that are purchased or sold.

(i) Slaughter Plant Collections and Submissions: This section provides that slaughter plants for cattle are required to collect and submit diagnostic specimens for the purpose of testing for tuberculosis as directed by state or federal inspection personnel.

(j) Retesting and release of movement restrictions. This section provides for the handling of retesting and release of movement restrictions are handled.

(k) This section provides that a person may protest an initial test or a herd plan for a herd classified as increased risk for Tuberculosis

(l) Tuberculosis accredited herd. This section provides that a herd must meet the standards of the Uniform Methods and Rules (UM&R) as provided in Part IV.

(m) Interstate Movement Requirements: This section provides that the Interstate Movement Requirements are found in Chapter 51, Section 51.8 of this Title.

Section 43.3, Approved Feedlots/Approved Pens: This section provides the standards and procedures for approving a feedlot or pen for feeding restricted livestock or exotic livestock.

Section 43.4, Increased Risk Herds or Animals This section provides the standards for the testing of increased-risk herds.

Section 43.5, Indemnification: This section provides the procedures and standards for obtaining indemnity.

FISCAL NOTE

Mr. Mike Jensen, 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 additional fiscal implications for state or local government as a result of enforcing or administering the rules. There will be no effect on small or micro businesses. This will not have any additional fiscal implications on veterinarians in complying with this rule.

PUBLIC BENEFIT NOTE

Mr. Jensen 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 clear and concise regulations which can be found in one chapter.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, Section 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 concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC, Section 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." *In order to ensure that all interested parties have adequate time to review and comment, the Commission will accept comments for sixty days from date of publication in the Texas Register.*

SUBCHAPTER A. CATTLE

4 TAC §§43.1 - 43.3

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

STATUTORY AUTHORITY

Chapter 43 is repealed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by Section 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 Section 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 Section 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 Section 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 Section 161.048.

Section 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Chapter 162 has statutory authority for "Tuberculosis Control". Section 162.002, entitled "Cooperative Program", which provides that the commission may cooperate with USDA for the eradication of tuberculosis. Section 162.003, entitled "Testing", which authorizes the commission by rule to prescribe the method and system of testing cattle for tuberculosis. Section 162.004, entitled "Certificate of Test or Vaccination of Cattle or Other Animal", which provides for required test information. Section 162.005 entitled "Identification of Cattle", provides for identification and reporting requirements for positive cattle. Section 162.006, entitled "Quarantine", and provides the commission to issue quarantines. Section 162.010, entitled "Duty of Owner or Caretaker to Assist", requires an owner or caretaker of cattle to submit the cattle to be tested.

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

§43.1. Cattle (All Dairy and Beef Animals, genus Bos), and Bison (genus Bison).

§43.2. Interstate Movement Requirements.

§43.3. Slaughter Plant Collection.

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 August 22, 2005.

TRD-200503512

Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 719-0700

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SUBCHAPTER A. CATTLE AND BISON

4 TAC §§43.1 - 43.5

Chapter 43 is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by Section 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 Section 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 Section 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 Section 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 Section 161.048.

Section 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

Chapter 162 has statutory authority for "Tuberculosis Control". Section 162.002, entitled "Cooperative Program", which provides that the commission may cooperate with USDA for the eradication of tuberculosis. Section 162.003, entitled "Testing", which authorizes the commission by rule to prescribe the method and system of testing cattle for tuberculosis. Section 162.004, entitled "Certificate of Test or Vaccination of Cattle or Other Animal", which provides for required test information. Section 162.005 entitled "Identification of Cattle", provides for identification and reporting requirements for positive cattle. Section 162.006, entitled "Quarantine", and provides the commission to issue quarantines. Section 162.010, entitled "Duty of Owner or Caretaker to Assist", requires an owner or caretaker of cattle to submit the cattle to be tested.

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

§43.1. Definitions.

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

(1) Accredited Veterinarian--A veterinarian jointly approved by the Executive Director of the Commission and the Administrator of APHIS, to perform functions required by cooperative State-Federal animal disease control and eradication programs.

(2) Adjacent herds--A herd of livestock or exotic livestock that occupies a premises that lies within one mile of "an affected herd."

(3) Affected herd--A herd of livestock or exotic livestock in which there is strong and substantial evidence that *Mycobacterium bovis* exists. This evidence should include, but is not limited to, any of the following: histopathology, polymerase chain reaction (PCR) assay, bacterial isolation or detection, testing data, or epidemiologic evidence such as contact with known sources of infection.

(4) Approved feedyard/ approved pens--A confined area, either the entire feedyard or designated pens within the feedyard, jointly approved by the Executive Director of the Commission and the Administrator of APHIS for feeding of restricted livestock and exotic livestock. Biosecurity standards, to include requirements for geographic separation, shall be enforced to prevent potential spread of diseases to other livestock on the premises and adjacent premises. Procedures for accountability of inventory, animal identification, and movement control shall be enforced to ensure that restricted livestock and exotic livestock remain within approved facilities until verification of slaughter.

(5) Approved livestock facility--A stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary supervision where livestock are assembled and that has been approved under Title 9, Code of Federal Regulations (9 CFR), Section 71.20.

(6) Approved slaughtering establishment--A slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), or a State-inspected slaughtering establishment that has inspection by a State inspector at the time of slaughter.

(7) Bovine Tuberculosis Eradication- Uniform Methods and Rules(UM&R)--The minimum standards adopted and approved by the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection, for the maintenance of tuberculosis-free accredited herds of cattle and bison, and the maintenance of State or zone status in the U.S. Department of Agriculture's (USDA) tuberculosis eradication program.

(8) Certificate--An official document for movement of livestock, including a certificate of veterinary inspection, or other approved document, issued by an accredited veterinarian, state or federal animal health official or other approved official at the point of origin for the shipment of animals. The document shall include the official identification, age, breed, and sex of each animal to be moved; the purpose for which the animals are to be moved; the date and place of issuance; the points of origin and destination; the consignor and consignee; and the results of all tests required for movement.

(9) Commuter herd--A herd that has been recognized and approved by the state animal health officials and the AVIC in both the state of origin and the state of destination for movement of animals interstate or interzone, without change of ownership, during the course of normal production operations

(10) Dealer--All persons engaged in the business of buying or selling livestock in commerce either on their own account or as the employees or agents of the vendor, purchaser, or both, or all persons engaged in the business of buying or selling livestock in commerce on a commission basis. The term shall not include persons who:

(A) buy or sell livestock as part of their own bona fide breeding, feeding, or dairy or beef operations;

(B) are not engaged in the business of buying, selling, trading, or negotiating the transfer of livestock; or

(C) receive livestock exclusively for immediate slaughter on their own premises.

(11) Designated Accredited Veterinarian--An Accredited Veterinarian trained and approved to conduct specific tuberculosis tests and/or other tuberculosis program activities as determined by the commission.

(12) Designated Tuberculosis Epidemiologist (DTE)--A State or Federal epidemiologist designated in each State to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and to manage the tuberculosis program. The DTE must be selected jointly by the cooperating Chief State Animal Health Official, the AVIC, and the Regional Tuberculosis Epidemiologist. The National Center for Animal Health Programs Eradication and Surveillance Team Staff of VS must concur with the appointment. The DTE has the responsibility to determine the scope of epidemiologic investigations, determine the status of herds, assist in development of individual herd plans, and coordinate disease surveillance and eradication programs within his or her geographic area of responsibility. The DTE has authority to make independent decisions concerning the use and interpretation of diagnostic tests and the management of herds when those decisions are supported by sound disease eradication principles.

(13) Direct shipment to slaughter--The shipment of livestock from a premises, without unloading, directly to a slaughter establishment under State or Federal inspection and without diversion to assembly points, such as auctions, dealers, commission firm premises, public stockyards, or feedlots.

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

(15) Exotic Livestock--Grass-eating or plant-eating, single-hoofed or cloven-hoofed mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, camel, llama, rhinoceros, elephant, deer, and antelope families.

(16) Exposed animals--Any livestock or exotic livestock that have been exposed to bovine tuberculosis by reason of associating with other livestock or exotic livestock in which *M. bovis* has been diagnosed.

(17) Feedyard--A confined dry lot area for feeding of animals on concentrated feed. All animals in a feedyard are considered a "herd" for purposes of these regulations.

(18) Geographic separation--A minimum of 30 feet of separation, between groups of animals for which there are no common or shared handling facilities or equipment, watering or feeding facilities, or feed vehicles that enter the pens, pastures, or premises, of herds of different status.

(19) Herd--

(A) All livestock under common ownership or supervision that are grouped on one or more parts of any single premises, feedlot, farm, or ranch; or

(B) All livestock under common ownership or supervision on two or more premises that are geographically separated, but in which the animals have been interchanged or had contact with animals from different premises. It will be assumed that contact between units or groups of animals on the different premises has occurred unless the owner establishes otherwise and the results of the epidemiologic investigation are consistent with the lack of contact between premises; or

(C) All livestock on common premises, such as community pastures or grazing association units, but owned by different persons. Other groups of animals owned or co-owned by the persons involved that are located on other premises are considered to be part of a herd unless the epidemiologic investigation establishes that animals from an affected herd have not had the opportunity for direct or indirect contact with animals from that specific premises.

(20) Herd test--An official tuberculosis test of all test eligible livestock and exotic livestock in a herd.

(21) High risk herd--A herd that is epidemiologically determined by a state-federal veterinarian to have a high probability of having or developing tuberculosis. A high risk herd need not be located on the same premises as an infected or adjacent herd.

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

(23) Individual herd plan--A written disease management plan that is developed by the herd owner(s) and/or their representative(s), and/or the owner's veterinarian and a State or Federal veterinarian to eradicate tuberculosis from an affected herd while reducing animal and human exposure to the disease. The herd plan will include appropriate herd test frequencies, tests to be employed, and any additional disease management or herd management practices deemed necessary to eradicate tuberculosis from the herd in an efficient and effective manner. The plan must be approved by the Executive Director of the Commission and AVIC, and have the concurrence of the DTE or Regional Tuberculosis Epidemiologist.

(24) 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.

(25) No gross lesion (NGL)--Any animal that has no visible lesion(s) of bovine tuberculosis detected upon necropsy or slaughter inspection.

(26) Official identification device--An identification device approved the Commission and/or by the APHIS Administrator that provides unique identification for each individual animal.

(27) 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.

(28) Official tuberculosis test--A test for bovine tuberculosis, approved by the Commission and APHIS, applied and reported by designated personnel in accordance with the UM&R and these rules. The official tuberculosis tests for cattle and bison are the:

(A) Caudal fold tuberculin (CFT) test

(B) Comparative cervical tuberculin (CCT) test

(C) Cervical tuberculin (CT) test

(D) Bovine interferon gamma assay (cattle only)

(29) Quarantine--A written commission document restricting movement of animals because of the existence of or exposure to tuberculosis. The commission may establish a 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 tuberculosis and/or an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

(30) Permit--An official document issued by a VS representative, a State representative, an Accredited Veterinarian, a designated Accredited Veterinarian or other designated person that is required to accompany any reactor, suspect, exposed livestock, or animals of unknown status to an approved destination, or to slaughter.

(31) Premises identification number--A Commission and/or APHIS-approved method of identification that includes the assignment of a unique number or alpha-numeric number to a premises by State or Federal animal health officials.

(32) Reactor--Any livestock or exotic livestock that shows a response to an official tuberculosis test and is classified a reactor by the testing veterinarian or DTE in accordance with the policy established by the cooperating State and Federal animal health officials and the test classification requirements defined in the UM&R, or any suspect animal that is classified a reactor by the DTE upon slaughter inspection or necropsy, histopathological examination, PCR assay, and/or culture of selected tissues collected by the Federal or State veterinarian performing or supervising the slaughter inspection or necropsy.

(33) Responder--Any livestock or exotic livestock that has a visible or palpable response at the site of a tuberculin test injection.

(34) Suspect--Any livestock or exotic livestock that show a response to a presumptive diagnostic test (CFT test in cattle and bison, SCT test in exotic bovidae and cervidae) and are not classified as reactor; or that have been classified as suspect by CCT test; the bovine interferon gamma assay; or any other official test for tuberculosis.

§43.2. General Requirements.

(a) Tuberculosis: Subchapter A of this chapter shall govern procedures for the prevention, surveillance, control, management and eradication of bovine tuberculosis in Texas. For the purpose of controlling and eradicating tuberculosis the following documents are incorporated by reference: The January 1, 2005, Edition of "Bovine Tuberculosis Eradication Uniform Methods and Rules" and the Code of Federal Regulations, Title 9, Parts 71, 77, and 161.

(b) Movement Restrictions: Whenever the Texas Animal Health Commission (Commission) has reason to believe that any livestock or exotic livestock have been exposed to or is infected with tuberculosis, that premises and all livestock and exotic livestock thereon shall have movement restricted, using either a "hold order" or "quarantine", subject to a determination or results of tuberculosis test conduced by authorized personnel or as directed by the Designated Tuberculosis Epidemiologist or the Executive Director. Movement of livestock or exotic livestock under movement restrictions must be authorized by the Designated Tuberculosis Epidemiologist or the Executive Director and accompanied by a written permit. The permit will list:

(1) the reactor tag number or official ear tag number in the case of reactor, suspect, or exposed livestock;

(2) the owner's name and address;

(3) origin and destination locations;

(4) number of animals covered;

(5) the purpose of the movement; and

(6) if the animals are required to be shipped under seal then the permit should also show the number on the seal. If a change in destination becomes necessary, a new permit must be issued by authorized personnel. No diversion from the destination on the permit is allowed.

(c) Official Tests: All official tuberculosis's tests shall be conducted by a designated personnel employed by the Commission, or the United States Department of Agriculture (USDA) or by an accredited veterinarian designated to perform approved tuberculosis test by the Executive Director of the Commission Each individual designated to conduct official tuberculin tests shall meet a performance standard, as referenced in the UM&R - Appendix C; entitled "Performance Standards for Caudal Fold Tuberculin (CFT) Testing" . Each individual authorized to conduct official CFT tests shall be in compliance with these standards for the CFT.

(d) Reporting: All official tests shall be reported on VS Form 6-22 and continuation sheet VS Form 6-22B and mailed to the Commission within seven days of reading the results. The information on the VS Form 6-22B, shall include:

(1) the official individual identification;

(2) the name and post office address of the owner;

(3) the location of the premises and the animals;

(4) the dates of injection and reading of the test;

(5) the kind of test conducted;

(6) the result of the test;

(7) the reason for testing (ie Herd Accreditation, Sale or Show, Other) and;

(8) the signature and accreditation number of the testing veterinarian.

(e) Identification. All animals tested must be permanently individually identified by an official identification device, an official registration tattoo or an official registration brand as specifically recognized or authorized by the commission.

(f) Tuberculin Test Interpretation, Classification, and Reporting Requirements.

(1) The site of administration of a tuberculin test shall be examined at 72 (+/- 6) hours following injection. Examination shall be made by visual observation and palpation. Observation without palpation shall constitute cause for removal of veterinary accreditation.

(2) Any animal with a visible or palpable response at the site of injection shall be classified as a Suspect by the testing veterinarian.

(3) Any animal classified as a Suspect shall:

(A) be reported by the testing veterinarian to the appropriate Area Office within 48 hours following examination, and

(B) The reporting veterinarian shall inform the owner or caretaker that the herd is restricted from movement until a determination of disease status has been made by the Commission.

(g) Disposition of Suspects and Reactors

(1) Reactors shall remain on the premise where they were disclosed until a State or Federal permit for movement has been obtained. Movement for immediate slaughter shall be within 15 days of classification and shall be directly to a slaughtering establishment where approved State or Federal inspection is maintained. Alternatively, the animals may be destroyed on the premises or in a postmortem examination facility under the direct supervision of a State or Federal animal health veterinarian to ensure that a proper postmortem examination is conducted; that the carcasses are disposed of by deep burial or burning, and that the facilities are adequately cleaned and disinfected.

(2) Herds containing suspects to the CFT test shall be quarantined until the suspect animals are:

(A) Negative to a CCT test; or

(B) Negative on the bovine interferon gamma assay; or

(C) Shipped, under permit, directly to slaughter in accordance with State and Federal laws and regulations with postmortem examinations conducted according to requirements outlined in paragraph (5) of this subsection.

(3) Suspects to the CCT test must be:

(A) Negative to a CCT retest 60 or more days after the previous CCT injection; or

(B) Shipped under permit directly to slaughter.

(4) Animals positive on the bovine interferon gamma assay and classified as suspect must be:

(A) Negative on a bovine interferon gamma assay retest conducted within 30 days of the CFT injection (the DTE or Regional Tuberculosis Epidemiologist must concur with the retest); or

(B) Shipped, under permit, directly to slaughter for postmortem examination.

(5) Postmortem examinations shall be witnessed by a State or Federal animal health veterinarian and selected tissue specimens, to include any tissue with granulomatous appearing lesions and representative head and thoracic lymph nodes, must be submitted for laboratory examination.

(h) Requirements on Dealer Recordkeeping: Any dealer must maintain records of livestock and exotic livestock that are purchased or sold. Such records shall show the buyer's and seller's name and address, county of origin, number of animals, and a description of each animal, including sex, age, color, breed, brand, and official identification. Records at auctions and commission firms shall show the delivery vehicle license number. These records must be maintained for a minimum of five (5) years. Such records must be made available to State or Federal animal health officials, upon request, during normal business hours.

(i) Slaughter Plant Collections and Submissions: Slaughter plants for cattle are required to collect and submit diagnostic specimens for the purpose of testing for tuberculosis as directed by state or federal inspection personnel. The slaughter of cattle shall be conducted so that the carcass and any diagnostic specimens can be identified as being derived from a particular animal. Handling shall include, but is not limited to, the retention of official eartags, official backtags, herd identification ear tags, ear bangles, electronic implants, and other man made identifying devices affixed to the animal, in a way that correctly relates the diagnostic specimen to the carcass from which it was taken. All identification devices shall be included with the documentation submitted with a diagnostic specimen to an approved laboratory.

(j) Retesting and release of movement restrictions.

(1) Sale of feeder calves from quarantined herds will be restricted. Feeder calves under 12 months of age that have passed a CFT test within 60 days prior to movement may be "S" branded and permitted to move intrastate to an approved feedlot or approved pens in a feedlot.

(2) Herds in which Mycobacterium bovis infection has been confirmed shall be depopulated; or shall remain under quarantine until all requirements of an individual herd plan have be completed in accordance with procedures prescribed in the UM&R

(3) Herds in which NGL reactor(s) only occur and no evidence of *Mycobacterium bovis* infection has been disclosed may be released from *movement restrictions* after a 60 day negative retest on the entire herd.

(4) Herds in which Suspect animal(s) are disclosed shall remain under movement restrictions until the Suspect(s) have been retested and classified negative, or are shipped direct to slaughter under permit and no evidence of M.bovis infection is disclosed. If animals are slaughtered as suspects but show no gross lesions and selected tissues, to include representative head and thoracic lymph nodes, are found negative on histopathology and bacteriological culture for M. bovis and a complete epidemiologic investigation, including a herd test of all eligible animals, fails to disclose evidence of infection with or exposure to bovine tuberculosis, the herd, with the concurrence of the DTE and Regional Tuberculosis Epidemiologist, may be considered free of bovine tuberculosis.

(k) A person may protest an initial test or a herd plan each herd classified as increased risk for Tuberculosis:

(1) To protest, the herd owner must request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:

(A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;

(B) the meeting or meetings shall be held in Austin; and

(C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.

(2) Upon receipt of a decision or order by the executive director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the Chairman of the Commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(3) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(4) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

(l) Tuberculosis accredited herd. A herd must meet the standards of the Uniform Methods and Rules (UM&R) as provided in Part IV.

(m) Interstate Movement Requirements: See §51.8 of this title (relating to Cattle).

§43.3. Approved Feedyards/Approved Pens.

(a) Approved Feedyards/ Approved Pens: A confined area, either the entire feedyard or designated pens within the feedyard, jointly approved by the Executive Director of the Commission and the Administrator of APHIS for feeding of restricted livestock and exotic livestock.

(b) Designation Agreement: In order to be recognized as an approved feedyard or approved pen there shall be a signed designation agreement with TAHC and USDA-APHIS-VS indicating that the facility can meet the necessary standards to accept restricted cattle, bison or exotic livestock. The agreement will contain standards and procedures which the facility must meet in order to be approved. The Agreement will provide for isolation of animals, to separate and prevent contact, with restricted animals and unrestricted animals through fencing and geographic separation; official identification; biosecurity standards; and recordkeeping requirements, which include information for all animals entering and leaving a facility. Failure to meet and maintain those standards and procedures will cause a facility to have the approve status rescinded. Known exposed animals must be tested negative within 60 days and be "S" branded prior to entering the approved feedyard. These animals will be placed under hold order and permitted out to slaughter.

(c) Standards and procedures

(1) Geographic separation: Adequate isolation of animals which separate and prevent contact with tested animals and untested animals by fencing and geographic separation. Geographic separation shall be sufficient to meet the minimum standards in the UM&R as well as to prevent potential spread of diseases to other livestock on the premises and adjacent premises.

(2) Official identification: All animals entering and leaving the facility must be officially identified and that information is to be recorded and maintained as required by paragraph (4) of this subsection.

(3) Biosecurity standards: All approved facilities must clean and disinfect their pens in accordance with the requirements as contained on the Code of Federal Regulations (CFR) Parts 77.19. If an infected animal is disclosed, the pen must be cleaned and disinfected as directed by a DTE. In addition, the pen should be vacated for thirty (30) days or as directed by a DTE

(4) Recordkeeping requirements: An approved facility shall maintain records which indicated the movement of all animals that enter and leave a facility. An approved facility must maintain the records as required by §43.2(i) of this title (relating to Requirements on Dealer Record Keeping).

(5) Grazing: In order for the Commission to recognize an approved facility having grazing the, commission must enter into a MOU with USDA-APHIS and the facility must be able to show an ability to maintain isolation of those animals from other animals. Any provisions for grazing or pasturing restricted cattle or bison entering an approved feedlot/approved pens must be formalized in a Memorandum of Understanding (MOU) by the Chief State Animal Health Official and the Administrator. The MOU must include adequate isolation and fencing requirements as recommended by the DTE and the Regional Tuberculosis Epidemiologist. An animal leaving the confined area must be destined to either another approved feedlot or approved pen, or to an approved slaughter facility.

(6) The approved status must be renewed by the operator every two years provided that the requirements specified in these regulations and the approved agreement continue to be met by the feedyard. If the Executive Director determines the feedyard's failure to comply with the Approved Pens Agreement or these regulations then he can rescind the agreement.

§43.4. Increased Risk Herds or Animals.

Testing of increased -risk herds.

(1) In herds where *Mycobacterium bovis* infection has been confirmed but the herd not depopulated, the herd shall remain under quarantine until all requirements of their individual herd plan have be completed as well as all applicable statutory and regulatory requirements.

(2) In a newly assembled herd on premises where a tuberculosis affected herd has been depopulated, two annual herd tests shall be applied to all livestock and exotic livestock ; the first test shall be applied approximately six months after assembly of the new herd. If the premises are vacated for one year, these requirements may be waived.

(3) In herds that are an increased risk for *Mycobacterium bovis* infection as determined by the Designated Tuberculosis Epidemiologist or the Executive Director in order to control or eradicate Bovine Tuberculosis from this state.

(4) Slaughter traceback investigations

(A) Tracebacks to a herd: Herds indicated as the source of slaughter traceback case investigations shall have movement restrictions in place and all livestock and exotic livestock shall be tested. The testing will be conducted by a representative of the Texas Animal Health Commission or USDA personnel.

(B) Tracebacks to a feedlot: Livestock and exotic livestock in feedlots known to be exposed to tuberculosis shall have movement restrictions in place and exposed animals shall be moved under permit for direct shipment to slaughter. When an affected lot originates from a non approved pen or feedyard, the pen must be cleaned and disinfected as directed by the DTE. In addition, this pen must be vacated for 30 days or as directed by the DTE. When an affected lot originates from an approved pen or feedlot, the requirements for cleaning and disinfection shall be according to the provisions specified in §43.3(c) of this title (relating to Standards and Procedures).

(5) Other increased risk herds: Herds located adjacent to an affected herd, herds that have contained known exposed animals, and herds that have been implicated as the source of animals found to be affected in an affected herd shall then have movement restricted until all conditions specified in the UM&R have been satisfied.

§43.5. Indemnification.

Indemnification to cattle owners. After said suspects or reactors are slaughtered, the owner may submit to the Texas Animal Health Commission a written statement made by said establishment showing the amount of salvage paid for each animal.

(1) Cattle that are slaughtered in compliance with the tuberculosis program or as a result of a response on an official test can be indemnified as follows. Subject to the availability of funds, the Commission may pay the owner the unreimbursed amount determined by deducting the salvage value and the federal indemnity from the appraised value not to exceed:

(A) 1,000 for each animal classified as a suspect or a reactor;

(B) $100 for each negative exposed animal slaughtered as a result of a whole herd depopulation.

(2) All animals in the herd must be tested for indemnity to be paid.

(3) All provisions of the law and the regulations of the Commission must be complied with for indemnity to be paid.

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 August 22, 2005.

TRD-200503513
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 719-0700

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER J. AUTHORIZED LENDER'S DUTIES AND AUTHORITY

7 TAC §§1.830 - 1.832, 1.834

The Finance Commission of Texas (the commission) proposes amendments to §§1.830 - 1.832 and 1.834, concerning the duties and authority of authorized lenders. (Please note that the proposed repeal of §1.833 is being published elsewhere in this issue of the *Texas Register*.)

The purpose of the amendments is to modernize the recordkeeping rules for regulated lenders, so that the rules better accommodate the prevalence of automated recordkeeping systems used by the vast majority (over 95%) of licensees today. The rules have also been reorganized and streamlined, so that items to be contained together in one file (e.g. the borrower's account record) are listed in one place within the rules. To that end, the substantive language of §1.833 (which is being proposed for repeal separately) has been added to §§1.830 - 1.832.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn 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 the proposed amendments will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. There is an anticipated, but negligible cost to some persons who will be required to comply with the amendments as proposed. Such negligible cost is estimated to be less than $5.00 per licensee who sells gap insurance, in order to comply with maintaining a gap waiver agreement register per §1.831. There will be little to no effect on individuals required to comply with the sections as proposed, aside from the minimal cost for those needing to maintain a log concerning gap waivers. Gap waiver registers may be maintained in electronic recordkeeping systems or simple manual logs. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 342, Subchapter J.

§1.830. Files and Records Required (Subchapter E and F Lenders).

Each licensee must maintain records with respect to each loan made under Chapter 342, Subchapters [~~Subchapter~~] E and F of the Texas Finance Code, and make those records available for examination. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, or optically imaged recordkeeping system unless otherwise specified by statute or regulation.

(1) Loan register [~~or transaction log~~]. Each licensee must maintain a loan register that contains the information required by subparagraphs (A) - (D) of this paragraph for each Chapter 342, Subchapter E and F loan made by a licensee. The loan register can be maintained either as a paper or an electronic record. If the loan register is maintained as an electronic record, a licensee must be able to sort, generate, and print, as a separate record, the loan register for each day the licensee originated or acquired Chapter 342, Subchapter E and F loans. A licensee may incorporate the loan register as part of the record of daily transactions required by paragraph (7) of this section if the loan register is a separate and distinct section of the daily report. If the loan register is maintained as a paper record, the [~~A~~] loan register must be maintained currently. A licensee may file, in chronological order, copies of any loan document or form prepared at the time a loan is made reflecting the information set forth in subparagraphs (A) - (D) of this paragraph to serve as a loan register. A loan register must contain the following information:

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

(2) Alphabetical index of current borrowers. A current alphabetical index or report of outstanding loans showing the full name of each borrower, co-borrower [~~coborrower~~], or other obligor on the loan and the loan number assigned each loan must be maintained. A licensee may maintain the alphabetical index of current borrowers either as a paper or an electronic record. If the alphabetical index of current borrowers is maintained as an electronic record, a licensee must be able to sort, generate, and print, as a separate record, the alphabetical index of current borrowers in strict alphabetical order. A licensee can maintain the alphabetical index of current borrowers by creating a rolodex of current borrowers. In lieu of creating a rolodex of current borrowers, a licensee may maintain the alphabetical index of current borrowers by filing the loan files of the borrowers or individual borrower's account records in strict alphabetical order. The manual recordkeeping system for maintaining the alphabetical index of current borrowers must be currently maintained and include a card, file, or record for each co-borrower or other obligor.

(3) Borrower's account record (including payment and collection contact history).

[~~(A)~~] A separate paper or electronic record must be maintained for the account of each borrower. The paper or electronic borrower's account record must be readily available by reference to either a name or loan number. The borrower's account record [~~and the record~~] must contain at least the following information on each loan:

(A) [~~(i)~~] Loan number as recorded on loan register;

(B) [~~(ii)~~] Loan schedule and terms itemized to show:

(i) [~~(I)~~] Date of loan;

(ii) [~~(II)~~] Number of installments;

(iii) [~~(III)~~] Due date of installments;

(iv) [~~(IV)~~] Amount of each installment, and;

(v) [~~(V)~~] Maturity date.

(C) [~~(iii)~~] Name, address, and telephone number of borrower;

(D) [~~(iv)~~] Names and addresses of co-borrowers [~~coborrowers~~] or other obligors, if any;

(E) [~~(v)~~] Type or brief description of security; if none, so indicate;

(F) [~~(vi)~~] Total of payments (amount of loan);

(G) [~~(vii)~~] Amount financed (cash advance);

(H) [~~(viii)~~] Total interest charges itemized to show: [~~on Subchapter E loans, including additional days charges for irregular installments; or, if the loan is made under Subchapter F, the acquisition charge and the installment account handling charge shown separately;~~]

(i) On Subchapter E loans, the base finance charge, the administrative loan fee and additional days charge for irregular installments, or;

(ii) On Subchapter F loans, the acquisition charge and the installment account handling charge shown separately;

(I) [~~(ix)~~] Amount of premium charges for insurance, gap waiver agreements, and authorized ancillary products itemized to show:

(i) [~~(I)~~] Credit life insurance;

(ii) [~~(II)~~] Credit accident and health (disability) insurance;

(iii) [~~(III)~~] Personal property insurance;

(iv) [~~(IV)~~] Collateral protection [~~Automobile~~] physical damage insurance (single interest or dual interest coverage);

(v) [~~(V)~~] Nonfiling insurance [~~, and~~];

(vi) [~~(VI)~~] Involuntary unemployment insurance;[~~.~~]

(vii) Gap waiver agreements, and;

(viii) Automobile club services memberships authorized by Texas Finance Code, §342.457.

(J) [~~(x)~~] Amount of official fees for recording, amending, or continuing a notice of security interest that is [~~are~~] collected at the time the loan is made and which is to be disbursed within the period of 30 days as prescribed in paragraph (6)(D)(i) [~~(5)(D)(i)~~] of this section;

(K) [~~(xi)~~] Amount of personal property insurance when the coverage amount of insurance is not equal to the amount of the total of payments (amount of loan), and;

(L) [~~(xii)~~] Individual payment entries itemized to show:

(i) [~~(I)~~] Date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(ii) [~~(II)~~] Amounts received for application to principal and [~~precomputed~~] interest, and;

(iii) [~~(III)~~] Amounts received for default, deferment, or other authorized charges.

[~~(B) Corrective entries are permitted when justified.~~]

(M) [~~(C)~~] Refunds of unearned interest, insurance charges, gap waiver agreements, and authorized ancillary products, if any. [~~In the event a loan is prepaid in full, refunds of unearned charges and unearned insurance premiums are required.~~] A licensee is responsible for substantiating final entries and that refunds were paid to the borrower. Refund amounts must be itemized to show:

(i) Interest refunded;

(ii) Credit life, accident and health, involuntary unemployment, collateral protection [~~single~~] interest (single interest or dual interest coverage), and personal property insurance charges refunded, showing separately the refund applicable to each separate insurance policy or coverage[~~, and~~];

(iii) Dual automobile physical damage insurance when borrower requests cancellation of the policy;[~~.~~]

(iv) Gap waiver agreements, and;

(v) Automobile club services memberships.

(N) Collection contact history. A licensee must make a written or an electronic record of each and every contact made by a licensee with the borrower or any other person. The written or electronic record must also include every contact made by the borrower with the licensee. The written record must include the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(O) Corrective entries. A licensee can make corrective entries to the borrower's account record if the corrective entry is justified. A licensee must maintain the reason and supporting documentation for each corrective entry made to the borrower's account record. The reason for the corrective entry can be recorded in the collection contact history of the borrower's account record. The supporting documentation justifying the corrective entry can be maintained in the individual borrower's account file or properly stored and indexed in a licensee's optically imaged recordkeeping system. If a licensee manually maintains the borrower's account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual borrower's account record.

[~~(D) When an error is made on the individual borrower's account record, a line must be drawn through the improper entry and the correct entry made above or below. No erasures or other obliterations may be made on the payments received section of a manual individual record.~~]

(4) [~~(E)~~] Transfer record. A licensee must maintain a transfer record, whether paper or electronic, when any Chapter 342 loan accounts made by or acquired by the licensee [~~When accounts~~] are transferred from its licensed location [~~, a separate record of these accounts must be maintained by the transferor~~]. The record must show the name

of the borrower, the account number, the date of transfer, and the location to which the accounts are transferred.

~~[(F) Separate individual borrower's account records must be maintained for open and closed loans. Any systematic method of filing may be utilized so long as any account record may be readily located by reference to either a name or loan number.]~~

(5) [~~(4)~~] General business and accounting records. [~~Borrower disbursement record.~~] General business and accounting records concerning the financial transactions of the loan business must be maintained. The business and accounting records must include [~~The loan contract, statement of loan or account record, or single separate disbursement record must show the individual amounts paid out at the borrower's direction or request on his behalf or for his benefit. Each disbursement must be substantiated by~~] receipts, documents, canceled checks, or other records[~~.~~] for each disbursement made at the borrower's direction or request on his behalf or for his benefit, including repossession, foreclosure, or legal fees applied to the borrower's account.

(6) [~~(5)~~] Official fee [~~Fee~~] record (Subchapter E loans only).

(A) The amount of official fees collected at the time the loan is made and to be disbursed within the period prescribed in subparagraph (D)(i) of this paragraph must be disclosed on the individual borrower's account record.

(B) Information concerning fees for termination, continuation, or amendment collected at the time a loan is made but not disbursed, as prescribed by subparagraph (D)(i) of this paragraph, or collected subsequent to the making of the loan, must be entered in a record. Entries to this record must be in chronological order as to the date the fees are collected. The record must show the date each fee is collected, the amount of each fee collected, the date each fee is disbursed and the amount of each fee disbursed. In addition, if a fee is collected in advance for the purpose of filing a UCC-3 to "continue" a notice of security interest, the record must show the date the present filing expires.

(C) If more than one fee is included in a disbursement by check to the recording office, the loan number of each account to which the disbursement is related on the check copy, check stub, or voucher must be documented.

(D) Disbursement procedures.

(i) Fees collected at the time a loan is made for recording, amending, or continuing a notice of security interest must be disbursed to the recording agency within 30 days from the date of collection from the borrowers. If fees are not properly disbursed within 30 days, the borrower must be given credit for the fee and any filing may be made only at the licensee's expense. If filing of continuation fees may not be made during the 30 days following the date of the loan due to conflict with §9.515 [~~§9.403~~] of the Uniform Commercial Code, the licensee must follow the procedure outlined in subparagraph (B) of this paragraph. (Note: Subparagraph (E)(i) of this paragraph summarizes the filing requirements of §9.515 [~~§9.403~~] of the Uniform Commercial Code.)

(ii) Each licensee should disburse, to the recording agency, termination fees collected from borrowers within 30 days from the date the loan is paid in full. If the termination fees are not disbursed within this period, the fees must be returned to the borrowers and the termination effected at expense of the licensee.

(E) Continuation of liens will be dependent upon conformity with the following:

(i) If a licensee desires to continue a notice of security interest on which a maturity date was not initially established on the financing statement, a continuation statement must be filed no later than 60 days after the maturity date and no sooner than six months prior to the maturity date. A licensee may exercise one of the following options when "continuing" a lien:

(I) The cost of filing a continuation statement may be included in the official fees collected in connection with a renewal loan that has a maturity date extending past the end of the five-year [~~five year~~] period or past the initial maturity date.

(II) The filing fee may be collected directly from the borrower within the period for filing prescribed by §9.515 [~~§9.403~~] of the Uniform Commercial Code.

(III) The borrower and the licensee may agree to charge the borrower's account for the cost of filing.

(IV) The cost of filing may be borne by the licensee.

(ii) Record of fees collected under this section must be maintained as prescribed in subparagraphs (A) or (B) of this paragraph.

(7) [~~(6)~~] Record of daily transactions. Each licensee must maintain sufficient records, paper or electronic, to adequately reflect, on an individual account basis, the business occurring during each day. The records must reflect the date on which each transaction occurred.

(8) [~~(7)~~] Record of loans in litigation and repossession.

(A) An index of each repossession as it occurs and each legal action by or against the licensee as it is initiated must be recorded. The index must show the borrower's name, account number, and date of action. If accounts have been transferred, it must be noted in the index as well as on the record of transferred accounts.

(B) All loan records, account cards, correspondence, and any other pertinent information must be maintained in the borrower's account folders or files. The file must include the following applicable items:

(i) Identification of the collateral sought or acquired by the licensee;

(ii) A copy of the original petition and the most current amended petition, if any;

(iii) Proof of judgment if a judgment is taken and amounts awarded by the court;

(iv) The date and terms of settlement if settlement is made between the borrower and the licensee before judgment;

(v) Record of all payments received after judgment, properly identified and applied;

(vi) When the licensee, acting as a secured party, takes possession of the collateral and disposes of it at a public or private sale as provided under the Uniform Commercial Code, and the sale is not a judicial sale, written evidence substantiating the commercial reasonableness of all aspects of the sale of the collateral, and of its preparation for sale, if any. These documents should include copies of any invoices or receipts, condition reports indicating the condition of the collateral, notice of intended disposition sent to the borrower and any other obligor or the waiver of the notice signed after default by the borrower and other obligors, and evidence of fair sale of the collateral. One means of providing evidence of fair sale or the commercial reasonableness of sale is the taking of not less than three bona fide bids. Bids must disclose the names and addresses of the bidders.

(vii) Name and address of purchaser of repossessed collateral.

(viii) After the disposition of the collateral, a licensee must maintain a copy of any explanation of calculation of surplus or deficiency sent to the borrower.

[(8) Loan records and documents.]

[(A) All obligations signed by the borrower, including promissory notes and security agreements, must be kept at an office in the state designated by the licensee or made available in the state, except when transferred under an agreement which gives the commissioner access to the documents. Copies of loan documents, financing statements, loan applications, records of insurance policies issued by or through the licensee in connection with the loan, and books and records required by this rule must be maintained in the licensed location or be made available at some place in the state designated by the licensee in writing to the commissioner. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.]

[(B) Loan documents and other records must be maintained as required to evidence compliance with applicable state and federal laws and regulations, including but not limited to, the Equal Credit Opportunity Act and the Truth in Lending Act.]

[(C) If tangible personal property is taken as collateral on a loan, the loan documents or attachments must describe the property in detail sufficient to identify each individual item taken.]

[(D) Copies of receipts on cash payments collected outside the licensed office must be maintained.]

[(E) If an automobile insurance policy is required, a copy of the policy or insurance application and other pertinent records relating to the rating of the policy as finally issued must be maintained in the borrower's file.]

(9) Insurance loss registers [Loss Registers]. Each licensee must maintain a register, paper or electronic, reflecting information on life, accident and health, property insurance, involuntary unemployment, and single interest insurance claims whether paid or denied by the insurance carrier.

(A) Life insurance claims [Insurance Claims]. The register pertaining to life insurance claims must show the name of the borrower, the account number, and the date of death. [The borrower's individual file or account record must disclose the amount of indebtedness at the time of death, the gross amount of the claim paid, the amount of insurance benefits paid beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness and the check number or numbers by which the amount is paid beneficiaries other than the licensee.]

(B) (No change.)

(C) Personal property insurance claims [losses]. The register pertaining to personal property insurance claims must show the name of the borrower, the account number, the amount of insurance written on tangible personal property other than a motor vehicle, the amount of the settlement, and a notation as to whether the loss is a total or partial loss.

(D) - (E) (No change.)

(10) Loan records and documents file.

(A) A licensee must maintain loan records and documents files for each individual borrower. The loan records and documents file must contain all necessary records and documents to evidence compliance with applicable state and federal laws and regulations including the Equal Credit Opportunity Act and the Truth in Lending Act. The loan records and documents file shall include copies of the following records or documents:

(i) promissory notes including disclosures required by the Truth in Lending Act;

(ii) security agreements that describe the collateral in detail sufficient to identify each individual item taken (including any separate valuation sheets reporting the replacement value of the personal property items);

(iii) loan applications and any other written or recorded information used in evaluating the application;

(iv) financing statements;

(v) certificates of title for motor vehicles securing the loan and applications for certificate of titles;

(vi) records of insurance policies issued by or through the licensee in connection with the loan, including certificate of insurances;

(vii) if a motor vehicle physical damage insurance policy is required, a copy of the policy or insurance application and other pertinent records relating to the rating of the policy as finally issued;

(viii) supplemental insurance records;

(ix) supplemental gap waiver agreement records;

(x) any written or recorded records relating to repossessions, legal actions, or foreclosure actions relating to the borrower or the borrower's collateral securing the loan, and;

(xi) any separate disclosures that are required by federal or state law such as the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(B) Supplemental insurance records. Each licensee must maintain in the borrower's file supplemental records supporting the settlement or denials of claims reported in the registers. If the reason for the denial of a life insurance or an accident and health insurance claim is based upon the medical records of the borrower, supplemental records supporting the denial of the claim must be forwarded to the commissioner upon request.

(i) Life insurance claims. The supplemental insurance records for life insurance claims shall include the death certificate or other written records relating to the death of the borrower; proof of loss or claim form that discloses the amount of indebtedness at the time of death; check copies or electronic payment receipts that reflect the gross amount of the claim paid including the amount of insurance benefits paid beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness; and the amount that is paid beneficiaries other than the licensee.

(ii) Accident and health insurance claims. The supplemental insurance records for accident and health insurance claims shall include any written records relating to the disability including statements from the physician, employer, and borrower; the proof of loss or claim form filed by the borrower; and copies of the checks or electronic payment receipts reflecting disability payments paid by the insurance carrier.

(iii) Personal property insurance claims. The supplemental insurance records for personal property insurance claims shall include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered item; the proof of loss or claim form filed by the borrower; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the personal property insurance claim. In the case of property insurance claims, these supplemental insurance records must clearly indicate whether the amount of the settlement on each individual item is based on replacement or based on repair.

(iv) Involuntary unemployment insurance claims. The supplemental insurance records for involuntary unemployment insurance claims shall include any written document relating to the termination, layoff, or dismissal of the borrower; the proof of loss or claim form filed by the borrower; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the involuntary unemployment insurance claim.

(v) Single interest insurance claims. The supplemental insurance records for single interest insurance claims shall include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered motor vehicle; the proof of loss or claim form filed by the borrower; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the single interest insurance claim.

(C) Supplemental gap waiver agreement records. Each licensee must maintain in the borrower's individual file records supporting the settlements or denials of gap waiver agreement claims reported in the gap wavier agreement register. The records must include, if applicable:

(i) the gap waiver agreement claim form;

(ii) proof of loss and settlement check from the borrower's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(iii) documents that provide verification of the borrower's primary insurance deductible;

(iv) if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss to the motor vehicle;

(v) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety "Driver's Accident Report" (Form ST-2) filed in connection with the total loss to the motor vehicle, and;

(vi) copies of the checks reflecting the settlement amount paid by the licensee for the gap waiver agreement claim.

(11) Advertising record.

(A) Each licensee must maintain, either at the licensed office or at a principal Texas office, so designated to the commissioner, a complete record of all written and electronic communications soliciting loans (including scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for a period of not less than one year from the date of use or until the next examination by a representative of the commissioner. The date or period of use of each solicitation or advertisement must be indicated.

(B) If any language other than English is used in any advertising material, a true and correct translation must appear along with the advertising material.

(12) Adverse action record. Each licensee must maintain a record of all applications relating to Chapter 342 loans where the applicant was denied credit. The record must include those records and documents required by Regulation B - Equal Credit Opportunity Act, 12 C.F.R. §202.1 et. seq., including the loan application; any written or recorded information used in evaluating the application; the adverse action notice (if required); notice of incompleteness, if applicable; and counteroffer notice, if applicable.

(13) Official correspondence file. Each licensee must maintain a separate file for all communications from the Office of Consumer Credit Commissioner and for copies of correspondence and reports addressed to the commissioner. This shall include a copy of the Texas Credit Title and applicable regulations, electronic or paper hard-copy version, and examination reports issued by the commissioner.

(14) [~~(10)~~] Retention and availability of records. All required books and records must be available for inspection at any time by the commissioner or the commissioner's authorized representatives, and must be retained for a period of four years from the date of the loan, or two years from the date of the final entry made thereon, whichever is later. All obligations authenticated by the borrower, including promissory notes and security agreements, must be kept at an office in the state designated by the licensee or made available in the state, except when transferred under an agreement which gives the commissioner access to the documents. Copies of loan documents, financing statements, loan applications, records of insurance policies issued by or through the licensee in connection with the loan, and books and records required by this rule must be maintained in the licensed location or be made available at some location in the state designated by the licensee in writing to the commissioner. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

§1.831. Files and Records Required (Subchapter G Lenders).

Each licensee must maintain records with respect to each loan made under Chapter 342, Subchapter G of the Texas Finance Code and each home equity loan made under Article XVI, §50 of the Texas Constitution and make those records available for examination. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, or optically imaged recordkeeping system unless otherwise specified by statute or regulation. The records required by this section must be retained and made available for inspection in the same manner as that specified in §1.830(14) of this title.

(1) A licensee must maintain the following items in a substantially similar form to the respective provisions of §1.830 of this title, as follows:

(A) a loan register;

(B) a transfer record;

(C) general business and account records;

(D) a record of daily transactions;

(E) insurance loss registers;

(F) an advertising record;

(G) an adverse action record; and

(H) an official correspondence file.

[(1) Loan register or transaction log. A loan register must be maintained. A licensee may file, in chronological order, copies of any loan document or form prepared at the time a loan is made reflecting the information set forth in subparagraphs (A) - (D) of this paragraph to serve as a loan register. A loan register must contain the following information:]

[(A) Date of loan day (day, month, and year);]

[(B) Surname of borrower;]

[(C) Total of payments (amount of loan), and;]

[(D) Loan number.]

(2) Record of individual borrower's account.

[(A)] A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(A) [(i)] Loan number as recorded on loan register;

(B) [(ii)] Loan schedule and terms itemized to show:

(i) [(I)] Date of loan;

(ii) [(II)] Number of installments;

(iii) [(III)] Due date of installments;

(iv) [(IV)] Amount of each installment, and;

(v) [(V)] Maturity date.

(C) [(iii)] Name, address, and telephone number of borrower;

(D) [(iv)] Names and addresses of co-borrowers [coborrowers], if any;

(E) [(v)] Legal description of real property;

(F) [(vi)] Principal amount;

(G) [(vii)] Total interest charges, including the scheduled base finance charge, the administrative loan fee, points, and odd days interest on the first installment period [additional days charges for irregular installments and points];

(H) [(viii)] Amount of premium charges for insurance itemized to show:

(i) [(I)] Credit life insurance;

(ii) [(II)] Credit accident and health (disability) insurance, and;

(iii) [(III)] Personal property insurance.[;]

(I) [(ix)] Amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;[.]

(J) [(x)] Individual payment entries itemized to show:

(i) [(I)] Date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(ii) [(II)] Actual amounts received for application to principal and interest, and;

(iii) [(III)] Actual amounts paid for default, deferment, or other authorized charges.

[(B) Corrective entries are permitted when justified.]

(K) [(C)] In the event a loan is prepaid in full, refunds of unearned charges and unearned insurance premiums may be required. A licensee is responsible for substantiating final entries and for substantiating that refunds due were paid to borrowers. Refund amounts must be itemized to show:

(i) Interest charges refunded, including the refund of any unearned points, and;

(ii) Credit life, accident and health, and personal property insurance charges refunded, showing separately the refund applicable to each separate insurance policy or coverage.

(L) Collection contact history. A licensee must make a written or an electronic record of each and every contact made by a licensee with the borrower or any other person. The written or electronic record must also include every contact made by the borrower with the licensee. The written record must include the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(M) Corrective entries. A licensee can make corrective entries to the borrower's account record if the corrective entry is justified. A licensee must maintain the reason and supporting documentation for each corrective entry made to the borrowers account record. The reason for the corrective entry can be recorded in the collection contact history of the borrower's account record. The supporting documentation justifying the corrective entry can be maintained in the individual borrower's account file or properly stored and indexed in a licensee's optically imaged recordkeeping system. If a licensee manually maintains the borrower's account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual borrower's account record.

[(D) When accounts are transferred from a licensed location, a separate record of these accounts must be maintained by the transferor. The record must show the name of the borrower, the account number, the date of transfer, and the location to which the accounts are transferred.]

[(3) Borrower disbursement record. The loan contract, statement of loan or account record, or single separate disbursement record must show the individual amounts paid out at the borrower's direction or request on his behalf or for his benefit. Each disbursement must be substantiated by receipts, documents, canceled checks, or other records.]

(3) [(4)] Fee record.

(A) The amount of official fees collected at the time the loan is made must be recorded on the individual borrower's account record.

(B) Disbursement procedures.

(i) Fees collected at the time a loan is made for recording, amending, or continuing a notice of security interest must be disbursed to the recording agency within 30 days from the date of collection from the borrowers.

(ii) Each licensee should disburse, to the recording agency, release of lien fees collected from borrowers within 30 days for the date the loan is paid in full. If the releases [release] of lien fees are not disbursed within this period, the fees must be returned to the borrowers and the release of lien effected and the expense borne by the licensee.

[(5) Record of daily transactions. Each licensee must maintain sufficient records to adequately reflect, on an individual account basis, the business occurring during each day. The records must reflect the date on which each transaction occurred.]

(4) [(6)] Record of loans in litigation and foreclosure.

(A) An index of each foreclosure as it occurs and each legal action by or against the licensee as it is initiated must be recorded. The index must show the borrower's name, account number, and date of action.

(B) All loan records, correspondence, and any other information pertinent to the litigation or foreclosure must be maintained in the borrower's account folders or files.

(5) [(7)] Loan records and documents.

[(A) All obligations authenticated signed by the borrower, including promissory notes and security agreements, must be kept at an office in the state designated by the licensee or made available in the state, except when transferred under an agreement which gives the commissioner access to the documents. Copies of loan documents, closing statements, loan applications, records of insurance policies issued by or through the authorized lender in connection with the loan, and books and records required by this rule must be maintained in the licensed location or made available at some place in the state designated by the licensee in writing to the commissioner. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.]

(A) [(B)] Loan documents and other records must be maintained as required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(B) Supplemental insurance records. Each licensee must maintain in the borrower's file supplemental records supporting the settlement or denials of claims reported in the registers. If the reason for the denial of a life insurance or an accident and health insurance claim is based upon the medical records of the borrower, supplemental records supporting the denial of the claim must be forwarded to the commissioner upon request. A licensee must maintain supplemental insurance records in a form substantially similar to §1.830(10)(B)(i) - (iii).

[(8) Insurance Loss Registers. Each licensee must maintain a register reflecting information on life, accident and health, and property insurance claims whether paid or denied by the insurance carrier.]

[(A) Life Insurance Claims. The register pertaining to life insurance claims must show the name of the borrower, the account number, and the date of death. The borrower's individual file or account record must disclose the amount of indebtedness at the time of death, the gross amount of the claim paid, the amount of insurance benefits paid beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness and the check number or numbers by which the amount is paid beneficiaries other than the licensee.]

[(B) Accident and health insurance claims. The register pertaining to accident and health insurance claims must show the name of the borrower, the account number, and the date of the initial filing of a claim for any continuous period of disability.]

[(C) Personal property insurance losses. The register pertaining to personal property insurance claims must show the name of the borrower, the account number, the amount of insurance written on tangible personal property other than a motor vehicle, the amount of the settlement, and a notation as to whether the loss is a total or partial loss.]

[(9) Retention of records. All required books and records must be available for inspection at any time by the commissioner or the commissioner's authorized representatives, and must be retained for a period of four years from the date of the loan, or two years from the date of the final entry made thereon, whichever is later.]

§1.832. Files and Records Required (Subchapter G Mortgage Brokers).

(a) Each licensee must maintain records with respect to each loan brokered under Chapter 342, Subchapter G and make those records available for examination. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, or optically imaged recordkeeping systems unless otherwise specified by statute or regulation. The records required by this section must be retained and made available for inspection in the same manner as that specified in §1.830(14) of this title.

(b) - (e) (No change.)

(f) A licensee must maintain the following items in a substantially similar form to the respective provisions of §1.830 of this title, as follows: [Record retention. All required books and records must be available for inspection at any time by the commissioner or the commissioner's authorized representative, and must be retained for a period of four years or a longer period if required by applicable state or federal laws or regulations.]

(1) an advertising record;

(2) an adverse action record; and

(3) an official correspondence file.

§1.834. Approval of Electronic Recordkeeping Systems and Optical Imaging Systems [Records].

(a) Records and accounting systems maintained in whole or in part by electronic systems must contain the equivalent information as required in §1.830 and §1.831 of this title relating to Files and Records Required (Subchapter E and F Lenders) and Files and Records Required (Subchapter G Lenders)[.]. An approved software system must be used unless a manual system that complies with §1.830 or §1.831 of this title is used or a licensee is using a proprietary electronic software system that is not sold or distributed to other licensees. A licensee must provide documentation of the system to the commissioner that explains how the required information is maintained within the system.

(b) Approval documentation.

(1) A licensee or vendor seeking approval of a system must make available a complete and detailed written description of the system proposed to be utilized, including:

(A) a statement specifying whether the system will be used in its entirety;

(B) operating manuals;

(C) instructions;

(D) a copy of the software to be used; and

(E) a full description of backup systems in place that will ensure business continuity and the protection of the data.

(2) Amendments. Any change to a software system is required to meet the minimum reporting requirements as established by this section.

(c) [~~(b)~~] If an examination of the system demonstrates that the required records are not being maintained appropriately the commissioner may disapprove the use of the system. A licensee will have 90 days to bring the electronic system into compliance.

(d) [~~(c)~~] Records may be retained and stored using optical image storage media, provided the following requirements are satisfied:

(1) The optical image storage must be nonerasable "write once, read many" ("WORM") that does not allow changes to the stored document or record.

(2) The stored document or record is made or preserved as part of and in the regular course of business.

(3) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the optical image storage.

(4) The optical image storage system contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date-ordered [~~date or dered~~] arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time.

(5) The original documents must be maintained for one year after the date of the loan. If a licensee assigns loans to another authorized lender and no longer services the loans, the licensee who sold the loans to another lender is no longer required to maintain the original documents for the transferred loans; however, the licensee must either maintain photocopies of the original form documents for one year or enter into an agreement with the authorized lender acquiring the loans to provide access to the original form documents for a period of one year. The optical imaged records must be maintained for the entire required retention period.

(6) [~~(d)~~] A licensee will maintain at the licensee's office a method of viewing documents or records stored pursuant to this section. A licensee must provide a hard copy of any document or record requested by the Commissioner.

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 August 19, 2005.

TRD-200503504
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 936-7611

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7 TAC §1.833

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

The Finance Commission of Texas (the commission) proposes the repeal of §1.833, concerning other required records. The commission has determined that the substance of §1.833 would more logically be included as part of §§1.830 - 1.832, concerning the recordkeeping requirements for authorized lenders. Proposed amendments elsewhere in this issue of the *Texas Register* seek to incorporate the old §1.833 within the other recordkeeping sections listed above.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Commissioner Pettijohn also has determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be a more logical location of this information for licensees. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

The repeal is proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Finance Code, Chapter 342, Subchapter J.

§1.833. Other Required 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.

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7 TAC §1.848

The Finance Commission of Texas (the commission) proposes new §1.848, concerning the disclosure required when an automobile club membership is offered in connection with a loan. The purpose of the new rule is to establish the disclosure as required under §342.457 of the Texas Finance Code, as enacted by the 79th Texas Legislature in HB 1088.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implications for state or local government as a result of administering the rule as proposed.

Commissioner Pettijohn also has determined that for each year of the first five years that new §1.848 as proposed will be in effect, the public benefit anticipated as a result of the new rule will be

the lenders' use of clear, uniform language, as contained in the rule, for the disclosure concerning automobile club memberships offered in connection with a loan. The language utilized in §1.848 conforms to the plain language and readability requirements of Texas Finance Code §341.502, as required in §342.457.

The sale of automobile club memberships is a voluntary sales program; however, should a lender sell such memberships, the statutory disclosure is required. For lenders who choose not to participate, there will be no anticipated cost. For lenders who elect to participate, there is an anticipated, but negligible, cost for lenders who will be required to comply with the rule as proposed. However, as the rule for this disclosure provides the exact language, which can be electronically entered into the lenders' existing forms or provided on a separate document, the only cost involved to participating lenders would be the potential cost of copies if a separate form is used. Furthermore, this small cost would be offset by the proceeds earned from sales of automobile club memberships. Thus, aside from the minimal cost of copies to participating lenders, there will be little to no effect on persons who are required to comply with the new rule as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed new rule may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

This new rule is proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (effective September 1, 2005) affected by the proposed new section will be contained in Texas Finance Code, §303.203 and §342.457.

§1.848. Disclosure When Automobile Club Membership Offered in Connection with a Loan.

(a) If an automobile club membership is offered in connection with a loan under Subchapter E of the Texas Finance Code, the disclosure contained in subsection (c) of this section is sufficient to satisfy the requirements of Texas Finance Code §342.457 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous.

(b) The text of the disclosure must be set in an easily readable typeface. Typefaces considered to be readable include: Times, Scala, Caslon, Century Schoolbook, Helvetica, Arial, and Garamond.

(c) The lender shall provide this disclosure in both English and Spanish to all borrowers who are offered an automobile club membership in connection with their loans. The automobile club membership disclosure shall read as follows:

(1) "I AM NOT REQUIRED TO PURCHASE THIS AUTOMOBILE CLUB MEMBERSHIP AS A CONDITION FOR APPROVAL OF THIS LOAN. I CAN CANCEL THIS MEMBERSHIP WITHIN 31 DAYS AND RECEIVE A FULL REFUND OF THE PURCHASE PRICE."

(2) Spanish Translation: "NO SE REQUIERE QUE COMPRE ESTA MEMBRESIA DE CLUB AUTOMOTRIZ COMO CONDICION PARA LA APROBACION DE ESTE PRESTAMO. PUEDO CANCELAR ESTA MEMBRESIA DENTRO DE 31 DIAS Y RECIBIR UN REEMBOLSO TOTAL DEL PRECIO DE COMPRA."

(d) The disclosure contained in subsection (c) of this section may be located in one of the following:

(1) the enrollment agreement;

(2) the loan contract; or

(3) a separate document.

(e) Evidence of the borrower's intent to purchase an automobile club membership must be acknowledged in writing by the borrower's signature or initials on the document containing the disclosure.

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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Finance Commission of Texas
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SUBCHAPTER Q. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

7 TAC §§1.1251 - 1.1256

The Finance Commission of Texas proposes new 7 TAC §§1.1251 - 1.1256, concerning required documents when loans under Chapter 342 or home equity loans regulated by the Office of Consumer Credit Commissioner have certain terms negotiated in Spanish. The new rules contained in 7 TAC §§1.1251 - 1.1256 outline applicability, the contract terms that constitute negotiation in Spanish, model forms, items not requiring translation, contracts with multiple creditors/debtors, and the status of the English language contract as the legal document.

The purpose of these rules is to implement the amendments contained in subsection (a-1) to Texas Finance Code §341.502, as enacted by the 79th Texas Legislature in HB 1547. Section 341.502 requires contracts for consumer loans under Chapter 342 to be written in plain language. The amendments to the statute require that certain disclosures be provided in Spanish when the terms of an agreement for the specified loans are negotiated in Spanish. The rules propose model disclosure language that is designed to comply with the plain language requirements of §341.502. A creditor may receive certain legal benefits by using the prescribed model language; however, a creditor may choose to use its own Spanish disclosure. A creditor is not required to submit a Spanish disclosure for plain language review as contemplated in §341.502(c).

Section 1.1251 clarifies the types of transactions that are covered by the provisions of the proposed rules. These rules only apply to closed-end transactions as the provisions of §341.502(a-1) require that the Spanish disclosure which must be delivered be identical to disclosures for a closed-end transaction under 12 C.F.R. §226.18. Section 341.502(a-1) also requires that the disclosure be given "if the terms of the agreement for a *loan* under Subsection (a) were negotiated in Spanish." (emphasis added) Since the statutory language expressly limits the requirement to loans, retail installment

transactions under Chapter 348, which are not loans, are not covered by §341.502(a-1) and the proposed rules. A creditor under Chapter 348 may choose to optionally comply with the proposed rules. Sections 341.001(9) and 301.002, Texas Finance Code define a "loan" as an advance of cash as contrasted to Texas Finance Code §348.007 which defines a retail installment transaction as a credit sale of a motor vehicle.

Section 1.1252 details which contract terms, that when a creditor provides information about credit items in Spanish in relation to a credit transaction with a debtor, will constitute negotiation in Spanish, and hence require written disclosure in Spanish.

Section 1.1253 outlines disclosure options, including figures containing model forms that may be utilized.

Section 1.1254 provides a list of items that do not require translation, such as names, addresses, brand names, and others.

Section 1.1255 discusses transactions with multiple creditors and/or multiple debtors and the methods for providing disclosure.

Section 1.1256 states that the English language contract is the legal document.

HB 1547 becomes effective on September 1, 2005. Compliance with the proposed rules will be deemed compliance with the statute effective September 1 until the permanent rules are adopted.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be more complete disclosure to Spanish-speaking debtors, enhanced compliance with the credit laws, and increased uniformity and consistency in credit contracts.

Additional economic costs may be incurred by a person required to comply with this proposal. These rules pertain only to those creditors who choose to negotiate certain key terms of credit transactions in Spanish with consumers. Because a licensee complies with the proposal by providing a Spanish translation of the contract form, by using the model forms contained in §1.1253, or by providing its own forms containing the necessary disclosures, the additional costs imposed by the proposal are limited. In some cases creditors already comply with these provisions and no additional costs would be required. For those who will be required to comply, the anticipated costs would include the costs associated with copying a contract or new forms, and costs attributable to the loss of obsolete forms inventory. Additional copy costs are estimated to be approximately $0.30-$0.40 per contract or new form. There will be no adverse effect on small businesses as compared to the effect on large businesses. Some licensees who use or lease specialized computer software programs for their loan business may experience some additional costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the forms. Whether programmers will use the adopted forms or provide Spanish translations of the full contracts is not predictable. Whether the programmers will charge an additional fee for a document they do not have to draft is also not predictable.

Comments on the proposed new rules may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to sealy.hutchings@occc.state.tx.us.

These new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter.

These rules affect Texas Finance Code Chapter 342, Subchapters E, F, and G.

§1.1251. Applicability.

(a) If a contract for loan under Chapter 342, Subchapters E, F, or G is negotiated in Spanish, then a licensee must deliver a disclosure to the debtor in Spanish.

(b) If a retail installment transaction under Chapter 348 is negotiated in Spanish, then a creditor may but is not required to deliver a disclosure specified in §1.1253 of this title to the debtor in Spanish.

(c) The disclosure requirement does not apply to open-end transactions.

§1.1252. Negotiation in Spanish.

(a) The disclosure specified in §1.1253 of this title must be given if a creditor provides information in relation to a credit transaction with a debtor regarding any of the following credit terms in Spanish:

(1) amount financed;

(2) finance charge;

(3) annual percentage rate;

(4) the amount of any payment or schedule of payments;

(5) total of payments; or

(6) security interest.

(b) Advertising exception. A creditor is not required to provide a disclosure specified in §1.1253 of this title if a creditor advertises credit terms in Spanish that are specified in this section.

§1.1253. Form of Disclosure.

(a) The creditor may at its option provide a debtor one of the following:

(1) a Spanish translation of the contract form that includes a Spanish translation of the disclosure form under 12 C.F.R. §226.18;

(2) for transactions subject to Chapter 342, Subchapter E, a copy of the "Notificacion de Credito Al Consumidor (Préstamo a Plazos)" as prescribed in Figure: 7 TAC §1.1253(a)(2);
Figure: 7 TAC §1.1253(a)(2)

(3) for transactions subject to Chapter 342, Subchapter F:

(A) a copy of the "Notificacion de Credito Al Consumidor (Préstamo)," as prescribed in Figure: 7 TAC §1.1253(a)(3)(A), selecting the appropriate late charge payment option; and
Figure: 7 TAC §1.1253(a)(3)(A)

(i) Late Charge Option 1: "Late Charge: If I don't pay an entire payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(ii) Late Charge Option 1 Spanish Translation: "Cargos por Retrasos: Si no doy un pago completo dentro de 10 días después de vencerse, me puedes cobrar un cargo por retraso. El cargo por retraso será el 5% de la cantidad del pago."

(iii) Late Charge Option 2: "Late Charge: For a loan that has an amount financed of less than $100, the late charge for a payment that is unpaid for 10 days after it is due is 5% of the amount of the installment. For a loan that has an amount financed of $100 or more, the late charge for a payment that is unpaid for 10 days after it is due is the greater of $10 or 5% of the amount of the installment."

(iv) Late Charge Option 2 Spanish Transaltion: "Cargos por Retrasos: Para un préstamo en el cual la cantidad financiada es menor de $100, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es 5% de la cantidad del pago. Para un préstamo en el cual la cantidad financiada es de $100 o más, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es de $10 o 5% de la cantidad del pago atrasado, lo que sea mayor."

(B) a copy of the "Conceptos Financieros," as prescribed in Figure: 7 TAC §1.1253(a)(3)(B);
Figure: 7 TAC §1.1253(a)(3)(B)

(4) for transactions subject to Chapter 342, Subchapter G, a copy of the "Notificacion de Credito Al Consumidor (Préstamo de Segunda Hipoteca)" as prescribed in Figure: 7 TAC §1.1253(a)(4); or
Figure: 7 TAC §1.1253(a)(4)

(5) for transactions subject to Chapter 348, a copy of the "Notificacion de Credito Al Consumidor (Contrato de Menudeo a Plazos para Vehículo Automotor)" as prescribed in Figure: 7 TAC §1.1253(a)(5), selecting the appropriate late charge payment option.
Figure: 7 TAC §1.1253(a)(5)

(b) Creditors may delete inapplicable provisions of the disclosure. Creditors may also delete any of the English portions of Figure: 7 TAC §1.1253(a)(4).

§1.1254. Items Excluded from Translation Requirement.

The summary or translation required under §341.502(a-1) may retain the following elements in English without translation to Spanish:

(1) names and titles of individuals, companies and other persons;

(2) addresses;

(3) brand names, trade names, trademarks, registered service marks, or full or abbreviated designations of the make and model of goods or services;

(4) alphanumeric codes, numerals, dollar amounts expressed in numerals, or dates; or

(5) words or expressions not having a generally-accepted Spanish translation.

§1.1255. Multiple-Party Transactions.

If there are multiple creditors in the transaction, only one creditor needs to provide the information required by §1.1253 of this title. If there are multiple debtors in a transaction, the creditor may deliver the information required by this section to any one or more of the debtors. The information may, but need not be, signed by the borrower or creditor.

§1.1256. Legal Document.

The agreement entered in the English language is the legal document and determines the rights and obligations of the parties.

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 August 19, 2005.

TRD-200503502
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 936-7611

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §25.23, §25.24

The Finance Commission of Texas (commission) proposes to amend §25.23, concerning application and renewal fees, and §25.24, concerning examination fees. The proposed amendments implement Finance Code, §154.051(a)(1), which authorizes the commission to adopt reasonable rules to defray the costs of administering Finance Code, Chapter 154 (Chapter 154), and other sections of Chapter 154 that specifically authorize the commission to establish examination and license renewal fees.

The proposed amendments to §25.23 and §25.24 require a Chapter 154 license holder to pay, respectively, its annual renewal and examination fees by ACH debit of the license holder's bank account initiated by the department.

The commission believes that the proposed amendments are necessary to and will promote the department's operational efficiency in collecting annual renewal and examination fees. Collection of these fees by department-initiated ACH debit will virtually eliminate the processing of incoming payments. The system will require little, if any, reconciliation with respect to the amount a license holder owes, whether payment has been received, and the actual amount paid. The proposed ACH debit requirement will enable the department to streamline its operational procedures and thereby save administrative time and reduce administrative costs.

In implementing the proposed ACH debit requirement, the department will utilize the same procedures it has already developed and is using to collect annual fees and assessments through ACH debit from its other regulated industries, such as state banks, check sellers, and perpetual care cemeteries.

Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that, for each year of the first five years that the amendments as proposed are in effect, there will be no fiscal implication for state or local governments.

Ms. Newberg has further determined that, for each year of the first five years that the amendments as proposed are in effect, the anticipated public benefit will be increased efficiency and time

and cost-savings in connection with the department's administration of Chapter 154. For each year of such first five years, there will be no economic costs to persons required to comply with the proposed amendments and the proposed amendments will not have an adverse effect upon small businesses or micro-businesses.

To be considered, comments concerning the proposed amendments must be submitted within 30 days of publication to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294 or by e-mail to sarah.shirley@banking.state.tx.us.

The proposed amendments implement Finance Code, §154.051(a)(1), which authorizes the commission to adopt reasonable rules to defray the costs of administering Chapter 154; Finance Code, §154.054, which directs the commission to establish examination fees in an amount sufficient to cover the costs of examination, the equitable or proportionate cost of maintaining and operating the department, and the cost of enforcing Chapter 154; and Finance Code, §154.108, which directs the commission to set the fee a prepaid funeral contract license holder must pay to renew its license.

Finance Code, Chapter 154, is affected by the proposed amendments.

§25.23. Application and Renewal Fees.

(a) (No change.)

(b) Application fees. The application fees set forth in this subsection have been set in accordance with the Finance Code, Chapter 154, for the purpose of defraying the cost of administering the Finance Code, Chapter 154. Except as otherwise provided in this subsection, all fees are due at the time the application is filed and are nonrefundable. An application submitted without the appropriate filing fee will be deemed incomplete and will not be considered.

(1) (No change.)

(2) Renewal fee. The renewal fee for an existing permit is based on the number of outstanding contracts as of the last examination, as specified in the Renewal Fee Schedule following this paragraph. You must pay the renewal fee by ACH debit on or before March 1 of each year, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the renewal fee and the date the department will initiate payment of the fee by ACH debit, which will be March 1 of each year or, if March 1 is a holiday, the last business day immediately preceding March 1. [~~To renew an existing permit you must pay the fee specified in the following table:~~]
Figure: 7 TAC §25.23(b)(2) (No change.)

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

§25.24. What fees must I pay for an examination?

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

(c) How will the department bill me for the examination fees and when must I pay them?

(1) Your annual examination fee may be billed in quarterly or fewer installments each fiscal year. You must pay a billed installment by ACH debit or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the payment due and the date the department will initiate payment by ACH debit [~~this fee no later than the 15th day after the date of the department's billing~~].

(2) (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 August 19, 2005.

TRD-200503485
Everette D. Jobe
Certifying Official
Texas Department of Banking
Proposed date of adoption: October 21, 2005
For further information, please call: (512) 475-1300

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CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.61

The Finance Commission of Texas (commission) proposes new §33.61, concerning the Applicability of Sale of Checks and Currency Exchange Rules, in new Chapter 33, relating to the recently enacted Money Services Act, to be codified at Finance Code, Chapter 151.

During its 79th Regular Session, the Texas Legislature enacted the Money Services Act (Act of May 26, 2005, 79th Legislature, Regular Session, House Bill 2218, §1), effective September 1, 2005. The Money Services Act ("MSA"), to be codified as Finance Code, Title 3, Subtitle E, Chapter 151, regulates persons that engage in money services businesses in Texas, specifically the businesses of money transmission and currency exchange. The MSA provides for the regulation of these businesses in one statute and repeals existing Finance Code, Chapter 152, the Sale of Checks Act, and Finance Code, Chapter 153, Currency Exchange, Transportation or Transmission, effective September 1, 2005. The MSA clarifies and simplifies the requirements and procedures that exist under current law and also establishes a statutory framework that treats money services businesses that engage in functionally similar transactions in a uniform manner.

Because of the enactment of the MSA, the commission will in time enact new regulations for money services businesses under the authority of the MSA. The new regulations, to be located in new Chapter 33, will replace existing Chapters 4 and 29 of this title concerning currency exchange and the Sale of Checks Act, respectively. These existing chapters will eventually be repealed.

Proposed new §33.61 is a transition section. The proposed section provides and confirms that until the commission adopts regulations to implement the new MSA, the regulations contained in Chapters 4 and 29 of this title, including sections relating to fees and assessments, apply to a person engaged in the sale of checks, money transmission, or currency exchange business or in activities subject to the new MSA, to the extent applicable and not inconsistent with the new law.

Assuming its adoption, the commission intends to repeal §33.61 after the new regulations necessary to implement the MSA are proposed and adopted. As a result, proposed new §33.61 is likely to be in effect only for a relatively short period.

Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that for the period the proposed new section is in effect, there will be no fiscal implications for

state or local governments as a result of enforcing or administering the proposed new section.

Ms. Newberg has also determined that, for each of the years the new section as proposed will be in effect, the anticipated public benefit will be the elimination of any possible ambiguity regarding the continued applicability of existing Chapters 4 and 29 of this title during the implementation of the MSA, and an orderly and clear transition to regulation of money services businesses in Texas under the new MSA. No economic cost will be incurred by a person required to comply with the proposed new section, and there will be no adverse impact on small businesses or micro businesses.

To be considered, comments on the proposed new section must be submitted in writing not later than 30 days after the date of publication of this notice. Comments should be addressed to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by e-mail to sarah.shirley@banking.state.tx.us.

The new section is proposed under Government Code, §2001.006, which authorizes a state agency to adopt rules in preparation for the implementation of legislation; Finance Code, §151.101, effective September 1, 2005, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151; and House Bill 2218, Section 2(e), which authorizes the commission to adopt rules to provide for the orderly transition to the licensing and regulation of money services businesses under the Money Services Act. If adopted, the proposed section will not take effect until after the effective date of the Money Services Act, September 1, 2005.

The Money Services Act (Act of May 26, 2005, 79th Legislature, Regular Session, House Bill 2218, §1, effective September 1, 2005) is affected by the proposed new section.

§33.61. Applicability of Sale of Checks and Currency Exchange Rules.

Because of the enactment of the Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1, effective September 1, 2005) codified as Finance Code, Title 3, Subtitle E, Chapter 151 ("MSA"), the commission will in time enact new regulations for money services businesses under the authority of the MSA. Until the commission proposes and adopts new regulations, a person engaged in the money transmission business or the currency exchange business and required to be licensed under the MSA must comply with all applicable regulations contained in Chapter 4 of this title, relating to currency exchange, transportation or transmission, and Chapter 29 of this title, relating to the Sale of Checks Act, including the sections regarding fees and assessments, to the extent not inconsistent with the MSA.

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 August 19, 2005.

TRD-200503486
Everette D. Jobe
Certifying Official
Texas Department of Banking
Proposed date of adoption: October 21, 2005
For further information, please call: (512) 475-1300

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PART 4. TEXAS SAVINGS AND LOAN DEPARTMENT

CHAPTER 79. MISCELLANEOUS

SUBCHAPTER C. HOLDING COMPANIES

7 TAC §79.47

The Finance Commission of Texas ("Finance Commission") proposes to adopt new 7 TAC §79.47, Mutual Holding Companies. The new section is proposed to implement new *Finance Code* Chapter 97, Subchapter B, (*Finance Code* §97.051 et seq.) relating to the organization by a savings bank of a mutual holding company. The proposed rule establishes the procedural requirements and documents required to organize a mutual holding company.

A savings bank may desire to reorganize as a stock savings bank and a mutual holding company. For mutual savings banks, such a reorganization provides a mechanism to raise outside capital. New *Finance Code* Chapter 97, Subchapter B provides that a savings bank may organize a subsidiary stock savings bank and transfer the assets of the savings bank to the new subsidiary, thus converting the existing entity into a mutual holding company. In forming the new subsidiary the rule provides that the articles of incorporation and bylaws of the new savings bank entity should contain the same provisions as those of any other state chartered savings bank. The rule also provides that approval is conditioned upon approval of the holding company by the appropriate federal regulator.

Danny Payne, Savings and Loan Commissioner, has determined that for the first five-year period that the new section, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the section and is therefore not expected to increase or decrease the net revenue of the Department from the industry.

Mr. Payne estimates that for the first five years the proposed new section is in effect, the public will benefit by having clearer direction as to the process and information necessary to file for a mutual holding company. No difference will exist between the cost of compliance for small business and the cost of compliance for the largest business affected by the new section.

Comments on the proposed new section may be submitted in writing to Danny Payne, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD1@tsld.state.tx.us, no later than 30 days from the date that this proposed new rule is published in the *Texas Register*. If comments are submitted by email after September 1, 2005, the comments should be sent to SMLinfo@sml.state.tx.us.

The new section is proposed pursuant to *Finance Code* §11.302(a) authorizing the Finance Commission to adopt rules applicable to state savings associations and savings banks.

The new section is affected by the *Finance Code*, Chapter 97, Subchapter B, Mutual Holding Companies (*Finance Code* §97.051 et seq.).

§79.47. Mutual Holding Companies.

(a) A savings bank may reorganize as a mutual holding company by complying with the provisions of *Finance Code* Chapter 97, Subchapter B, (*Finance Code* §97.051). The savings bank shall provide to the commissioner an application to reorganize in a form specified by the commissioner. The applicant shall provide one signed original and

at least one copy of the application together with complete exhibits. The application shall include:

(1) two copies of the articles of incorporation for the proposed subsidiary savings bank which shall comply with the requirements of *Finance Code* §92.051 and §92.052 or §92.053, as applicable;

(2) two copies of the bylaws for the proposed subsidiary;

(3) two copies of the proposed restated articles of incorporation and bylaws of the mutual holding company;

(4) the complete plan of reorganization;

(5) a certification by the president or secretary as to how that the reorganization, including the amendments to the articles of incorporation and bylaws of the mutual holding company have been approved by a majority of the members or shareholders of the reorganizing savings bank in accordance with *Finance Code* Chapter 97, Subchapter B.

(6) A fee which shall be in the amount of the fee required for the conversion of a mutual savings bank into a stock savings bank under §79.106 of this title.

(b) On receipt of the application, the commissioner may conduct an examination of the applicant savings bank.

(c) The commissioner shall approve the reorganization without a hearing if the commissioner determines:

(1) that the resulting savings bank will be in sound condition and meets all requirements of *Finance Code* Chapter 92, Subchapter B, and relevant rules of the commissioner and the finance commission; and

(2) the applicant has received all approvals required under federal law for the creation of a bank or thrift holding company.

(d) If the commissioner denies an application to reorganize, the applicant may appeal in the same manner as provided in *Finance Code* §92.304.

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 August 22, 2005.

TRD-200503518
John Fleming
General Counsel
Texas Savings and Loan Department
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-1353

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CHAPTER 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

SUBCHAPTER B. PROFESSIONAL CONDUCT

7 TAC §80.9

The Finance Commission of Texas ("Finance Commission") proposes to amend 7 TAC §80.9 Required Disclosures, which requires mortgage brokers and loan officers to provide certain information to applicants describing the relationship of the applicant and mortgage broker; information as to how the mortgage broker will be compensated; and information related to the recovery fund. The purpose of the amendment is to clarify that certain fees paid to a mortgage broker may be subject to refund because of the exercise of a right of rescission under the Truth in Lending Statute, 12 U.S.C. §1600, et seq and its implementing regulation, Regulation Z, 12 C.F.R. Part 226 or in connection with a home equity loan governed by Article XVI Sec. 50 of the Texas Constitution. The amendment also updates the regulation to reflect the renaming of the Texas Savings and Loan Department to the Department of Savings and Mortgage Lending and the new web address of the Department.

The Mortgage Broker Licensing Act (the "Act") became effective September 1, 1999. It requires that mortgage brokers and the loan officers who work for them meet certain requirements, that they obtain licenses, that they adhere to certain standards of conduct, and that they provide required disclosures to mortgage loan applicants. The Act directs the Finance Commission to promulgate regulations to implement the Act (the "Regulations") and specifically *Finance Code* §156.004 authorizes the Finance Commission to adopt rules to establish uniform forms to use in making standard disclosures relating to mortgage broker compensation and the relationship of mortgage brokers to applicants. The Commissioner of the Texas Savings and Loan Department ("Department") is charged with administration of the Act.

The form currently used in the regulation contains the following disclosure:

"Of this amount, $_____ is not refundable under any conditions."

When properly completed, this permits the mortgage broker to collect certain fees prior to closing and to retain those fees in the event the loan does not close or is not funded. However, when a mortgage loan transaction is subject to a right of rescission under the federal Truth in Lending Act or under the home equity provisions of the Texas Constitution, the current disclosure may not adequately describe the ability of a consumer to obtain a refund of the prepaid fees. The proposed amendment clarifies that the fees, even if otherwise not subject to refund, may be subject to refund if required by applicable state or federal law.

The 79th Texas Legislature enacted H.B. 955. Section 3.02 adds new *Finance Code* Section 13.015 which changes the name of the Texas Savings and Loan Department to the Department of Savings and Mortgage Lending. *Finance Code* §13.015 contains a "self executing" provision which makes any reference to the Savings and Loan Department a reference to the Department of Savings and Mortgage Lending. This eliminates the need for any immediate wholesale revision of the Department's regulations referencing the current name. As the Department revisits and amends its rules, it will amend them to update the change in name. The proposed amendments to 80.9 are in furtherance of that policy. Additionally, because the name change will result in a new web address, the form is being updated to contain the new address.

The Act establishes a Mortgage Broker Advisory Committee to advise the Commissioner and the Finance Commission on the promulgation of forms and regulations and the implementation of the Act. The Advisory Committee met on August 3, 2005, and discussed the proposed amendments. The Advisory Committee by a record vote unanimously recommended publication for comment of the amendments.

Danny Payne, Savings and Loan Commissioner, has determined that for the first five-year period that the amended section, as proposed, will be in effect, there will be no fiscal implications for

state and local government as a result of enforcing or administering these sections and is not expected to increase or decrease the net revenue of the Department from the industry.

Mr. Payne estimates that for the first five years that the proposed amended section is in effect, the public will benefit by having a disclosure that clarifies when a consumer might be entitled to a refund of certain fees. No difference will exist between the cost of compliance for small business and the cost of compliance for the largest business affected by the new sections.

Comments on the proposed amendments may be submitted in writing to Danny Payne, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD1@tsld.state.tx.us, no later than 30 days from the date that these proposed rules are published in the *Texas Register*. If comments are submitted by email after September 1, 2005, the comments should be sent to SM-Linfo@sml.state.tx.us

The amended section is proposed under *Finance Code*, Section 11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, Section 156.102(a) and (b), which authorizes the Commissioner of the Texas Savings and Loan Department, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amended section is *Finance Code*, Section 156.004 relating to authority for the Finance Commission to adopt rules relating to use of standard forms for use to describe mortgage broker compensation; to define the relationship of the mortgage broker to the applicant; and to provide information relating to the recovery fund.

§80.9. Required Disclosures.

(a) (No change.)

(b) In order to let its consumers know how to file complaints and to inform them of the Mortgage Broker Recovery Fund, Mortgage Brokers and Loan Officers must include the following notice in the disclosure required by subsection (a) of this section:
Figure: 7 TAC §80.9(b)

(c) Anytime a Mortgage Broker or Loan Officer charges or receives from a Mortgage Applicant a fee for a service that is provided by a third party and retains any portion of the fee so charged or received:

(1) The portion retained by the Mortgage Broker or Loan Officer and a description of the service actually rendered by the Mortgage Broker or Loan Officer shall be disclosed to the Mortgage Applicant in writing and

(2) The portion so retained by the Mortgage Broker or Loan Officer shall not exceed the reasonable value of services actually rendered by the Mortgage Broker or Loan Officer for the benefit of the Mortgage Applicant.

(3) Any Mortgage Broker or Loan Officer retaining any portion of any fee or fees charged by third parties, however denominated, shall maintain appropriate documentation to substantiate the basis for the retention of such monies, including the reasonable value of the services rendered for such fee or fees.

(4) Affiliated business arrangements, as provided for under the Real Estate Settlement Procedures Act, and payments made pursuant thereto shall be disclosed to Mortgage Applicants as provided for by the Real Estate Settlement Procedures Act and the regulations implementing that act.

Figure: 7 TAC §80.9(c)(4)

(d) - (e) (No change.)

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

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503514
John Fleming
General Counsel
Texas Savings and Loan Department
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-1353

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SUBCHAPTER C. ADMINISTRATION AND RECORDS

7 TAC §80.14

The Finance Commission of Texas ("Finance Commission") proposes to amend 7 TAC §80.14, Approval of Courses by adding a new subsection (f). The purpose of the amendment is to more particularly define those courses which directly relate to residential mortgage lending. The proposal is intended to implement the provisions of S.B. 988 passed by the 79th Legislature.

The Mortgage Broker Licensing Act (the "Act") became effective September 1, 1999. It requires that mortgage brokers and the loan officers who work for them meet certain requirements, that they obtain licenses, that they adhere to certain standards of conduct, and that they provide required disclosures to mortgage loan applicants. The Act directs the Finance Commission to promulgate regulations to implement the Act (the "Regulations") and specifically authorizes the Finance Commission to adopt rules to prohibit false, misleading, or deceptive practices by mortgage brokers and loan officers. The Commissioner of the Texas Savings and Loan Department ("Department") is charged with administration of the Act.

The Act establishes a Mortgage Broker Advisory Committee to advise the Commissioner and the Finance Commission on the promulgation of forms and regulations and the implementation of the Act. The Advisory Committee met on August 3, 2005, and discussed the proposed amendments. The Mortgage Brokerage Advisory Committee by record vote unanimously recommended the proposed amendments.

Danny Payne, Savings and Loan Commissioner, has determined that for the first five-year period that the amended section, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering these sections and is not expected to increase or decrease the net revenue of the Department from the industry.

Mr. Payne estimates that for the first five years that the proposed amended section is in effect, the public will benefit by having more detailed notice of how to file a complaint, including more detailed information as to contact with the Department. This will further the ability of the Department to detect and enforce violations of the Act, and provide improved consumer protection. No difference will exist between the cost of compliance for small business and the cost of compliance for the largest business affected by the new sections.

Comments on the proposed amendments may be submitted in writing to Danny Payne, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD1@tsld.state.tx.us, no later than 30 days from the date that these proposed rules are published in the *Texas Register*. If comments are submitted by email after September 1, 2005, the comments should be sent to SMLinfo@sml.state.tx.us.

The amended section is proposed under *Finance Code*, Section 11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, Section 156.102(a) and (b), which authorizes the Commissioner of the Texas Savings and Loan Department , subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act. The new subsection is also proposed under new *Finance Code* Section 156.208(i) which requires the Finance Commission to adopt a rule requiring that at least eight out of the required fifteen hours of continuing education courses be in courses relating to residential mortgage lending.

The section of the Act affected by the proposed new subsection is *Finance Code*, Section 156.208(i) relating to authority for the Finance Commission to adopt rules educational requirements for the renewal of a mortgage broker or loan officer license.

§80.14. Approval of courses.

(a) - (e) (No change.)

(f) The Mortgage Broker License Act requires that each licensee complete at least fifteen hours of continuing education courses during the term of his or her current license. The Mortgage Broker License Act further requires that at least eight of the fifteen hours relate to residential mortgage lending.

(1) Courses which relate to residential mortgage lending and satisfy the eight hour requirement are those courses covering the following subject matters provided that the courses meet the other requirements of the Department's rules:

(A) courses related to ethics in origination of residential mortgage loans;

(B) courses relating to the state and federal laws governing residential mortgage lending including the Mortgage Broker License Act and the Department's rules, the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et seq.), the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.), the Texas Constitution, statutes, and official interpretations relating to home equity loans; and

(C) courses relating to predatory lending and deceptive trade practices in residential mortgage lending.

(2) The remaining seven hours may be satisfied by taking courses which cover any of the following subjects provided that the courses meet the other requirements of the Department's rules: courses that are related to finance, financial consulting, lending, real estate contracts, discrimination laws, or real property conveyances.

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 August 22, 2005.

TRD-200503515

John Fleming
General Counsel
Texas Savings and Loan Department
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-1353

SUBCHAPTER J. FORMS

7 TAC §80.22

The Finance Commission of Texas ("Finance Commission") proposes to amend 7 TAC §80.22, Loan Status Forms, which requires mortgage brokers and loan officers to provide certain information relating to the approval status of a mortgage loan application. The purpose of the amendment is to revise the existing rule to conform to the recently adopted rule for loan status forms used by mortgage bankers, 7 TAC §81.2. Additionally, minor spelling corrections were made of a non-substantive nature. The Finance Commission believes that uniformity of practice in the origination of mortgage loans benefits consumers by providing information in a manner that is readily understandable and that includes sufficient information to keep the consumer and those with whom the consumer is transacting business reasonably informed as to the status of the loan approval process.

The Mortgage Broker Licensing Act (the "Act") became effective September 1, 1999. It requires that mortgage brokers and the loan officers who work for them meet certain requirements, that they obtain licenses, that they adhere to certain standards of conduct, and that they provide required disclosures to mortgage loan applicants. The Act directs the Finance Commission to promulgate regulations to implement the Act (the "Regulations") and specifically *Finance Code* §156.105 authorizes the Finance Commission to adopt rules to establish uniform forms to use in representing that a consumer has been pre-approved or pre-qualified for a mortgage loan and to require licensees to use the required form. The Commissioner of the Texas Savings and Loan Department ("Department) is charged with administration of the Act.

The Act establishes a Mortgage Broker Advisory Committee to advise the Commissioner and the Finance Commission on the promulgation of forms and regulations and the implementation of the Act. The Mortgage Broker Advisory Committee met on August 3, 2005, and discussed the proposed amendments. The Mortgage Broker Advisory Committee by a record unanimously recommended the proposed amendments.

Danny Payne, Savings and Loan Commissioner, has determined that for the first five-year period that the amended section, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering these sections and is not expected to increase or decrease the net revenue of the Department from the industry.

Mr. Payne estimates that for the first five years that the proposed amended section is in effect, the public will benefit by having uniform information as to the loan status as required by the act. Further, because the form required to be used by mortgage bankers and mortgage brokers will be uniform, market efficiency will be enhanced by reducing overall opportunity search costs and transaction negotiation costs to all parties in the affected market. No difference will exist between the cost of compliance for small business and the cost of compliance for the largest business affected by the new sections.

Comments on the proposed amendment may be submitted in writing to Danny Payne, Commissioner, Texas Savings and Loan Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or e-mailed to TSLD1@tsld.state.tx.us, no later than 30 days from the date that these proposed rules are published in the *Texas Register*. If comments are submitted by email after September 1, 2005, the comments should be sent to SMLinfo@sml.state.tx.us

The amended section is proposed under *Finance Code*, Section 11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, Section 156.102(a) and (b), which authorizes the Commissioner of the Texas Savings and Loan Department, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amended section is *Finance Code*, Section 156.105 relating to authority for the Finance Commission to adopt rules relating to use of standard forms for use to represent that a loan applicant has been pre-approved or pre-qualified for a mortgage loan.

§80.22. Loan Status Forms.

(a) Unless exempted under subsection (c), whenever [~~Whenever~~] a mortgage broker or loan officer provides a prospective loan applicant with written confirmation of the prospective loan applicant's conditional qualification for a [~~status of a~~] mortgage loan that has not been approved, the licensee shall use the form attached as Form A below. Such form may be modified as follows:

Figure: 7 TAC §80.22(a)

(1) The descriptive heading "Conditional Qualification Letter" may not be [~~maybe~~] omitted;

(2) Additional aspects of the Loan may be described as long as they are not misleading;

(3) Additional items that the mortgage broker or loan officer has review may be described; and

(4) Additional terms, conditions, and requirements may be added; and[~~.~~]

(5) An alternative form may be used if it provides at least the same information as is set forth in the approved form.

(b) Whenever a mortgage broker or loan officer provides a loan applicant with confirmation that an application for a mortgage loan has been approved as to credit but not as to collateral, the licensee may use the form attached as Form B below. Such form maybe modified as follows:

Figure: 7 TAC §80.22(b)

(1) The descriptive heading "Conditional Approval Letter" may not be [~~may be~~] omitted;

(2) Additional aspects of the Loan may be described as long as they are not misleading;

(3) Fees charged may be disclosed but such disclosure shall not serve as a substitute for the disclosure required by §156.004 of the Act or the Good Faith Estimate required by the Real estate Settlement Procedures Act;

(4) Additional items that the mortgage broker or loan officer has reviewed may be described;

(5) Additional terms, conditions, and requirements may be added;

(6) An alternative form [~~prepared by an attorney licensed in Texas~~] may be used if it provides at least the same information as is set forth in the approved form.

(c) A mortgage broker who makes a "firm offer of credit" as defined in the Fair Credit Reporting Act (the "FCRA", 15 USC §1681 et seq.), is exempted from the requirement to use the Conditional Qualification Letter as required by subsection (a) provided that the firm offer of credit is made in conformity with the requirements of the FCRA.

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 August 22, 2005.

TRD-200503516
John Fleming
General Counsel
Texas Savings and Loan Department
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-1353

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. RULES OF OPERATION FOR PAWNSHOPS

SUBCHAPTER D. OPERATION OF PAWNSHOPS

7 TAC §85.402, §85.405

The Finance Commission of Texas (the commission) proposes amendments to §85.402 and §85.405, concerning the operation of pawnshops.

In general, the purpose of the amendments is to modernize the recordkeeping rules for pawnbrokers, so that the rules better accommodate the prevalence of automated recordkeeping systems used by the vast majority (over 90%) of our licensees today. Subsection (g) has been added to §85.402 to clarify established electronic recordkeeping procedures. An explanation concerning the proper destruction of the law enforcement copy when such information is electronically exchanged with law enforcement agencies is also contained in §85.402(g). In §85.405, a clarification has been added explaining that the original pawn ticket may be maintained in the numerical pawn ticket file. Furthermore, the rule reconfirms that the original pawn ticket may be filed chronologically by date if the pawnshop maintains the pawnshop records electronically. The remaining changes to §85.405 are technical corrections and nonsubstantive in nature.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn 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 the proposed amendments will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

Regarding the addition of subsection (g) to §85.402, this subsection formalizes the requirements of the current practice of computer software approval. Part of subsection (g) involves the requirement that pawnbrokers have a disaster recovery plan. Such a plan can be easily achieved by simply saving pawn transaction data to a disk and keeping that disk at a separate location. From the agency's experience, most electronic recordkeeping systems used by pawnbrokers already have back-up capabilities. Thus, the requirements outlined by §85.402(g) should not present any additional cost to licensees. Likewise, in §85.405, the proposed change concerning the proper destruction of the law enforcement copy when such information is electronically exchanged with law enforcement agencies, should not impose any additional cost on licensees.

Therefore, there is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the sections as proposed.

Comments on the proposed amendments may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 371.

§85.402. Recordkeeping.

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

(g) Requirements of an electronic record system. In an electronic recordkeeping system, the pawn ticket must be a three-part form. Entries made to the top copy of the pawn ticket must be legible and simultaneously reproduced on the remaining parts. The form must provide a perforated stub to be utilized in labeling and identifying pledged goods. Each part of the pawn ticket must be numbered sequentially by the supplier of the pawn ticket form unless the commissioner approves, in writing, an alternative method of numbering the pawn ticket. The stub must be numbered simultaneously with the same sequential number. The second part of the pawn ticket (law enforcement copy) may be omitted or properly destroyed (i.e., pawn ticket is completely shredded or incinerated) if the pawn and purchase ticket information is exchanged electronically, directly or indirectly, with the primary law enforcement agency in the jurisdiction that the pawnshop is located.

(1) Required electronic information. A pawnbroker who chooses to maintain pawn and purchase ticket information electronically must comply with the requirements of Chapter 371 of the Texas Finance Code and the rules governing electronic records. The information relating to the dates and amounts of all payments made on the pawn transaction, the final disposition or status of the pawn transaction (i.e., renewed, redeemed, voided, forfeited, or seized), and the final disposition date, must be either manually recorded on the hard card pursuant to subsection (f) of this section, or electronically stored pursuant to this subsection. The final disposition or closing date is the date that the pawn transaction is renewed, redeemed, voided, or the pledged goods are forfeited by the pledgor or seized by a law enforcement agency. For the electronic system, the final disposition information must be stored and accessible for the entire record retention period required by Texas Finance Code, §371.152(b). If subsection (g)(2) of this section applies, the loan disposition report and supplemental loan disposition report must be timely printed or stored as an electronically imaged record.

(2) Loan disposition report and supplemental loan disposition report. For the purposes of this paragraph, a calendar month means every day from the first day of the month to the last day of the month.

(A) Loan disposition report. The loan disposition report is a listing of all pawn transactions that were made in a calendar month. The loan disposition report is printed or stored as an electronically imaged record and is sorted by using the field of the date made as recorded on the pawn ticket.

(B) Supplemental loan disposition report. The supplemental loan disposition report is a listing of all pawn transactions that were closed (i.e., renewed, redeemed, voided, forfeited, or seized) in a calendar month. The supplemental loan disposition report is printed or stored as an electronically imaged record and is sorted by using the field of the final disposition or closing date. A supplemental loan disposition report is only required to be printed or stored as an electronically imaged record if the pawnbroker extends the maturity date of the pawn transaction using a memorandum of extension or if the pawnbroker does not exercise the option to forfeit pledged goods on the day after the last day of grace recorded on the pawn ticket.

(C) Content.

(i) Required information. The loan disposition report and the supplemental loan disposition report must contain the following:

(I) pawn or loan ticket number;

(II) name of the pledgor;

(III) the original date made;

(IV) the original maturity date;

(V) the loan amount or amount financed;

(VI) the original pawn service charge;

(VII) the final disposition or closing date;

(VIII) the action taken to close the pawn transaction (i.e., renewed, redeemed, voided, forfeited, or seized);

(IX) if applicable, the date and dollar amount of each memorandum of extension payment; and

(X) if applicable, the dollar amount paid to redeem or renew the pawn transaction (i.e., amount paid itemized to show the allocation between the amount financed, pawn service charge, additional daily charges, and the lost pawn ticket statement).

(ii) The loan disposition report may contain active or open pawn transactions. If a pawn transaction is active or open when the loan disposition report is printed or electronically imaged, the closing date should be left blank and the action taken to close the pawn transaction should be shown as "active" or "open."

(D) Timing. If required, the loan disposition report and supplemental loan disposition report must be printed or stored as an electronically imaged record every month.

(i) The loan disposition report must capture all pawn transactions, including active or open, that were made for a particular

calendar month. The report must be produced four or five months after the completion of the reporting period, depending upon the length of the grace period. If a 30-day grace period is offered, the report must contain information for pawn transactions made four months prior. If a 60-day grace period is offered, the report must contain information for pawn transactions made five months prior. As an example, in May, 2005, the loan disposition report must be printed or electronically imaged to include all pawn transactions that were made during the calendar month of December, 2004 (60-day grace period) or January, 2005 (30-day grace period).

(ii) The supplemental loan disposition report must be printed to capture all pawn transactions that were closed or have had a final disposition (i.e., renewed, redeemed, voided, forfeited, or seized) in the previous calendar month. As an example, in May, 2005, the supplemental loan disposition report must include all pawn transactions that were closed in the previous month of April, 2005 (i.e., April 1, 2005 to April 30, 2005).

(3) Disaster recovery plan. A pawnbroker must maintain a sufficient disaster recovery plan to ensure that the pawn and purchase ticket information is not destroyed, lost, or damaged.

(4) Access by agency personnel. The pawnbroker must provide reasonable access to a computer terminal capable of accessing and retrieving the pawn and purchase ticket information throughout the examination or investigation conducted by the commissioner or the commissioner's representatives. A pawnbroker may provide the commissioner or the commissioner's representatives the same information in physical form as an alternative to reasonable access to a computer terminal.

§85.405. Pawn Transaction.

(a) Pawn Ticket.

(1) Prescribed form.

(A) The front and back of the original pawn ticket are prescribed in Figures 1 and 2: 7 TAC §85.405(a)(1)(A). The original portion of the pawn ticket must be given to the pledgor when the pawn transaction is made.

Figure 1: 7 TAC §85.405(a)(1)(A)

Figure 2: 7 TAC §85.405(a)(1)(A)

(B) The prescribed back of the printed copy of the pawn ticket, as shown in Figure: 7 TAC §85.405(a)(1)(B), must be maintained in the numerical pawn ticket file.

Figure: 7 TAC §85.405(a)(1)(B)

(2) (No change.)

(3) Information required on pawn ticket. The pawn ticket must contain all information required in the Texas Finance Code, §371.157, and satisfy the requirements of the Truth in Lending [~~Truth-in-Lending~~] Act, 15 U.S.C. §1601 et seq., and Regulation Z, 12 C.F.R. [~~CFR~~] §226.1 et seq. The pawn ticket must disclose the date that is thirty (30) days following the maturity date, and it must be captioned "last day of grace." The system used to create and store information about pawn transactions must include alphabetical or numerical characters sufficient to identify the pawnshop employee or owner writing the pawn ticket and handling the renewal or redemption of the pawn transaction. All parts of the pawn ticket form must be sequentially numbered by the automated information system unless produced manually in accordance with the requirements of §85.402(f) of this title [~~, of this chapter~~].

(4) Prescribed copies.

(A) Original. The top original copy is to be given to pledgor. This is the copy that is to be presented upon redemption and filed with the numerical file of redemptions and renewals. The original copy of the pawn ticket, presented to the pawnbroker upon redemption of the pledged goods and renewal of the pawn transaction, may be kept in chronological order by date if through the use of an automated system, the records pertaining to the pawn transaction may be readily located. Additionally, the original copy of the pawn ticket may be maintained in the numerical pawn ticket file.

(B) - (D) (No change.)

(5) Legible information. Reasonable procedures must be in place to ensure that all information on the original pawn ticket and all copies of the pawn ticket are [~~is~~] legible.

(6) (No change.)

(b) - (f) (No change.)

(g) Items usually sold as a set in a retail transaction or pledged together with their accessories.

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

(3) Items that may usually be sold as a set in a retail transaction or pledged together with their accessories, but which are pledged on separate days will not normally be considered to fall within the provisions in paragraph (2) of this subsection.

(4) (No change.)

(h) (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 August 19, 2005.

TRD-200503508
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 936-7611

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CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

SUBCHAPTER A. REGISTRATION PROCEDURE

7 TAC §§88.101 - 88.108

The Finance Commission of Texas (the commission) proposes new Chapter 88 Consumer Debt Management Services, §§88.101 - 88.108, concerning the registration of debt management services providers.

In general, the purpose of the new rules is to establish application and registration procedures as required under Subchapter C, Consumer Debt Management Services, to be contained in Chapter 394 of the Texas Finance Code, as enacted by the 79th Texas Legislature in SB 1112. The proposed rules provide definitions, procedures for filing an application for registration for a Consumer Debt Management Services Registration, processing procedures, procedures for amendments to pending applications, procedures for relocation of a registered provider, procedures for designating an inactive status, the fees associated with

the registration, annual report requirements, and annual renewal procedures.

Section 88.101 defines a particular term.

Section 88.102 describes the procedure for filing a new application for a debt management services registration, including instructions regarding what forms to use, what information is necessary on the application, and what information must be filed with the application.

Section 88.103 outlines how an application for a debt management services registration is processed, including a description of when an application is complete as well as an explanation of what may occur if an applicant fails to complete an application. In addition, this section describes the hearings process that occurs if the applicant contests the denial of its application.

Section 88.104 requires each applicant, upon discovery of new or changed information, to supplement its application within 10 business days of discovery of the new or changed information.

Section 88.105 describes the procedures for relocating the registered provider location.

Section 88.106 outlines how a registered provider may change its debt management services registration from active to inactive status.

Section 88.107 sets out the fees for new registered providers, registration amendments, registration duplication, the cost of hearings, and annual assessments.

Section 88.108 describes how registration applications and notices are public records, citing the relevant provisions within the Texas Government Code.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws and consistency in debt management services agreements.

Additional economic costs will be incurred by a person required to comply with this proposal. The registration fees as outlined by new §88.107 constitute the potential anticipated costs for registered providers, with a fee of $250 to process new applications. The fixed cost of an annual assessment will be $430 per registered provider. Other potential, but not required, fees could result from registration amendments ($25 each), registration duplicates ($10 each), or the cost of an administrative hearing, which cannot be predicted due to the varying circumstances of each provider. Under the provisions of SB 1112, a registered provider is required to maintain a surety bond or insurance. The potential cost to maintain a bond is typically an annual charge of one to two percent (1-2%) of the bond amount. Thus, for a $50,000 bond, the cost would range from $500 - $1,000 per year per registered provider. For a $100,000 bond, the cost would range from $1,000 - $2,000 per year per registered provider. Regarding the potential costs to maintain the requisite insurance, these costs are not predictable due to several variable factors, including the amount of insurance coverage purchased, a provider's insurance deductible amount, a provider's number of employees, and any prior insurance claims experience which may affect the premiums charged. It is anticipated that there will be no adverse economic effect on small businesses as compared to the effect on large businesses.

Compliance with these rules is optional prior to January 1, 2006. For those providers who choose to register prior to January 1, 2006, the requisite surety bond or insurance must be in place at the time of application. Providers under this chapter should apply for registration no later than January 1, 2006.

Comments on the proposed new rules may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to sealy.hutchings@occc.state.tx.us.

These new sections are proposed under Texas Finance Code §394.204, which authorizes the Finance Commission to adopt rules to establish procedures to facilitate the registration of and collection of fees from debt management services providers.

The statutory provisions (effective September 1, 2005) affected by the proposed new sections will be contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.101. Definition.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 394, Subchapter C, have the same meanings as defined in Chapter 394. The following term, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise. Principal party--All adult individuals with a substantial relationship to the proposed debt management services business of the applicant. Individuals with a substantial relationship to the proposed debt management services business of the applicant include:

(1) corporate officers, to include the Chief Executive Officer or President, the Chief Financial Officer or Treasurer, and those with substantial responsibility for debt management services operations or compliance with the Finance Code;

(2) shareholders owning 10% or more of the outstanding voting stock; or

(3) owners, trustees, or governing persons of other organizational entities applying for registration under this chapter.

§88.102. Filing of New Application.

(a) An application for issuance of a new debt management services provider registration must be submitted as prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. Applications may be submitted electronically by Internet or e-mail, or by mail.

(b) The application shall include the following required forms and filings. All questions must be answered.

(1) Application for Registration of Debt Management Services Provider (ADM 76).

(A) A physical street address must be listed for the proposed address for the applicant's business address. If the address has not yet been determined, then the application must so state.

(B) The person responsible for the day-to-day operation of the applicant's proposed business location must be named.

(C) Authentication. An officer must authenticate the application.

(2) Application Questionnaire for Debt Management Services Provider (ADM 77). All applicable questions must be answered.

(3) Disclosure of Owners and Principal Parties of Debt Management Services Provider (ADM 78).

(A) A detailed description of the ownership interest of each officer, director, agent, or employee of the applicant must be provided. Any member of the immediate family of an officer, director, agent, or employee of the applicant, in a for-profit affiliate or subsidiary of the applicant or in any other for-profit business entity that provides services to the applicant or to a consumer in relation to the applicant's debt management business must also be provided.

(B) The section inquiring about owners requires an answer based upon the applicant's entity type. If an individual's interest in an entity is community property, then spouses with a community property interest must also be listed. If the business interest is owned by a married individual as separate property, then a statement authenticating that fact should be provided.

(i) Corporations. All shareholders holding 5% or more voting stock must be named. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be attached that describes each level of ownership and management. This narrative or diagram requires the listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(ii) Other organizations. The owners, trustees, or governing persons must be named.

(4) Statutory Agent Disclosure (ADM 13). The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must list a Texas address for legal service. If the statutory agent is an individual, the address must be a residential address.

(5) Surety bond or insurance. An applicant must file with the commissioner:

(A) a Surety Bond in the prescribed form (ADM 79):

(i) At initial application:

(I) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is less than $50,000 or if the provider does not have any trust account history for Texas consumers, then a $50,000 bond is required.

(II) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is $50,000 or more, then a $100,000 bond is required.

(ii) At annual renewal:

(I) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is less than $100,000, the bond amount must be equivalent to or exceed the average daily balance, but not be less than $25,000.

(II) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is $100,000 or more, then a $100,000 bond is required; or

(B) evidence that the applicant maintains an insurance policy in a form approved by the commissioner, meeting the requirements of §394.206 of the Texas Finance Code, and meeting the requirements of clauses (i) - (iii) of this subparagraph, as follows:

(i) a fidelity insurance policy, in the aggregate amount of $100,000 that provides coverage for:

(I) employee dishonesty;

(II) depositor's forgery;

(III) computer fraud; and

(ii) a professional liability insurance policy in the aggregate amount of $100,000.

(iii) Both the fidelity insurance policy and the professional liability insurance policy must contain a loss payee clause or rider stating that a loss may be payable in favor of the State of Texas.

(6) Assumed name certificates. For any applicant that does business under an assumed name as that term is defined in Texas Business & Commerce Code, §36.02(7), the applicant must provide all assumed names used.

(7) Debt management services agreement. The applicant must provide a blank copy of the written debt management services agreement as described in §394.209 of the Texas Finance Code.

§88.103. Processing of Application.

(a) Initial review. The agency will respond to applications within 15 working days of receipt stating that the application is complete and accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when it:

(1) conforms to the rules and the commissioner's published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Failure to complete application. If a complete application has not been filed with the commissioner within 30 days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) Hearing. Whenever an application is denied, the applicant has 30 days from the date the application was denied to request in writing a hearing to contest the denial. This hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and §9.1 et seq. of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. The commissioner shall inform the applicant in writing of the reasons for denial. Upon the final denial of an application, the annual fee will be refunded to applicant. The investigation fee will be forfeited.

(f) Processing time.

(1) The commissioner shall ordinarily approve or deny a registered provider application within a maximum of 60 days after the date of filing of a completed application.

(2) Exceptions. The commissioner may take more time where good cause exists, as defined by Government Code, §2005.004, for exceeding the established time period in paragraph (1) of this subsection.

§88.104. Amendments to Pending Application.

Upon discovery of new or changed information, each applicant must provide the commissioner with information supplemental to that contained in the applicant's original application documents and attachments. Any action, fact, or information that would require a materially different answer than that given in the original registered provider application and which relates to the qualifications for registration must be reported to the commissioner within 10 business days after the person has knowledge of the action, fact or information.

§88.105. Relocation of Registered Provider Location.

A registered provider may move the business office from the registered provider location to any other location by giving notice of intended relocation to the commissioner. The notice must include the present address of the registered provider location, the contemplated new address of the registered provider location, and the approximate date of relocation.

§88.106. Designation of Inactive Status.

Inactivation of an active registration. A registered provider may cease operating under a debt management services provider registration and render the registration inactive by giving notice of the cessation of operations to the commissioner. Notification must be filed on the Registration Amendment Form for Debt Management Services Provider (ADM 80).

§88.107. Fees.

(a) New registrations. A $250 investigation fee is assessed each time an application for a new registration under this chapter is filed and is non-refundable.

(b) Registration amendment. A fee of $25 must be paid each time a registered provider seeks to amend a registration by changing the assumed name of the registered provider, inactivating an active registration, or relocating the registered provider location.

(c) Registration duplicate. The fee for a registration duplicate is $10.

(d) Costs of hearings. The commissioner may assess the costs of an administrative appeal hearing afforded under §88.103 of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, attorneys fees, or investigative costs, if applicable.

(e) Annual assessment. An annual fixed fee of $430 is required for each registered debt management services provider. The agency may provide a discount or credit to an assessment as necessary to appropriately allocate and recover the requisite costs of administration.

§88.108. Applications and Notices as Public Records.

Once a registration application or notice is filed with the Office of Consumer Credit Commissioner (OCCC), it becomes a "state record" under Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any original documents associated with a debt management services provider application or notice to the applicant or registered provider. An individual may request copies of a state record under the authority of the Government Code, Chapter 552.

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 August 19, 2005.

TRD-200503506
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 936-7611

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SUBCHAPTER B. ANNUAL REQUIREMENTS

7 TAC §88.201, §88.202

The Finance Commission of Texas (the commission) proposes new Chapter 88 Consumer Debt Management Services, §88.201 and §88.202, concerning the registration of debt management services providers.

In general, the purpose of the new rules is to establish application and registration procedures as required under Subchapter C, Consumer Debt Management Services, to be contained in Chapter 394 of the Texas Finance Code, as enacted by the 79th Texas Legislature in SB 1112. The proposed rules provide annual report requirements and annual renewal procedures.

Section 88.201 describes the procedures for annual renewal. The first annual renewal period will occur in January 2007.

Section 88.202 outlines the requirement of annual reports for registered debt management services providers, and what information must be included in the annual reports. The first annual report submission will occur in 2007.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws and consistency in debt management services agreements.

Additional economic costs will be incurred by a person required to comply with this proposal. The registration fees as outlined by new §88.107, which is being published separately in this issue of the *Texas Register* and is referenced by §88.201, constitute the potential anticipated costs for registered providers. The fixed cost of an annual assessment will be $430 per registered provider. Other potential, but not required, fees could result from registration amendments ($25 each), registration duplicates ($10 each), or the cost of an administrative hearing, which cannot be predicted due to the varying circumstances of each provider. Under the provisions of SB 1112, a registered provider is required to maintain a surety bond or insurance. The potential cost to maintain a bond is typically an annual charge of one to two percent (1-2%) of the bond amount. Thus, for a $50,000 bond, the cost would range from $500 - $1,000 per year per registered provider. For a $100,000 bond, the cost would range from $1,000 - $2,000 per year per registered provider. Regarding the potential costs to maintain the requisite insurance, these costs are not predictable due to several variable factors, including the amount of insurance coverage purchased, a provider's insurance deductible amount, a provider's number of employees, and any prior insurance claims experience which may affect the

premiums charged. It is anticipated that there will be no adverse economic effect on small businesses as compared to the effect on large businesses.

Compliance with these rules is optional prior to January 1, 2006. For those providers who choose to register prior to January 1, 2006, the requisite surety bond or insurance must be in place at the time of application. Providers under this chapter should apply for registration no later than January 1, 2006.

Comments on the proposed new rules may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to sealy.hutchings@occc.state.tx.us.

These new sections are proposed under Texas Finance Code §394.204, which authorizes the Finance Commission to adopt rules to establish procedures to facilitate the registration of and collection of fees from debt management services providers.

The statutory provisions (effective September 1, 2005) affected by the proposed new sections will be contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.201. Annual Renewal.

Not later than February 1, a registered debt management services provider may renew its registration by providing the following:

(1) an annual report, according to §88.202 of this title;

(2) the fees required by §88.107(e) of this title; and

(3) any other information required by the commissioner.

§88.202. Annual Report.

(a) Each authorized debt management services provider must file an annual report under this section on forms prescribed by the commissioner and must comply with all instructions from the commissioner relating to submitting the report.

(b) Each year, at the time of annual renewal, an authorized debt management services provider must file with the commissioner, in a form prescribed by the commissioner, a report that contains the following:

(1) the information required by §394.205 of the Texas Finance Code; and

(2) a list of all owners and principal parties, including any change in ownership that occurred during the preceding calendar year.

(c) Upon request by the commissioner, the applicant must provide any other information the commissioner deems relevant concerning the provider's business and operations during the preceding calendar year for the registered location of the provider in this state where business is conducted under 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 August 19, 2005.

TRD-200503507
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 936-7611

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER B. UNDERWRITING, MARKET ANALYSIS, APPRAISAL, ENVIRONMENTAL SITE ASSESSMENT, PROPERTY CONDITION ASSESSMENT, AND RESERVE FOR REPLACEMENT RULES AND GUIDELINES

10 TAC §§1.31 - 1.37

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

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §§1.31 - 1.37, concerning the 2005 Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment and Reserve for Replacement Rules and Guidelines. The sections are proposed to be repealed in order to enact new sections conforming to Chapter 2306 of the Texas Government Code.

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

Ms. Carrington also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Lisa Vecchietti, Real Estate Analysis at phone: (512) 475-3227, fax: (512) 475-4420, email: lisa.vecchiett@tdhca.state.tx.us, or post: Real Estate Analysis, P.O. Box 13941, Austin, TX 78711-3941 within thirty days of this notice.

The repeals are proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

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

§1.31. General Provisions.

§1.32. Underwriting Rules and Guidelines.

§1.33. Market Analysis Rules and Guidelines.

§1.34. Appraisal Rules and Guidelines.

§1.35. Environmental Site Assessment Rules and Guidelines.

§1.36. Property Condition Assessment Guidelines.

§1.37. Reserve for Replacement Rules and Guidelines.

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 August 22, 2005.

TRD-200503520
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-4595

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10 TAC §§1.31 - 1.37

The Texas Department of Housing and Community Affairs (the Department) proposes new §§1.31 - 1.37, concerning the Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment and Reserve for Replacement Rules and Guidelines.

This subchapter is proposed in order to address guidelines for underwriting, market analysis, appraisal, environmental site assessment, and property condition assessment performed for requests submitted to the Department for review and the establishment of reserve for replacement and subsequent monitoring for developments funded through the Department.

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

Ms. Carrington has also determined that for each year of the first five-years the sections are in effect the public benefit anticipated as a result of enforcing the section will be to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Lisa Vecchietti, Real Estate Analysis at phone: (512) 475-3227, fax: (512) 475-4420, email: lisa.vecchiett@tdhca.state.tx.us, or post: Real Estate Analysis, P.O. Box 13941, Austin, TX 78711-3941 within thirty days of this notice.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by the proposed new sections.

§1.31. General Provisions.

(a) Purpose. The Rules in this subchapter apply to the underwriting, market analysis, appraisal, environmental site assessment, property condition assessment, and reserve for replacement standards employed by the Texas Department of Housing and Community Affairs (the "Department" or "TDHCA"). This chapter provides rules for the underwriting review of an affordable housing development's financial feasibility and economic viability. In addition, this chapter guides the underwriting staff in making recommendations to the Executive Award and Review Advisory Committee ("the Committee"), Executive Director, and TDHCA Governing Board ("the Board") to help ensure procedural consistency in the award determination process. Due to the unique characteristics of each development the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b) Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

(c) Definitions. Many of the terms used in this subchapter are defined in the Department's Housing Tax Credit Program Qualified Allocation Plan and Rules, known as the "QAP", as proposed. Those terms that are not defined in the QAP or which may have another meaning when used in subchapter B of this title, shall have the meanings set forth in this subsection unless the context clearly indicates otherwise.

(1) Affordable Housing--Housing that has been funded through one or more of the Department's programs or other local, state or federal programs or has at least one unit that is restricted in the rent that can be charged either by a Land Use Restriction Agreement or other form of Deed Restriction.

(2) Bank Trustee--A bank authorized to do business in this state, with the power to act as trustee.

(3) Cash Flow--The funds available from operations after all expenses and debt service required to be paid has been considered.

(4) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board, described more fully in §1.32 of this subchapter.

(5) Comparable Unit--A Unit, when compared to the subject Unit, similar in overall condition, net rentable square footage, monthly rent or sales price, unit amenities, utility structure, common amenities, and

(A) for purposes of calculating the inclusive capture rate and subsidized Unit rent targets the same population, and is likely to draw from the same demand pool, or

(B) for purposes of estimating the subject Unit market rent does not have any income or rent restrictions.

(6) Contract Rent--Maximum Rent Limits based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(7) DCR--Debt Coverage Ratio. Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." A measure of the number of times loan principal and interest are covered by Net Operating Income.

(8) Development--Sometimes referred to as the "Subject Development." Multi-unit residential housing that meets the affordability requirements for and requests or has received funds from one or more of the Department's sources of funds.

(9) EGI--Effective Gross Income. The sum total of all sources of anticipated or actual income for a rental Development less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(10) ESA--Environmental Site Assessment. An environmental report that conforms with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with the Department's Environmental Site Assessment Rules and Guidelines in §1.35 of this subchapter as it relates to a specific Development.

(11) First Lien Lender--A lender whose lien has first priority.

(12) Gross Program Rent--Sometimes called the "Program Rents." Maximum Rent Limits based upon the tables promulgated by the Department's division responsible for compliance by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA").

(13) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates or pricing conducted in accordance with the Department's Market Analysis Rules and Guidelines in §1.33 of this subchapter as it relates to a specific Development.

(14) Market Rent--The unrestricted rent concluded by the Market Analyst for a particular unit type and size after adjustments are made to rents charged by owners of Comparable Units.

(15) NOI--Net Operating Income. The income remaining after all operating expenses, including replacement reserves and taxes have been paid.

(16) Primary Market--Sometimes referred to as "Primary Market Area" or "Submarket" or "PMA". The area defined by the Qualified Market Analyst as described in §1.33(d)(9) of this subchapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(17) PCA--Property Condition Assessment. Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessments," "Property Condition Report," or "Property Work Write-Up." An evaluation of the physical condition of the existing property and evaluation of the cost of rehabilitation conducted in accordance with the Department's Property Condition Assessment Rules and Guidelines in §1.36 of this subchapter as it relates to a specific Development.

(18) Rent Over-Burdened Households--Non-elderly households paying more than 35% of gross income towards total housing expenses (unit rent plus utilities) and elderly households paying more than 40% of gross income towards total housing expenses.

(19) Reserve Account--An individual account:

(A) Created to fund any necessary repairs for a multifamily rental housing development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(20) Secondary Market--Sometimes referred to as "Secondary Market Area". The area defined by the Qualified Market Analyst as described in §1.33(d)(8) of this subchapter.

(21) Supportive Housing--Sometimes referred to as "Transitional Housing." Rental housing intended solely for occupancy by individuals or households transitioning from homelessness or abusive situations to permanent housing and typically consisting primarily of efficiency units.

(22) Sustaining Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses and mandatory debt service requirements for a Development.

(23) TDHCA Operating Expense Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual operating expense information collected through the Department's Annual Owner Financial Certification process and published on the Department's web site.

(24) Underwriter--The author(s), as evidenced by signature, of the Credit Underwriting Analysis Report.

(25) Unstabilized Development-- A Development with Comparable Units that has been approved for funding by the TDHCA Board or is currently under construction or has not maintained a 90% occupancy level for at least 12 consecutive months following construction completion.

(26) Utility Allowance--The estimate of tenant-paid utilities, based either on the most current HUD Form 52667, "Section 8, Existing Housing Allowance for Tenant-Furnished Utilities and Other Services," provided by the local entity responsible for administering the HUD Section 8 program with most direct jurisdiction over the majority of the buildings existing or a documented estimate from the utility provider proposed in the Application. Documentation from the local utility provider to support an alternative calculation can be used to justify alternative Utility Allowance conclusions but must be specific to the Subject Development and consistent with the building plans provided.

(27) Work Out Development--A financially distressed Development seeking a change in the terms of Department funding or program restrictions based upon market changes.

§1.32. Underwriting Rules and Guidelines.

(a) General Provisions. The Department, through the division responsible for underwriting, produces or causes to be produced a Credit Underwriting Analysis Report (the "Report") for every Development recommended for funding through the Department. The primary function of the Report is to provide the Committee, Executive Director, the Board, Applicants, and the public a comprehensive analytical report and recommendations necessary to make well informed decisions in the allocation or award of the State's limited resources. The Report in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development by the Department.

(b) Report Contents. The Report provides an organized and consistent synopsis and reconciliation of the application information submitted by the Applicant. At a minimum, the Report includes:

(1) Identification of the Applicant and any Principals of the Applicant;

(2) Identification of the funding type and amount requested by the Applicant;

(3) The Underwriter's funding recommendations and any conditions of such recommendations;

(4) Review and analysis of the Applicant's operating pro-forma;

(5) Analysis of the Development's debt service capacity;

(6) Review and analysis of the Applicant's development budget;

(7) Evaluation of the commitment for additional sources of financing for the Development;

(8) Identification of related interests among the members of the Development Team, Third Party service providers and/or the seller of the property;

(9) Analysis of the Applicant's and Principals' financial statements and creditworthiness;

(10) Review of the proposed Development plan and evaluation of the proposed improvements;

(11) Review of the Applicant's evidence of site control and any potential title issues that may affect site control;

(12) Identification of the site which includes review of the independent site inspection report;

(13) Review of the Phase I Environmental Site Assessment in conformance with the Department's Environmental Site Assessment Rules and Guidelines in §1.35 of this subchapter or soils and hazardous material reports as required;

(14) Review of market data and Market Study information and any valuation information available for the property in conformance with the Department's Market Analysis Rules and Guidelines in §1.33 of this subchapter;

(15) Review of the appraisal, if required, for conformance with the Department's Appraisal Rules and Guidelines in §1.34 of this subchapter; and,

(16) Review of the Property Condition Assessment, if required, for conformance with the Department's Property Condition Assessment Rules and Guidelines in §1.36 of this subchapter.

(c) Recommendations in the Report. The conclusion of the Report includes a recommended award of funds or allocation of Tax Credits based on the lesser amount calculated by the program limit method (if applicable), gap/DCR method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection.

(1) Program Limit Method. For Developments requesting Housing Tax Credits, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is as defined in the QAP. For Developments requesting funding through a Department program other than Housing Tax Credits, this method is based upon calculation of the funding limit based on current program rules at the time of underwriting.

(2) Gap/DCR Method. This method evaluates the amount of funds needed to fill the gap created by total development cost less total non-Department-sourced funds or Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee down to zero before reducing the amount of Department funds or Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Tax Credits. In making this determination, the Department adjusts the permanent loan amount and/or any Department-sourced loans, as necessary, such that it conforms to the DCR standards described in this section.

(3) The Amount Requested. The amount of funds that is requested by the Applicant as reflected in the application documentation.

(d) Operating Feasibility. The operating financial feasibility of Developments funded by the Department is tested by adding total income sources and subtracting vacancy and collection losses and operating expenses to determine Net Operating Income. This Net Operating Income is divided by the annual debt service to determine the Debt Coverage Ratio. The Underwriter characterizes a Development as infeasible from an operational standpoint when the Debt Coverage Ratio does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may choose to make adjustments to the financing structure, such as lowering the debt and increasing the deferred developer fee that could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.

(1) Income. The Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program and market factors. Miscellaneous income and vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.

(A) Rental Income. The Program Rent less Utility Allowances or Market Rent or Contract Rent is utilized by the Underwriter in calculating the rental income for comparison to the Applicant's estimate in the application. Where multiple programs are funding the same units, Contract Rents are used, if applicable. If Contract Rents do not apply, the lowest Program Rents less Utility Allowance ("net Program Rent") or Market Rents, as determined by the Market Analysis that are lower than the net Program Rents, are utilized.

(i) Market Rents. The Underwriter reviews the Attribute Adjustment Matrix of Rent Comparable Units by unit size provided by the Market Analyst and determines if the adjustments and conclusions made are reasoned and well documented. The Underwriter uses the Market Analyst's conclusion of adjusted Market Rent by unit, as long as the proposed Market Rent is reasonably justified and does not exceed the highest existing unadjusted market comparable rent. Random checks of the validity of the Market Rents may include direct contact with the comparable properties. The Market Analyst's Attribute Adjustment Matrix should include, at a minimum, adjustments for location, size, amenities, and concessions as more fully described in §1.33 of this subchapter, the Department's Market Analysis Rules and Guidelines.

(ii) Program Rents less Utility Allowance. The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the application. The Underwriter uses the Program Rents as promulgated by the Department's division responsible for compliance for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all of the applications are underwritten with the rents promulgated for the same year. Program Rents are reduced by the Utility Allowance. The Utility Allowance figures used are determined based upon what is identified in the application by the Applicant as being a utility cost paid by the tenant and upon other consistent documentation provided in the application.

(I) Units must be individually metered for all utility costs to be paid by the tenant.

(II) Gas utilities are verified on the building plans and elsewhere in the application when applicable.

(III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.

(IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the development cost breakdown.

(iii) Contract Rents. The Underwriter reviews submitted rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the

likelihood of continued rental assistance is also reviewed. The underwriting analysis will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant proposed rents may be used in the underwriting analysis with the recommendations of the Report conditioned upon receipt of final approval of such increase.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to late fees, storage fees, laundry income, interest on deposits, carport rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $15 per unit per month range. Exceptions may be made at the discretion of the Underwriter for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.

(i) Exceptions must be justified by operating history of existing comparable properties.

(ii) The Applicant must show that the tenant will not be required to pay the additional fee or charge as a condition of renting an apartment unit and must show that the tenant has a reasonable alternative.

(iii) The Applicant's operating expense schedule should reflect an offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iv) Collection rates of exceptional fee items will generally be heavily discounted.

(v) If the total secondary income is over the maximum per unit per month limit, any cost associated with the construction, acquisition, or development of the hard assets needed to produce an additional fee may also need to be reduced from Eligible Basis for Tax Credit Developments as they may, in that case, be considered to be a commercial cost rather than an incidental to the housing cost of the Development.

(C) Vacancy and Collection Loss. The Underwriter uses a vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss) unless the Market Analysis reflects a higher or lower established vacancy rate for the area. Elderly and 100% project-based rental subsidy Developments and other well documented cases may be underwritten at a combined 5% at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income. The Underwriter independently calculates EGI. If the EGI figure provided by the Applicant is within 5% of the EGI figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter will maintain and use its independent calculation unless the Applicant's proforma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. The Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the type of Development, the size of the units, and the Applicant's expectations as reflected in their proforma. Historical stabilized certified or audited financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The Department's database of property in the same location or region as the proposed Development also provides heavily relied upon data points. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as Public Housing Authority ("PHA") Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Finally, well documented information provided in the Market Analysis, the application, and other sources may be considered.

(A) General and Administrative Expense. General and Administrative Expense includes all accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. The underwriting tolerance level for this line item is 20%.

(B) Management Fee. Management Fee is paid to the property management company to oversee the effective operation of the property and is most often based upon a percentage of Effective Gross Income as documented in the management agreement contract. Typically, 5% of the Effective Gross Income is used, though higher percentages for rural transactions that are consistent with the TDHCA Database can be concluded. Percentages as low as 3% may be utilized if documented by a Third Party management contract agreement with an acceptable management company. The Underwriter will require documentation for any percentage difference from the 5% of the Effective Gross Income standard.

(C) Payroll and Payroll Expense. Payroll and Payroll Expense includes all direct staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a conventional development. It does not, however, include direct security payroll or additional supportive services payroll. The underwriting tolerance level for this line item is 10%.

(D) Repairs and Maintenance Expense. Repairs and Maintenance Expense includes all repairs and maintenance contracts and supplies. It should not include extraordinary capitalized expenses that would result from major renovations. Direct payroll for repairs and maintenance activities are included in payroll expense. The underwriting tolerance level for this line item is 20%.

(E) Utilities Expense (Gas & Electric). Utilities Expense includes all gas and electric energy expenses paid by the owner. It includes any pass-through energy expense that is reflected in the EGI. The underwriting tolerance level for this line item is 30%.

(F) Water, Sewer and Trash Expense. Water, Sewer and Trash Expense includes all water, sewer and trash expenses paid by the owner. It would also include any pass-through water, sewer and trash expense that is reflected in the EGI. The underwriting tolerance level for this line item is 30%.

(G) Insurance Expense. Insurance Expense includes any insurance for the buildings, contents, and liability but not health or workman's compensation insurance. The underwriting tolerance level for this line item is 30%.

(H) Property Tax. Property Tax includes all real and personal property taxes but not payroll taxes. The underwriting tolerance level for this line item is 10%.

(i) The per unit assessed value will be calculated based on the capitalization rate published on the county taxing authority's website. If the county taxing authority does not publish a capitalization rate on the internet, a capitalization rate of 10% will be used or comparable assessed values may be used in evaluating this line item expense.

(ii) Property tax exemptions or proposed payment in lieu of tax agreement (PILOT) must be documented as being reasonably achievable if they are to be considered by the Underwriter. At the discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.

(I) Reserves. Reserves include annual reserve for replacements of future capitalizable expenses as well as any ongoing additional operating reserve requirements. The Underwriter includes minimum reserves of $200 per unit for new construction and $300 per unit for all other Developments. The Underwriter may require an amount above $300 for Developments other than new construction based on information provided in the PCA. Higher levels of reserves also may be used if they are documented in the financing commitment letters.

(J) Other Expenses. The Underwriter will include other reasonable and documented expenses, not including depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. Lender or syndicator's asset management fees or other ongoing partnership fees also are not considered in the Department's calculation of debt coverage. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.

(i) Supportive Services Expense. Supportive Services Expense includes the documented cost to the owner of any non-traditional tenant benefit such as payroll for instruction or activities personnel. The Underwriter will not evaluate any selection points for this item. The Underwriter's verification will be limited to assuring any anticipated costs are included. For all transactions supportive services expenses are considered in calculating the Debt Coverage Ratio.

(ii) Security Expense. Security Expense includes contract or direct payroll expense for policing the premises of the Development. The Applicant's amount is typically accepted as provided. The Underwriter will require documentation of the need for security expenses that exceed 50% of the anticipated payroll expense estimate discussed in subparagraph (C) of this paragraph.

(iii) Compliance Fees. Compliance fees include only compliance fees charged by TDHCA. The Department's charge for a specific program may vary over time; however, the Underwriter uses the current charge per unit per year at the time of underwriting. For all transactions compliance fees are considered in calculating the Debt Coverage Ratio.

(iv) Cable Television Expense. Cable Television Expense includes fees charged directly to the owner of the Development to provide cable services to all units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing cable television in only the community building should be included in General and Administrative Expense as described in subparagraph (A) of this paragraph.

(K) The Department will communicate with and allow for clarification by the Applicant when the overall expense estimate is over 5% greater or less than the Underwriter's estimate. In such a case, the Underwriter will inform the Applicant of the line items that exceed the tolerance levels indicated in this paragraph, but may request additional documentation supporting some, none or all expense line items. If an acceptable rationale for the difference is not provided, the discrepancy is documented in the Report and the justification provided by the Applicant and the countervailing evidence supporting the Underwriter's determination is noted. If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter will maintain and use its independent calculation unless the Applicant's proforma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income. NOI is the difference between the EGI and total operating expenses. If the NOI figure provided by the Applicant is within 5% of the NOI figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating the DCR the Underwriter will maintain and use his independent calculation of NOI unless the Applicant's EGI, total expenses, and NOI are each within 5% of the Underwriter's estimates.

(4) Debt Coverage Ratio. Debt Coverage Ratio is calculated by dividing Net Operating Income by the sum of loan principal and interest for all permanent sources of funds. Loan principal and interest, or "Debt Service," is calculated based on the terms indicated in the submitted commitments for financing. Terms generally include the amount of initial principal, the interest rate, amortization period, and repayment period. Unusual financing structures and their effect on Debt Service will also be taken into consideration.

(A) Interest Rate. The interest rate used should be the rate documented in the commitment letter.

(i) Commitments indicating a variable rate must provide a detailed breakdown of the component rates comprising the all-in rate. The commitment must also state the lender's underwriting interest rate, or the Applicant must submit a separate statement executed by the lender with an estimate of the interest rate as of the date of the statement.

(ii) The maximum rate allowed for a competitive application cycle is evaluated by the Director of the Department's division responsible for Credit Underwriting Analysis Reports and posted to the Department's web site prior to the close of the application acceptance period. Historically this maximum acceptable rate has been at or below the average rate for 30-year U.S. Treasury Bonds plus 400 basis points.

(B) Amortization Period. The Department generally requires an amortization of not less than 30 years and not more than 50 years or an adjustment to the amortization structure is evaluated and recommended. In non-Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.

(C) Repayment Period. For purposes of projecting the DCR over a 30-year period for Developments with permanent financing structures with balloon payments in less than 30 years, the Underwriter will carry forward Debt Service calculated based on a full amortization and the interest rate stated in the commitment.

(D) Acceptable Debt Coverage Ratio Range. The initial acceptable DCR range for all priority or foreclosable lien financing plus the Department's proposed financing falls between a minimum of 1.10 to a maximum of 1.30. HOPE VI and USDA Rural Development transactions may underwrite to a DCR less than 1.10 based upon documentation of acceptance from the lender.

(i) For Developments other than HOPE VI and USDA Rural Development transactions, if the DCR is less than the minimum, the recommendations of the Report are conditioned upon a reduced debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) A reduction of the interest rate or an increase in the amortization period for TDHCA funded loans;

(II) A reclassification of TDHCA funded loans to reflect grants, if permitted by program rules;

(III) A reduction in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the permanent loan commitment letter as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph .

(ii) If the DCR is greater than the maximum, the recommendations of the Report are conditioned upon an increase in the debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) A reclassification of TDHCA funded grants to reflect loans, if permitted by program rules;

(II) An increase in the interest rate or a decrease in the amortization period for TDHCA funded loans;

(III) An increase in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the permanent loan commitment letter as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Tax Credit allocation may be made based on the gap/DCR method described in subsection (c)(2) of this section.

(iv) Although adjustments in Debt Service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.

(5) Long Term Feasibility. The Underwriter will evaluate the long term feasibility of the Development by creating a 30-year operating proforma.

(A) A 3% annual growth factor is utilized for income and a 4% annual growth factor is utilized for expenses.

(B) The base year projection utilized is the Underwriter's EGI, expenses, and NOI unless the Applicant's EGI, total expenses, and NOI are each within 5% of the Underwriter's estimates.

(C) The DCR should remain above a 1.10 and a continued positive Cash Flow should be projected for the initial 30-year period in order for the Development to be characterized as feasible for the long term. DCR will be calculated based on the guidelines stated in subsection (d)(4) of this section.

(D) Any Development with a 30-year proforma, used in the underwriting analysis, reflecting cumulative Cash Flow over the first fifteen years as insufficient to repay the projected amount of deferred developer fee , amortized in irregular payments at 0% interest, is characterized as infeasible. An infeasible Development will not be recommended for funding unless the Underwriter can determine a plausible alternative feasible financing structure and conditions the recommendation(s) in the Report accordingly.

(e) Development Costs. The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected total development costs. The Department's estimate of the total development cost will be based on the Applicant's project cost schedule to the extent that it can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For new construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's total development cost is within 5% of the Underwriter's estimate. In the case of a rehabilitation Development, the Underwriter may use a lower tolerance level due to the reliance upon the PCA. If the Applicant's total development cost is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's total cost estimate.

(1) Acquisition Costs. The proposed acquisition price is verified with the fully executed site control document(s) for the entire proposed site.

(A) Excess Land Acquisition. Where more land is being acquired than will be utilized for the site and the remaining acreage is not being utilized as permanent green space, the value ascribed to the proposed Development will be prorated from the total cost reflected in the site control document(s). An appraisal or tax assessment value may be tools that are used in making this determination; however, the Underwriter will not utilize a prorated value greater than the total amount in the site control document(s).

(B) Identity of Interest Acquisitions.

(i) The acquisition will be considered an identity of interest transaction when an Affiliate of, a Related Party to, or any owner at any level of the Development Team

(I) is the current owner in whole or in part of the proposed property, or

(II) was the owner in whole or in part of the proposed property during any period within the 36 months prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide the additional documentation identified in §50.9(i)(7)(A) of this title to support the transfer price to be used in the underwriting analysis.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed

(I) the original acquisition cost listed in the submitted settlement statement or, if a settlement statement is not available, the original asset value listed in the most current audited financial statement for the identity of interest owner, or

(II) the "as-is" value conclusion in the submitted appraisal.

(C) Acquisition of Buildings for Tax Credit Properties. In order to make a determination of the appropriate building acquisition value, the Applicant will provide and the Underwriter will utilize an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §1.34 of this subchapter. The value of the improvements are the result of the difference between the as-is appraised value less the land value. The Underwriter may alternatively prorate the actual or identity of interest sales price based upon a lower calculated improvement value over the as-is value provided in the appraisal, so long as the resulting land value utilized by the Underwriter is not less than the land value indicated in the appraisal or tax assessment.

(2) Off-Site Costs. Off-Site costs are costs of development up to the site itself such as the cost of roads, water, sewer and other utilities to provide the site with access. All off-site costs must be well documented and certified by a Third Party engineer on the required application form.

(3) Site Work Costs. Project site work costs exceeding $7,500 per Unit must be well documented and certified by a Third Party engineer on the required application form. In addition, for Applicants seeking Tax Credits, documentation in keeping with §50.9(i)(6)(G) of this title will be utilized in calculating eligible basis.

(4) Direct Construction Costs. Direct construction costs are the costs of materials and labor required for the building or rehabilitation of a Development.

(A) New Construction. The Underwriter will use the Marshall and Swift Residential Cost Handbook and historical final cost certifications of all previous housing tax credit allocations to estimate the direct construction cost for a new construction Development. If the Applicant's estimate is more than 5% greater or less than the Underwriter's estimate, the Underwriter will attempt to reconcile this concern and ultimately identify this as a cost concern in the Report.

(i) The "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook, based upon the details provided in the application and particularly site and building plans and elevations will be used to estimate direct construction costs. If the Development contains amenities not included in the Average Quality standard, the Department will take into account the costs of the amenities as designed in the Development.

(ii) If the difference in the Applicant's direct cost estimate and the direct construction cost estimate detailed in clause (i) of this subparagraph is more than 5%, the Underwriter shall also evaluate the direct construction cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous housing tax credit allocations for:

(I) the county in which the Development is to be located, or

(II) if cost certifications are unavailable under subclause (I) of this clause, the uniform state service region in which the Development is to be located.

(B) Rehabilitation Costs. In the case where the Applicant has provided a PCA which is inconsistent with the Applicant's figures as proposed in the development cost schedule, the Underwriter may request a supplement executed by the PCA provider supporting the Applicant's estimate and detailing the difference in costs. If said supplement is not provided or the Underwriter determines that the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations in lieu of the Applicant's estimates.

(5) Hard Cost Contingency. All contingencies identified in the Applicant project cost schedule will be added to Hard Cost Contingency with the total limited to the guidelines detailed in this paragraph. Hard Cost Contingency is limited to a maximum of 5% of direct costs plus site work for new construction Developments and 10% of direct costs plus site work for rehabilitation Developments. The Applicant's figure is used by the Underwriter if the figure is less than 5%.

(6) Contractor Fee Limits. Contractor fees are limited to 6% for general requirements, 2% for contractor overhead, and 6% for contractor profit. The percentages are applied to the sum of the direct construction costs plus site work costs. Minor reallocations to make these fees fit within these limits may be made at the discretion of the Underwriter. For Developments also receiving financing from TX-USDA-RHS, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or TX-USDA-RHS requirements.

(7) Developer Fee Limits. For Tax Credit Developments, the development cost associated with developer fees included in Eligible Basis cannot exceed 15% of the project's Total Eligible Basis less developer fees, as defined in the QAP. Developer fee claimed must be proportionate to the work for which it is earned. In the case of an identity of interest transaction requesting acquisition Tax Credits, no developer fee attributable to acquisition of the Development will be included in Eligible Basis. For non-Tax Credit Developments, the percentage remains the same but is based upon total development costs less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in subsection (f)(8) of this section, reserves, and any other identity of interest acquisition cost .

(8) Financing Costs. Eligible construction period financing is limited to not more than one year's fully drawn construction loan funds at the construction loan interest rate indicated in the commitment. Any excess over this amount is removed to ineligible cost and will not be considered in the determination of developer fee.

(9) Reserves. The Department will utilize the terms proposed by the syndicator or lender as described in the commitment letter(s) or the amount described in the Applicant's project cost schedule if it is within the range of two to six months of stabilized operating expenses less management fees plus debt service.

(10) Other Soft Costs. For Tax Credit Developments all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by Internal Revenue Code but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities. The Underwriter will evaluate and accept the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Internal Revenue Code. If the Underwriter questions the eligibility of any soft costs, the Applicant is given an opportunity to clarify and address the concern prior to removal from Eligible Basis.

(f) Developer Capacity. The Underwriter will evaluate the capacity of the Person(s) accountable for the role of the Developer to determine their ability to secure financing and successfully complete the Development. The Department will review financial statements, and personal credit reports for those individuals anticipated to guarantee the completion of the Development.

(1) Credit Reports. The Underwriter will characterize the Development as "high risk" if the Applicant, General Partner, Developer, anticipated Guarantor or Principals thereof have a credit score which reflects a 40% or higher potential default rate.

(2) Financial Statements of Principals. The Applicant, Developer, any principals of the Applicant, General Partner, and Developer and any Person who will be required to guarantee the Development will be required to provide a signed and dated financial statement and authorization to release credit information in accordance with the Department's program rules.

(A) Individuals. The Underwriter will evaluate and discuss financial statements for individuals in a confidential portion of the Report. The Development may be characterized as "high risk" if the Developer, anticipated Guarantor or Principals thereof is determined to have limited net worth or significant lack of liquidity.

(B) Partnerships and Corporations. The Underwriter will evaluate and discuss financial statements for partnerships and corporations in the Report. The Development may be characterized as "high risk" if the Developer, anticipated Guarantor or Principals thereof is determined to have limited net worth or significant lack of liquidity.

(C) If the Development is characterized as a high risk for either lack of previous experience as determined by the TDHCA division responsible for compliance or a higher potential default rate is identified as described in paragraph (1) or (2) of this subsection, the Report must condition any potential award upon the identification

and inclusion of additional Development partners who can meet the Department's guidelines.

(g) Other Underwriting Considerations. The Underwriter will evaluate numerous additional elements as described in subsection (b) of this section and those that require further elaboration are identified in this subsection.

(1) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain; or

(C) The Development must be designed to comply with the QAP, as proposed.

(2) Inclusive Capture Rate. The Underwriter will not recommend the approval of funds to new Developments requesting funds if the anticipated inclusive capture rate, as defined in §1.33 of this subchapter, exceeds 25% for the Primary Market unless:

(A) The Developments is classified as a Rural Development according to the QAP, as proposed, in which case an inclusive capture rate of 100% is acceptable; or

(B) The Development is strictly targeted to the elderly or special needs populations, in which case an inclusive capture rate of 100% is acceptable; or

(C) The Development is comprised of Affordable Housing which replaces previously existing substandard Affordable Housing within the same Primary Market Area on a Unit for Unit basis, and which gives the displaced tenants of the previously existing Affordable Housing a leasing preference, in which case an inclusive capture rate is not applicable.

(3) The Underwriter will identify in the report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject.

(4) Supportive Housing. The unique development and operating characteristics of Supportive Housing Developments may require special consideration in the following areas:

(A) Operating Income. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50% AMI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development.

(B) Operating Expenses. A Supportive Housing Development may have significantly higher expenses for payroll, security, resident support services, or other items than typical Affordable Housing Developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments provided by the Applicant or otherwise available to the Underwriter.

(C) DCR and Long Term Feasibility. Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional debt. Applicants must provide evidence of sufficient financial resources to offset any projected 30-year cumulative negative cash flows. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of the following: executed subsidy commitment(s), set-aside of Applicant's financial resources, to be substantiated by an audited financial statement evidencing sufficient resources, and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities.

(D) Development Costs. For Supportive Housing that is styled as efficiencies, the Underwriter may use "Average Quality" dormitory costs from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the application, as a base cost in evaluating the reasonableness of the Applicant's direct construction cost estimate for new construction Developments.

(h) Work Out Development. Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

§1.33. Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs.

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst (§2306.67055, Texas Government Code). The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

(1) If not listed as approved by the Department, Market Analysts must submit subparagraphs (A) - (F) of this paragraph at least thirty days prior to the first day of the Application Acceptance Period for which the Market Analyst must be approved. To maintain status as an approved Qualified Market Analyst, updates to the items described in subparagraphs (A) - (C) of this paragraph must be submitted annually on the first Monday in February for review by the Department.

(A) Documentation of good standing in the State of Texas.

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.

(D) General information regarding the firm's experience including references, the number of previous similar assignments and time frames in which previous assignments were completed.

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the application round in which each Market Analysis is submitted.

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the application round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(3) The list of approved Qualified Market Analysts is posted on the Department's web site and updated within 72 hours of a change in the status of a Market Analyst.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Summary Form. Complete and include the most current TDHCA Primary Market Area Analysis Summary form. An electronic version of the form and instructions are available on the Department's website at http://www.tdhca.state.tx.us/rea/.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the Property. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three year history of ownership for the subject Property.

(8) Secondary Market Area. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Secondary Market Area definition. The entire PMA, as described in paragraph (9) of this subsection, must be contained within the Secondary Market boundaries. Secondary Market Demand will be considered for only Qualified Elderly Developments or Developments targeting special needs populations. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area (§2306.67055 Texas Government Code).

(A) The Secondary Market Area will be defined by the Market Analyst with boundaries based on (in descending order of TDHCA preference)

(i) major roads,

(ii) political boundaries, and

(iii) natural boundaries.

(iv) A radius is prohibited as a boundary definition.

(B) The Market Analyst's definition of the Secondary Market Area must be supported with a detailed description of the methodology used to determine the boundaries. If applicable, the Market Analyst must place special emphasis on data used to determine an irregular shape for the Secondary Market.

(C) A scaled distance map indicating the Secondary Market Area boundaries that clearly identifies the location of the subject Property must be included.

(9) Primary Market Area. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Primary Market Area definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area (§2306.67055 Texas Government Code).

(A) The Primary Market Area will be defined by the Market Analyst with

(i) size based on a base year population of no more than

(I) 100,000 people for Developments targeting the general population, and

(II) 250,000 people for Qualified Elderly Developments or Developments targeting special needs populations,

(ii) boundaries based on (in descending order of TDHCA preference)

(I) major roads,

(II) political boundaries, and

(III) natural boundaries.

(IV) A radius is prohibited as a boundary definition.

(B) The Market Analyst's definition of the Primary Market Area must be supported with a detailed description of the methodology used to determine the boundaries. If applicable, the Market Analyst must place special emphasis on data used to determine an irregular shape for the PMA.

(C) A scaled distance map indicating the Primary Market Area boundaries that clearly identifies the location of the subject Property and the location of all Local Amenities must be included.

(10) Market Information.

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the Secondary Market, if applicable

(i) total housing,

(ii) rental developments,

(iii) Affordable Housing,

(iv) Comparable Units,

(v) Unstabilized Comparable Units, and

(vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development (§1.32(d)(1)(C)). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by

(i) number of Bedrooms,

(ii) quality of construction (class),

(iii) Targeted Population, and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Turnover. The turnover rate should be specific to the Targeted Population. The data supporting the turnover rate must originate from documented turnover rates from at least one of the following (in descending order of TDHCA preference)

(i) Comparable Units,

(ii) the defined PMA,

(iii) the defined Secondary Market, and

(iv) a Third Party data collection agency or demographer.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing within the defined market areas using the most current census and demographic data available.

(i) Demographics.

(I) Population. Provide population and household figures, supported by actual demographics, for a five-year period with the year of application as the base year.

(II) Target. If applicable, adjust the household projections for the Qualified Elderly or special needs population targeted by the proposed Development. State the target adjustment rate.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Development based on 1.5 persons per bedroom (round up). State the Household Size-Appropriate adjustment rate.

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Development with

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35% for the general population and 40% for Qualified Elderly households, and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per bedroom (round up).

(-c-) State the Income Eligible adjustment rate.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). State the Tenure-Appropriate adjustment rate.

(ii) Demand from Turnover. Apply the turnover rate as described in subparagraph (D) of this paragraph to the target, income-eligible, size-appropriate and tenure-appropriate households in the PMA projected at twelve months prior to the proposed placed in service date.

(iii) Demand from Population Growth. Calculate the target, income-eligible, size-appropriate and tenure-appropriate household growth in the PMA for the twelve month period prior to the proposed placed in service date.

(iv) Demand from Other Sources. The source of additional demand and the methodology used to calculate the additional demand must be clearly stated. Calculation of additional demand must factor in the adjustments described in clause (i) of this subparagraph.

(11) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (G) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand within the PMA.

(B) Rents. Provide a separate market rent and subsidized rent conclusion for each proposed unit type (number of bedrooms or net rentable square footage) and rent restriction category. Conclusions of market rents or subsidized rents below the maximum net program rent limit must be well documented.

(i) Comparable Units. Identify developments in the PMA with Comparable Units. In Primary Market Areas lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each development consisting of

(I) Development name,

(II) address,

(III) year of construction and year of rehabilitation, if applicable,

(IV) property condition,

(V) population target,

(VI) unit mix specifying number of bedrooms, number of baths, net rentable square footage and

(-a-) monthly rent, or

(-b-) sales price with terms, marketing period and date of sale,

(VII) description of concessions,

(VIII) list of unit amenities,

(IX) utility structure,

(X) list of common amenities, and

(XI) for rental developments only

(-a-) occupancy, and

(-b-) turnover.

(ii) Provide a scaled distance map indicating the Primary Market Area boundaries that clearly identifies the location of the subject Property and the location of the identified developments with Comparable Units.

(iii) Rent Adjustments. In support of the market rent and subsidized rent conclusions, provide a separate attribute adjustment matrix for each proposed unit type (number of bedrooms or net rentable square footage) and rental restriction category.

(I) The Department recommends use of HUD Form 92273.

(II) A minimum of three developments must be represented on each attribute adjustment matrix.

(III) Adjustments for concessions must be included, if applicable.

(IV) Total adjustments in excess of 15% must be supported with additional narrative.

(V) Total adjustments in excess of 25% suggest a weak comparable.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) Demand. State the total target, income-eligible, size-appropriate and tenure-appropriate household demand by summing the demand components discussed in paragraph (10)(E)(ii) - (iv) of this subsection.

(E) Inclusive Capture Rate. The Market Analyst must calculate inclusive capture rates for the subject Development's proposed program Units, market rate Units, if applicable, and total Units. The Underwriter will adjust the inclusive capture rates to take into account any errors or omissions. To calculate an inclusive capture rate

(i) total

(I) the proposed subject Units,

(II) Comparable Units with priority, as defined in §50.9(e)(2) of this title, over the subject that have made application to TDHCA and have not been presented to the TDHCA Board for decision and

(III) previously approved, but Unstabilized Comparable Units, and

(ii) divide by the total target, income-eligible, size-appropriate and tenure-appropriate household demand stated in subparagraph (D) of this paragraph.

(F) Absorption. Project an absorption period for the subject Development to achieve Sustaining Occupancy. State the absorption rate.

(G) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing program Developments in the Primary Market (§2306.67055 Texas Government Code).

(12) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) All Applicants shall acknowledge, by virtue of filing an application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§1.34. Appraisal Rules and Guidelines.

(a) General Provisions. Appraisals prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. Self-contained reports must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions. The report must contain sufficient data, included in the appendix when possible, and analysis to allow the reader to understand the property being appraised, the market data presented, analysis of the data, and the appraiser's value conclusion. The complexity of this requirement will vary in direct proportion with the complexity of the real estate and real estate interest being appraised. The report should lead the reader to the same or similar conclusion(s) reached by the appraiser.

(b) Upon completion of the report, an electronic copy should be transmitted to TDHCA, and an original hard copy must be submitted.

(c) Value Estimates.

(1) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables.

(2) Appraisal assignments for new construction are required to provide an "as completed" value of the proposed structures. These reports shall provide an "as restricted with favorable financing" value as well as an "unrestricted market" value.

(3) Reports on Properties to be rehabilitated shall address the "as restricted with favorable financing" value as well as both an "as is" value and an "as completed" value.

(4) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E)

and/or intangible items. This separate assessment may be required because their economic life may be shorter than the real estate improvements and may require different lending or underwriting considerations. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(d) Date of Appraisal. The appraisal report must be dated and signed by the appraiser who inspected the property. The date of valuation should not be more than six months prior to the date of application to the Department unless the Department's program rules indicate otherwise.

(e) Appraiser Qualifications. The qualifications of each appraiser are determined and approved on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser, as set forth in the Statement of Qualifications appended to the appraisal. At minimum, a qualified appraiser must be appropriately certified or licensed for the type of appraisal being performed by the Texas Appraiser Licensing and Certification Board.

(f) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (18) of this subsection.

(1) Title Page. Include identification as to the type of appraisal submitted (e.g., type of process--complete or limited, type of report--self-contained, summary or restricted), property address and/or location, housing type, the Department addressed as the client or acknowledgement that THDCA is granted full authority to rely on the findings of the report, effective date of value estimate(s), date of report, name and address of person authorizing report, and name and address of appraiser(s).

(2) Letter of Transmittal. Include date of letter, property address and/or location, description of property type, extraordinary/special assumptions or limiting conditions that were approved by person authorizing the assignment, statement as to function of the report, statement of property interest being appraised, statement as to appraisal process (complete or limited), statement as to reporting option (self-contained, summary or restricted), reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, identification of type(s) of value(s) estimated (e.g., market value, leased fee value, as-financed value, etc.), estimate of marketing period, signatures of all appraisers authorized to work on the assignment.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Assumptions and Limiting Conditions. Include a summary of all assumptions, both general and specific, made by the appraiser(s) concerning the property being appraised. Statements may be similar to those recommended by the Appraisal Institute.

(5) Certificate of Value. This section may be combined with the letter of transmittal and/or final value estimate. Include statements similar to those contained in Standard Rule 2-3 of USPAP.

(6) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience, as discussed in subsection (e) of this section.

(7) Identification of the Property. Provide a statement to acquaint the reader with the property. Real estate being appraised must be fully identified and described by street address, tax assessor's parcel number(s), and Development characteristics. Include a full, complete, legible, and concise legal description.

(8) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject property which occurred within the past three years. Any pending agreements of sale, options to buy, or listing of the subject property must be disclosed in the appraisal report.

(9) Purpose and Function of the Appraisal. Provide a brief comment stating the purpose of the appraisal and a statement citing the function of the report.

(A) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(B) Definition of Value Premise. One or more types of value (e.g., "as is," "as if," "prospective market value") may be required. Definitions corresponding to the appropriate value must be included with the source cited.

(10) Scope of the Appraisal. Address and summarize the methods and sources used in the valuation process. Describes the process of collecting, confirming, and reporting the data used in the assignment.

(11) Regional Area Data. Provide a general description of the geographic location and demographic data and analysis of the regional area. A map of the regional area with the subject identified is requested, but not required.

(12) Neighborhood Data. Provide a specific description of the subject's geographical location and specific demographic data and an analysis of the neighborhood. A summary of the neighborhood trends, future Development, and economic viability of the specific area should be addressed. A map with the neighborhood boundaries and the subject identified must be included.

(13) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (F) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the site. Include a plat map and/or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the Highest and Best Use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (net rentable area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance,

etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Fair Housing. It is recognized appraisers are not an expert in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential violations of the Fair Housing Act of 1988, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 and/or report any accommodations (e.g., wheelchair ramps, handicap parking spaces, etc.) which have been performed to the property or may need to be performed.

(F) Environmental Hazards. It is recognized appraisers are not an expert in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (e.g., discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(14) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (13)(A) - (F) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements in appropriate order as outlined in the Appraisal of Real Estate (legally permissible, physically possible, feasible, and maximally productive) must be sequentially considered.

(15) Appraisal Process. The Cost Approach, Sales Comparison Approach and Income Approach are three recognized appraisal approaches to valuing most properties. It is mandatory that all three approaches are considered in valuing the property unless specifically instructed by the Department to ignore one or more of the approaches; or unless reasonable appraisers would agree that use of an approach is not applicable. If an approach is not applicable to a particular property, then omission of such approach must be fully and adequately explained.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The type of cost (reproduction or replacement) and source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements analysis.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

(I) Property rights conveyed.

(II) Financing terms.

(III) Conditions of sale.

(IV) Location.

(V) Highest and best use.

(VI) Physical characteristics (e.g., topography, size, shape, etc.).

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the reader with the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Minimum content of the sales should include address, legal description, tax assessor's parcel number(s), sale price, financing considerations, and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three year sale history, complete description of the property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) Several methods may be utilized in the Sale Comparison Approach. The method(s) used must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions and physical features. Sufficient narrative analysis must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable. The appraiser(s) reasoning and thought process must be explained.

(II) Potential Gross Income/Effective Gross Income Analysis. If used in the report, this method of analysis must clearly indicate the income statistics for the comparables. Consistency in the method for which such economically statistical data was derived should be applied throughout the analysis. At least one other method should accompany this method of analysis.

(III) NOI/Unit of Comparison. If used in the report, the net income statistics for the comparables must be calculated in the same manner and disclosed as such. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section is to contain an analysis of both the actual historical and projected income and expense aspects of the subject property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental units. The comparables must indicate current research for this specific property type. The rental comparables must be confirmed with the landlord, tenant or agent and individual

data sheets must be included. The minimum content of the individual data sheets should include property address, lease terms, description of the property (e.g., unit type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The contract rents should be compared to the market-derived rents. A determination should be made as to whether the contract rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparable and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (e.g., IREM, BOMA, etc.). Any expense differences should be reconciled. Historical data regarding the subject's assessment and tax rates should be included. A statement as to whether or not any delinquent taxes exist should be included.

(v) Capitalization. Several capitalization methods may be utilized in the Income Approach. The appraiser should present the method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate (OAR) is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(16) Reconciliation and Final Value Estimate. This section of the report should summarize the approaches and values that were utilized in the appraisal. An explanation should be included for any approach which was not included. Such explanations should lead the reader to the same or similar conclusion of value. Although the values for each approach may not "agree", the differences in values should be analyzed and discussed. Other values or interests appraised should be clearly labeled and segregated. Such values may include FF&E, leasehold interest, excess land, etc. In addition, rent restrictions, subsidies and incentives should be explained in the appraisal report and their impact, if any, needs to be reported in conformity with the Comment section of USPAP Standards Rule 1-2(e), which states, "Separation of such items is required when they are significant to the overall value." In the appraisal of subsidized housing, value conclusions that include the intangibles arising from the programs will also have to be analyzed under a scenario without the intangibles in order to measure their influence on value.

(17) Marketing Period. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(18) Photographs. Provide good quality color photographs of the subject property (front, rear, and side elevations, on-site amenities, interior of typical units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(g) Additional Appraisal Concerns. The appraiser(s) must recognize and be aware of the particular TDHCA program rules and guidelines and their relationship to the subject's value. Due to the various programs offered by the Department, various conditions may be placed on the subject which would impact value. Furthermore, each program may require that the appraiser apply a different set of specific definitions for the conclusions of value to be provided. Consequently, as a result of such criteria, the appraiser(s) should be aware of such conditions and definitions and clearly identify them in the report.

§1.35. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department should be conducted and reported in conformity with the standards of the American Society for Testing and Materials. The initial report should conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The environmental assessment shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to TDHCA as a User of the report (as defined by ASTM standards). Copies of reports provided to TDHCA which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The ESA report should also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the Environmental Site Assessment, and that the fee is in no way contingent upon the outcome of the assessment .

(b) In addition to ASTM requirements, the report must

(1) State if a noise study is recommended for a property and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the environmental site assessment or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map.

(4) Provide a narrative determination of the flood risk for the proposed Development described in the narrative of the report includes a discussion of the impact of the 100-year floodplain on the proposed Development based upon a review of the current site plan;

(5) State if testing for asbestos containing materials (ACMs) would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(6) State if testing for Lead Based Paint would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(7) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration; and

(8) Assess the potential for the presence of Radon on the property, and recommend specific testing if necessary.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site but would nonetheless affect the Property, the Development Owner must act on such a recommendation or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments which have had a Phase II Environmental Assessment performed and hazards identified, the Development Owner is required to maintain a copy of said assessment on site available for review by all persons which either occupy the Development or are applying for tenancy.

(e) For Developments in programs that allow a waiver of the Phase I ESA such as a TX-USDA-RHS funded Development the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(f) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms with the requirements of this subsection.

§1.36. Property Condition Assessment Guidelines.

(a) General Provisions. The objective of the Property Condition Assessment (the PCA) is to provide cost estimates for repairs and replacements which are: immediately necessary; proposed by the developer; and expected to be required throughout the term of the regulatory period. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)" except as provided for in subsections (b) and (c) of this section. The PCA must include discussion and analysis of the following:

(1) Useful Life Estimates. For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived.

(2) Code Compliance. The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject property.

(3) Program Rules. The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points.

(4) Cost Estimates for Repair and Replacement. It is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the development cost schedule submitted as an exhibit of the Application.

(A) Immediately Necessary Repairs and Replacement. Systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair and Replacement. If the development plan calls for additional repair and replacement above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(C) Expected Repair and Replacement Over Time. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(b) The Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments,

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments,

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports,

(4) TX-USDA-RHS guidelines for Capital Needs Assessment, or

(5) Standard and Poor's Property Condition Assessment Criteria: Guidelines for Conducting Property Condition Assessments, Multifamily Buildings.

(c) The Department may consider for acceptance reports prepared according to other standards which are not specifically named above in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(d) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to TDHCA as the client. Copies of reports provided to TDHCA which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA should be signed and dated by the Third Party report provider not more than six months prior to the date of the application.

§1.37. Reserve for Replacement Rules and Guidelines.

(a) General Provisions. The Department will require Developments to provide regular maintenance to keep housing sanitary, safe and decent by maintaining a reserve for replacement in accordance with §2306.186 Texas Government Code. The reserve must be established for each unit in a Development of 25 or more rental units, regardless of the amount of rent charged for the unit. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section.

(b) The First Lien Lender shall maintain the reserve account through an escrow agent acceptable to the First Lien Lender to hold reserve funds in accordance with an executed escrow agreement and the rules set forth in this section and §2306.186 Texas Government Code.

(1) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond indenture or tax credit syndication, the Department shall

(A) Be a required signatory party in all escrow agreements for the maintenance of reserve funds;

(B) Be given notice of any asset management findings or reports, transfer of money in reserve accounts to fund necessary repairs, and any financial data and other information pursuant to the oversight of the Reserve Account within 30 days of any receipt or determination thereof;

(C) Subordinate its rights and responsibilities under the escrow agreement, including those described in this subsection, to the First Lien Lender or Bank Trustee through a subordination agreement subject to its ability to do so under the law and normal and customary limitations for fraud and other conditions contained in the Department's standard subordination clause agreements as modified from time to time, to include subsection (c) of this section.

(2) The escrow agreement and subordination agreement, if applicable, shall further specify the time and circumstances under which the Department can exercise its rights under the escrow agreement in order to fulfill its obligations under §2306.186 Texas Government Code and as described in this section.

(3) Where the Department is the First Lien Lender and there is no Bank Trustee as a result of a bond indenture or tax credit syndication or where there is no First Lien Lender but the allocation of funds by the Department and §2306.186 Texas Government Code requires that the Department oversee a Reserve Account, the Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Owner due to breach of the escrow agent's responsibilities or otherwise with 30 days prior notice of all parties to the escrow agreement.

(c) If the Department is not the First Lien Lender with respect to the Development, each Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Owner's Financial Certification packet a signed certification by the First Lien Lender including:

(1) Reserve for replacement requirements under the first lien loan agreement;

(2) Monitoring standards established by the First Lien Lender to ensure compliance with the established reserve for replacement requirements; and

(3) A statement by the First Lien Lender

(A) That the Development has met all established reserve for replacement requirements; or

(B) Of the plan of action to bring the Development in compliance with all established reserve for replacement requirements, if necessary.

(d) If the Development meets the minimum unit size described in subsection (a) of this section and the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Owner receiving Department assistance for multifamily rental housing shall set aside the repair reserve amount as described in subsection (e)(1) - (3) of this section through the date described in subsection (f)(2) of this section through the appointment of an escrow agent as further described in subsection (b)(3) of this section.

(e) If the Department is the First Lien Lender with respect to the Development, each Owner receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve Account through the date described in subsection (f)(2) of this section:

(1) For new construction Developments:

(A) Not less than $150 per unit per year for units one to five years old; and

(B) Not less than $200 per unit per year for units six or more years old.

(2) For rehabilitation Developments:

(A) An amount per unit per year established by the Department's division responsible for credit underwriting based on the information presented in a Property Condition Assessment in conformance with §1.36 of this subchapter; and

(B) Not less than $300 per unit per year.

(3) For either new construction or rehabilitation Developments, the Owner of a multifamily rental housing Development shall contract for a third-party Property Condition Assessment meeting the requirements of §1.36 of this subchapter and the Department will reanalyze the annual reserve requirement based on the findings and other support documentation.

(A) A Property Condition Assessment will be conducted:

(i) At appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department; or

(ii) At least once during each five-year period beginning with the 11th year after the awarding of any financial assistance for

the Development by the Department, if the Department is the First Lien Lender or the First Lien Lender does not require a third-party Property Condition Assessment.

(B) Submission by the Owner to the Department will occur within 30 days of completion of the Property Condition Assessment and must include:

(i) The complete Property Condition Assessment;

(ii) First Lien Lender and/or Owner response to the findings of the Property Condition Assessment;

(iii) Documentation of repairs made as a result of the Property Condition Assessment; and

(iv) Documentation of adjustments to the amounts held in the replacement Reserve Account based upon the Property Condition Assessment.

(f) A Land Use Restriction Agreement or restrictive covenant between the Owner and the Department must require:

(1) The Owner to begin making annual deposits to the reserve account on the later of:

(A) The date that occupancy of the Development stabilizes as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date the property is at least 90% occupied; or

(B) The date that permanent financing for the Development is completely in place as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date when the permanent loan is executed and funded.

(2) The Owner to continue making deposits until the earliest of the following dates:

(A) The date on which the Owner suffers a total casualty loss with respect to the Development;

(B) The date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(C) The date on which the Development is demolished;

(D) The date on which the Development ceases to be used as a multifamily rental property; or

(E) The later of

(i) The end of the affordability period specified by the Land Use Restriction Agreement or restrictive covenant; or

(ii) The end of the repayment period of the first lien loan.

(g) The duties of the Owner of a multifamily rental housing Development under this section cease on the date of a change in ownership of the Development; however, the subsequent Owner of the Development is subject to the requirements of this section.

(h) If the Department is the First Lien Lender with respect to the Development or the First Lien Lender does not require establishment of a Reserve Account, the Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Owner's Financial Certification packet:

(1) Financial statements, audited if available, with clear identification of the replacement Reserve Account balance and all capital improvements to the Development within the fiscal year;

(2) Identification of costs other than capital improvements funded by the replacement Reserve Account; and

(3) Signed statement of cause for:

(A) Use of replacement Reserve Account for expenses other than necessary repairs, including property taxes or insurance;

(B) Deposits to the replacement Reserve Account below the Department's or First Lien Lender's mandatory levels as defined in subsections (c), (d) and (e) of this section; and

(C) Failure to make a required deposit.

(i) If a request for extension or waiver is not approved by the Department, Department action, including a penalty of up to $200 per dwelling unit in the Development and/or characterization of the Development as Materially Non-Compliant, as defined in §60.1 of this title, may be taken when:

(1) A Reserve Account, as described in this section, has not been established for the Development;

(2) The Department is not a party to the escrow agreement for the Reserve Account;

(3) Money in the Reserve Account

(A) Is used for expenses other than necessary repairs, including property taxes or insurance; or

(B) Falls below mandatory deposit levels;

(4) Owner fails to make a required deposit;

(5) Owner fails to contract for the third party Property Condition Assessment as required under subsection (e)(3) of this section; or

(6) Owner fails to make necessary repairs, as defined in subsection (k) of this section.

(j) On a case by case basis, the Department may determine that the money in the Reserve Account may:

(1) Be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and

(B) The funds withdrawn from the Reserve Account are replaced as cashflow after payment of expenses, but before payment of return to Owner or developer fee is available.

(2) Fall below mandatory deposit levels without resulting in Department action, if:

(A) Development income after payment of operating expenses, but before payment of return to Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and

(B) Subsequent deposits to the Reserve Account exceed mandatory deposit levels as cashflow after payment of operating expenses, but before payment of return to Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

(k) The Department or its agent may make repairs to the Development if the Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by physical inspection. Repairs may be deemed necessary if the Development is notified of the Owner's failure to comply with federal, state and/or local health, safety, or building code.

(1) Payment for necessary repairs must be made directly by the Owner or through a replacement Reserve Account established for the Development under this section.

(2) The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs.

(l) This section does not apply to a Development for which the Owner is required to maintain a Reserve Account under any other provision of federal or state law.

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

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503519
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-4595

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

10 TAC §§50.1 - 50.24

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

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §§50.1 - 50.24, concerning the 2004 Housing Tax Credit Program Qualified Allocation Plan and Rules. The sections are proposed to be repealed in order to enact new sections conforming to the requirements of regulations enacted under the Internal Revenue Code of 1986, §42 as amended, which provides for credits against federal income taxes for owners of qualified low income rental housing.

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

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

Public hearings will be held across the state between September 26 and October 4, 2005 to receive input on this proposed rule repeal. More information on the hearings can be found at http://www.tdhca.state.tx.us. Comments may be submitted to Jennifer Joyce, Program Administrator, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or by email at the following address: jennifer.joyce@tdhca.state.tx.us or at 512.475.0764. Comments must be made within 30 days of this notice.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306; and the Internal Revenue Code of 1986, §42 as amended, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

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

§50.1. Purpose, Program Statement, Allocation Goals.
§50.2. Coordination with Rural Agencies.
§50.3. Definitions.
§50.4. State Housing Credit Ceiling.
§50.5. Ineligibility, Disqualification and Debarment, Applicant Standards, Representation by Former Board Member or Other Person.
§50.6. Site and Development Restrictions: Floodplain, Ineligible Building Types, Scattered Site Limitations, Credit Amount, Limitations on the Size of Developments, Rehabilitation Costs.
§50.7. Regional Allocation Formula, Set-Asides, Redistribution of Credits.
§50.8. Pre-Application: Submission, Evaluation Process, Threshold Criteria and Review, Results.
§50.9. Application: Submission, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation Factors, Staff Recommendations.
§50.10. Board Decisions, Waiting List, Forward Commitments.
§50.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.
§50.12. Tax Exempt Bond Developments: Filing of Applications, Applicability of Rules, Supportive Services, Financial Feasibility Evaluation, Satisfaction of Requirements.
§50.13. Commitment and Determination Notices; Agreement and Election Statement.
§50.14. Carryover, 10% Test.
§50.15. Closing of the Construction Loan, Commencement of Substantial Construction.
§50.16. Cost Certification, LURA.
§50.17. Housing Credit Allocations.
§50.18. Board Reevaluation, Appeals; Amendments, Housing Tax Credit and Ownership Transfers, Sale of Tax Credit Properties, Withdrawals, Cancellations.
§50.19. Compliance Monitoring and Material Non-Compliance.
§50.20. Department Records, Application Log, IRS Filings.
§50.21. Program Fees, Refunds, Public Information Requests, Amendments of Fees and Notification of Fees, Extensions.
§50.22. Manner and Place of Filing all Required Documentation.
§50.23. Waiver and Amendment of Rules.
§50.24. Deadlines for Allocation of Housing Tax Credits.

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

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503532

Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-4595

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CHAPTER 50. 2006 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§50.1 - 50.23

The Texas Department of Housing and Community Affairs proposes new §§50.1-50.23, concerning the 2006 Housing Tax Credit Program Qualified Allocation Plan and Rules. The new sections are necessary to provide procedures for the allocation by the Department of certain housing tax credits available under federal income tax laws to owners of qualified rental housing developments.

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

Ms. Carrington also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the enhancement of the state's ability to provide safe and sanitary housing for Texans through the efficient and coordinated allocation of federal income tax credit authority available to the state for administration of state housing agencies. There will be no effect on small businesses or persons. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Public hearings will be held across the state between September 26 and October 4, 2005 to receive input on this proposed new rule. More information on the hearings can be found at http://www.tdhca.state.tx.us. Comments may be submitted to Jennifer Joyce, Program Administrator, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941 or by email at the following address: jennifer.joyce@tdhca.state.tx.us or at 512.475.0764. Comments must be made within 30 days of this notice.

The proposed new sections are proposed under the Texas Government Code, Chapter 2306; and the Internal Revenue Code of 1986, §42, as amended, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs

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

§50.1. Purpose and Authority; Program Statement; Allocation Goals.

(a) Purpose and Authority. The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of Housing Tax Credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, as amended, provides for credits against federal income taxes for owners of qualified low-income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Chapter 2306, Subchapter DD, Texas Government Code, the Department is authorized to make Housing Credit Allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed this Qualified Allocation Plan (QAP) which is set forth in §50.1 - 50.23 of this title. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations.

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

(c) Allocation Goals. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula; to promote maximum utilization of the available tax credit amount; and to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is being built. The processes and criteria utilized to realize this goal are described in §50.8 and §50.9 of this title, without in any way limiting the effect or applicability of all other provisions of this title. (General Appropriation Act, Article VII, Rider 8(e))

§50.2. Coordination with Rural Agencies.

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

§50.3. Definitions.

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

(1) Administrative Deficiencies--The absence of information or a document from the Application as is required under §50.5, §50.6, §50.8(d) and §50.9(g), (h), i and (j) of this title.

(2) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person, and

specifically shall include parents or subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with an ownership interest.

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

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

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

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

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

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

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

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

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

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

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

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

(8) Application Acceptance Period--That period of time during which Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department as more fully described in §50.9(a) and §50.21 of this title. For Tax-Exempt Bond Developments this period is that period of time prior to the deadline stated in §50.12 of this title, and for Rural Rescue Applications this is that period of time stated in the Rural Rescue Policy.

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

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

(11) Area--An incorporated place or Census Designated Place as defined by the U.S. Census Bureau. Developments located outside the boundaries of a place shall use the Area definition of the closest place.

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

(13) At-Risk Development--a Development that: (2306.6702)

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

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

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

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

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

(v) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;

(vi) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;

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

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

(B) is subject to the following conditions:

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

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

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site.

(D) Developments must be at risk of losing all affordability on the site. However, Developments that have an opportunity to retain or renew any of the financial benefit described in subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development.

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a qualified contract under Section 42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years IRS Forms 8609 for all buildings showing Part II completed and, if applicable, documentation from the original application regarding the right of first refusal.

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

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

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

(17) Carryover Allocation Document--A document issued by the Department, and executed by the Development Owner, pursuant to §50.14 of this title.

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

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

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

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

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

(21) Commitment Notice--A notice issued by the Department to a Development Owner pursuant to §50.13 of this title and also referred to as the "commitment."

(22) Community Revitalization Plan--A published document, approved and adopted by the local governing body by ordinance or resolution, that targets local funds to specific geographic areas (the geographic area cannot be the entire town or city that has adopted the plan) for low-income residential Developments (serving residents at, or below, 60% of the area median income).

(23) Compliance Period--With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1).

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

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

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

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

(28) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which states that the Development may be eligible to claim Housing Tax Credits without receiving an allocation of Housing Tax Credits from the State Housing Credit Ceiling because it satisfies the requirements of this QAP; sets forth conditions which must be met by the Development before the Department will issue the IRS Form(s) 8609 to the Development Owner; and specifies the Department's determination as to the amount of tax credits necessary for the financial feasibility of the Development and its viability as a rent restricted Development throughout the affordability period. (42(m)(1)(D))

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

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

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

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

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

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

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

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

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

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

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

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

(36) Executive Award and Review Advisory Committee ("The Committee")--A Departmental committee that will develop funding priorities and make funding and allocation recommendations to the Board based upon the evaluation of an Application in accordance with the housing priorities as set forth in Chapter 2306 of the Texas Government Code, and as set forth herein, and the ability of an Applicant to meet those priorities. (2306.1112)

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

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

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

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

(41) Governmental Instrumentality--A legal entity such as a housing authority of a city or county, a housing finance corporation, or a municipal utility, which is created by a local political subdivision under statutory authority and which instrumentality is authorized to transact business for the political subdivision.

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

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

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

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

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

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

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

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

(A) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for Housing Tax Credits if the Development involves the conversion of the building to a non-transient multifamily residential development. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living.

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

(C) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments with any Units having more than two bedrooms.

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

(E) Any Development proposing New Construction, other than a Development (New Construction or Rehabilitation) composed entirely of single-family dwellings, having more than 5% of the Units in the Development with four or more bedrooms.

(F) Any Development that violates the Integrated Housing Policy of the Department, §1.15 of this title.

(G) Any Development located in an Urban/Exurban Area involving any New Construction of additional Units (other than a Qualified Elderly Development, a single family development or a transitional housing development) in which any of the designs in clauses (i) - (iii) of this subparagraph are proposed. For purposes of this limitation, a den, study or other similar space that could reasonably function as a bedroom will be considered a bedroom. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings. An Application may reflect a total of Units for a given bedroom size greater than the percentages stated below to the extent that the increase is only to reach the next highest number divisible by four.

(i) more than 30% of the total Units are one bedroom Units; or

(ii) more than 55% of the total Units are two bedroom Units; or

(iii) more than 40% of the total Units are three bedroom Units.

(H) Any Development that includes age restricted units that are not Intergenerational Housing or a Qualified Elderly Development.

(50) Intergenerational Housing--Housing that includes specific units that are restricted to the age requirements of a Qualified

Elderly Development and specific units that are not age restricted in the same Development that:

(A) have separate and specific buildings exclusively for the age restricted units

(B) have separate and specific leasing offices and leasing personnel exclusively for the age restricted units

(C) have separate and specific entrances, and other appropriate security measures for the age restricted units

(D) provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group

(E) share the same Development site

(F) are developed and financed under a common plan and owned by the same Person for federal tax purposes; and

(G) meet the requirements of the federal Fair Housing Act

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

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

(53) Local Political Subdivision--A county or municipality (city) in Texas. For purposes of §50.9(i)(5) of this title, a local political subdivision may act through a government instrumentality such as a housing authority, housing finance corporation, or municipal utility.

(54) Material Noncompliance--As defined in §60.1 of this title.

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

(56) New Construction--Any Development not meeting the definition of Rehabilitation.

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

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

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

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

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

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

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

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

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

(60) Persons with Special Needs--Persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations, and migrant farm workers.

(61) Pre-Application--A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application, including any required exhibits or other supporting material, as more fully described in §50.8 and §50.21 of this title. (2306.6704)

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

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

(A) partnerships, Principals include all General Partners, Special Limited Partners and Principals with ownership interest;

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

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

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

(65) Qualified Allocation Plan (QAP)--

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

(B) As defined in §2306.6702, Texas Government Code: A plan adopted by the board that provides the threshold, scoring, and underwriting criteria based on housing priorities of the Department that are appropriate to local conditions; provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance

with the qualified allocation plan and this subchapter; and consistent with §2306.6710(e), gives preference in housing tax credit allocations to Developments that, as compared to the other Developments:

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

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

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

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

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

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

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

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

(70) Qualified Nonprofit Organization--An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low-income housing within the meaning of the Code, §42(h)(5)(C). A Qualified Nonprofit Organization may select to compete in one or more of the Set-Asides, including, but not limited to, the nonprofit Set-Aside, the At-Risk Development Set-Aside and the TX-USDA-RHS Allocation. (2306.6729)

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

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

(73) Rehabilitation--The improvement or modification of an existing structure through alterations, incidental additions or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices. Rehabilitation may include demolition, reconstruction and adding rooms outside the existing walls of a structure, but adding a housing unit is considered New Construction.

(74) Related Party--As defined, (2306.6702)

(A) The following individuals or entities:

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

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

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

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

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

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

(iv) a grantor and fiduciary of any trust;

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

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

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

(I) the trust; or

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

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

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

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

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

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

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

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

(xiii) two partnerships, if the same person or organization owns more than 50 percent of the capital interests or profits' interests.

(B) Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

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

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

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

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

(C) in an area that is eligible for New Construction or Rehabilitation funding by TX-USDA-RHS. (2306.6702)

(77) Rural Development--A Development located within a Rural Area. A Rural Development may not exceed 76 Units if New Construction.

(78) Selection Criteria--Criteria used to determine housing priorities of the State under the Housing Tax Credit Program as specifically defined in §50.9(i) of this title.

(79) Set-Aside--A reservation of a portion of the available Housing Tax Credits under the State Housing Credit Ceiling to provide financial support for specific types of housing or geographic locations or serve specific types of Applications or Applicants as permitted by the Qualified Allocation Plan on a priority basis. (2306.6702)

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

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

(A) by an individual who is:

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

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

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

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

(ii) married and file a joint return.

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

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

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

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

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

(84) Threshold Criteria--Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in §50.9(h) of this title. (2306.6702)

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

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

(87) Unit--Any residential rental unit in a Development consisting of an accommodation including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation. (2306.6702) For purposes of completing the Rent Schedule for loft or studio type Units (which still must meet the definition of Bedroom), a Unit with 650 square feet or less is considered not more than a one-bedroom Unit, a Unit with 651 to 900 square feet is considered not more than a two-bedroom Unit and a Unit with greater than 900 square feet is considered not more than a three-bedroom Unit.

(88) Urban/Exurban Area-- Non-Rural Areas located within the boundaries of a metropolitan Area as designated by the US Office of Management and Budget as of November 1, 2005, or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), the date Volume III is submitted to the Department.

§50.4. State Housing Credit Ceiling.

The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C), using such information and guidance as may be made available by the Internal Revenue Service. The Department shall publish each such determination in the Texas Register within 30 days after the receipt of such information as is required for that purpose by the Internal Revenue Service. The aggregate amount of commitments of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. As permitted by §42(h)(4), Housing Credit Allocations made to Tax-Exempt Bond Developments are not included in the State Housing Credit Ceiling.

§50.5. Ineligibility; Disqualification and Debarment; Certain Applicant and Development Standards; Representation by Former Board Member or Other Person; Due Diligence, Sworn Affidavit; Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.

(a) Ineligibility. An Application is ineligible if:

(1) The Applicant, Development Owner, Developer or Guarantor has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or, (2306.6721(c)(2))

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

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

(4) The Applicant, Development Owner, Developer or Guarantor with any past due audits has not submitted those past due audits to the Department in a satisfactory format. A Person is not eligible to receive a commitment of Housing Tax Credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the application is submitted; or

(5) (2306.6703(a)(1)) At the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been:

(A) a member of the Board; or

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

(6) (2306.6703(a)(2)) The Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless:

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

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

(7) The Development is located in a municipality or, if located outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the reservation is made by the Texas Bond Review Board) unless the Applicant: (2306.6703(a)(4))

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

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

(C) For purposes of this paragraph, evidence under subparagraphs (A) and (B) of this paragraph must be received by the Department no later than April 1, 2006 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be considered) and may not be more than one year old; or

(8) The Applicant proposes to construct a new Development that is located one linear mile (measured by a straight line on a map) or less from a Development that: (2306.6703(a)(3))

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

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

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

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

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

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

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

(iv) the local government where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under subparagraphs (A) - (C) of this paragraph. For purposes of this clause, evidence of the local government vote or evidence required by subparagraph (D) of this paragraph must be received by the Department no later than April 1, 2006 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed) and may not be more than one year old.

(E) In determining the age of an existing development as it relates to the application of the three-year period, the development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §50.9(j).

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

(10) The proposed Development is located in a census tract that has in excess of 500 units supported by Housing Tax Credits unless the Applicant has submitted to the Department approval of the Development in the form of a resolution from the governing body of the appropriate municipality or county containing the Development. For purposes of this paragraph, evidence of the local government approval

must be received by the Department no later than April 1, 2006 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed).

(11) The Applicant proposes to construct a Development that involves only New Construction in an Urban/Exurban Area in Regions 3, 6, 7 or 9 unless the Applicant has submitted to the Department approval of the New Construction Development in the form of a resolution from the governing body of the appropriate municipality or county containing the Development. For purposes of this paragraph, evidence of the local government approval must be received by the Department no later than April 1, 2006 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed).

(b) Disqualification and Debarment. The Department will disqualify an Application, and/or debar a Person (see §2306.6721, Texas Government Code), if it is determined by the Department that any issues identified in the paragraphs of this subsection exist. The Department may debar a Person for one year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines the facts warrant it. Causes for disqualification and debarment include: (2306.6721)

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

(2) The Applicant, Development Owner, Developer or Guarantor or anyone that has ownership interest in the Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA (or any other document containing an Extended Housing Commitment) or the program rules in effect for such property as further described in §60.1 of this title on May 1, 2006 or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the application is submitted; (2306.6721(c)(3)) or

(3) The Applicant, Development Owner, Developer or Guarantor or anyone that has ownership interest in the Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties outside of the state of Texas has an incidence of Material Noncompliance with the LURA or the program rules in effect for such tax credit property as further described in §60.1 of this title on May 1, 2006 or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the application is submitted; or

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

(5) The Applicant or the Development Owner that is active in the ownership or Control of one or more tax credit properties in the state of Texas has failed to pay in full any fees within 30 days of when they were billed by the Department, as further described in §50.20 of this title; or

(6) the Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or Control of the proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a lobbyist by the Applicant or a Related Party, communicates with any Board member during the period of time beginning on the date an Application is filed and ending on the date the Board makes a final decision with respect to any approval of that Application, unless the communication takes place at any board meeting or public hearing held with respect to that Application. Communication with Department staff must be in accordance with §50.9(b) of this title; violation of the communication restrictions of §50.9(b) is also a basis for disqualification and/or debarment. (2306.1113)

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

(8) Applicants may be ineligible as further described in §50.17(d)(8) of this title.

(9) The Applicant or a Related Party has failed to comply in the past with, or materially violates, any condition imposed by the Department in connection with the allocation of Housing Tax Credits, or has repeatedly violated a LURA. (2306.6721(b), (c)(1) and (c)(3).

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

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

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

(3) the Development Owner is not financially responsible;

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

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

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

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

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

(6) the Development will be undertaken outside the authority granted by this chapter to the Department and the Development Owner.

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

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

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

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

(2) A Person commits an offense if the Person violates this section. An offense under this section is a Class A misdemeanor.

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

(f) Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment. An Applicant or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) - (e) of this section will be notified in accordance with the Administrative Deficiency process described in §50.9(d)(4) of this title. They may also utilize the appeals process described in §50.17(b) of this title. (2306.6721(d))

§50.6. Site and Development Restrictions: Floodplain; Ineligible Building Types; Scattered Site Limitations; Credit Amount; Limitations on the Size of Developments; Limitations no Rehabilitation Costs; Unacceptable Sites; Appeals and Administrative Deficiencies for Site and Development Restrictions.

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

(b) Ineligible Building Types. Applications involving Ineligible Building Types as defined in §50.3(49) of this title will not be considered for allocation of tax credits.

(c) Scattered Site Limitations. Consistent with §50.3(30) of this title, a Development must be financed under a common plan, be owned by the same Person for federal tax purposes, and the buildings may be either located on a single site or contiguous site, or be located on scattered sites and contain only rent-restricted units.

(d) Credit Amount. The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the affordability period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department, or that the Development will qualify for and be able to claim Housing Tax Credits. The Department will limit the allocation of tax credits to no more than $1.2 million per Development. The Department shall not allocate more than $2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party or Guarantor; Housing Tax Credits approved by the Board during the 2006 calendar year, including commitments from the 2006 Credit Ceiling and forward commitments from the 2007 Credit Ceiling, are applied to the credit cap limitation for the 2006 Application Round. In order to encourage the capacity enhancement of developers in rural areas, the Department will prorate the credit amount allocated in situations where an Application is submitted in the Rural Regional Allocation and the Development has 76 Units or less. To be considered for this provision, a copy of a Joint Venture Agreement and narrative on how this builds the capacity of the inexperienced developers is required. Tax-Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax-Exempt Bond Developments will not count towards the total limit on tax credits per Applicant. The limitation does not apply (2306.6711(b)):

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

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

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

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

(e) Limitations on the Size of Developments.

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

(2) Rural Developments involving New Construction will be limited to 76 Units. Rural Developments involving only Rehabilitation do not have a size limitation.

(3) Developments involving New Construction, that are not Tax-Exempt Bond Developments, will be limited to 252 Total Units, wherein the maximum Department administered Units will be limited

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

(f) Limitations on the Location of Developments. Staff will only recommend, and the Board may only allocate, housing tax credits from the Credit Ceiling to more than one Development in the same calendar year if the Developments are, or will be, located more than one linear mile apart as determined by the Department. If the Board forward commits credits from the following year's allocation of credits, the Development is considered to be in the calendar year in which the Board votes, not in the year of the Credit Ceiling. This limitation applies only to communities contained within counties with populations exceeding one million (which for calendar year 2006 are Harris, Dallas, Tarrant and Bexar Counties). For purposes of this rule, any two sites not more than one linear mile apart are deemed to be "in a single community." (2306.6711) This restriction does not apply to the allocation of housing tax credits to Developments financed through the Tax-Exempt Bond program, including the Tax-Exempt Bond Developments under review and existing Tax-Exempt Bond Developments in the Department's portfolio. (2306.67021)

(g) Rehabilitation Costs. Rehabilitation Developments must establish that the Rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per Unit in direct hard costs unless financed with TX-USDA-RHS in which case the minimum is $6,000.

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

(i) Appeals and Administrative Deficiencies for Site and Development Restrictions. An Application or Development found to be in violation under subsections (a) - (h) of this section will be notified in accordance with the Administrative Deficiency process described in §50.9(d)(4) of this title. They may also utilize the appeals process described in §50.17(b) of this title.

§50.7. Regional Allocation Formula; Set-Asides; Redistribution of Credits.

(a) Regional Allocation Formula. As required by §2306.111(d), Texas Government Code, the Department uses a regional distribution formula developed by the Department to distribute credits from the State Housing Credit Ceiling to all urban/exurban areas and rural areas. The formula is based on the need for housing assistance, and the availability of housing resources in those urban/exurban areas and rural areas, and the Department uses the information contained in the Department's annual state low income housing plan and other appropriate data to develop the formula. This formula establishes separate targeted tax credit amounts for rural areas and urban/exurban areas within each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published on the Department's web site. The regional allocation for rural areas is referred to as the Rural Regional Allocation and the regional allocation for urban/exurban areas is referred to as the Urban/Exurban Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition. At least 5% of each region's allocation for each calendar year shall be allocated to Developments which are financed through TX-USDA-RHS, that meet the definition of a Rural Development, do not exceed 76 Units if New Construction, and have filed an "Intent to Request 2006 Housing Tax Credits" form by the Pre-Application submission deadline. These Developments will be attributed to the Rural Regional Allocation in each region where they are located. Developments financed through TX-USDA-RHS's 538 Guaranteed Rural Rental Housing Program will not be considered under this set-aside. Commitments of 2006 Housing Tax Credits issued by the Board in 2005 will be applied to each Set-Aside, Rural Regional Allocation, Urban/Exurban Regional Allocation and TX-USDA-RHS Allocation for the 2006 Application Round as appropriate.

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

(1) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of the Code, §42(h)(5). Qualified Nonprofit Organizations must have the Controlling interest in the Qualified Nonprofit Development applying for this Set-Aside. If the organization's Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the controlling managing General Partner and must retain 80% of the developer fee. If the organization's Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit set-aside must have the nonprofit entity or its nonprofit affiliate or subsidiary be the Developer and retain 80% of the Developer fee. (2306.6729 and 2306.6706(b))

(2) At least 15% of the allocation to each Uniform State Service Region will be set aside for allocation under the At-Risk Development Set-Aside. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments designated as At-Risk Developments as defined in §50.3(13) of this title. (2306.6714). To qualify as an At-Risk Development, the Applicant must provide evidence that it either is not eligible to renew, retain or preserve any portion of the financial benefit described in §50.3(13)(A) of this title, or provide evidence that it will renew, retain or preserve the financial benefit described in §50.3(13)(A) of this title; and must have filed an "Intent to Request 2006 Housing Tax Credits" form by the Pre-Application submission deadline.

(c) Redistribution of Credits. (2306.111(d)) If any amount of housing tax credits remain after the initial commitment of housing tax credits among the Rural Regional Allocation and Urban/Exurban Regional Allocation within each Uniform State Service Region and among the Set-Asides, the Department may redistribute the credits amongst the different regions and Set-Asides depending on the quality of Applications submitted as evaluated under the factors described in §50.9(d) of this title, the need to most closely achieve regional allocation goals and then the level of demand exhibited in the Uniform State Service Regions during the Allocation Round. However as described in subsection (b)(1) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

§50.8. Pre-Application: Submission; Communication with Departments Staff; Evaluation Process; Threshold Criteria and Review; Results. (2306.6704)

(a) Pre-Application Submission. Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period along with the required Pre-Application Fee as described in §50.20 of this title. Only one Pre-Application may be submitted by an Applicant for each site under the State Housing Credit Ceiling. The Pre-Application submission is a voluntary process. While the Pre-Application Acceptance Period is open, Applicants may withdraw their Pre-Application and subsequently file a new Pre-Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized to request the Applicant to provide additional information it deems relevant to clarify information contained in the Pre-Application or to submit documentation for items it considers to be Administrative Deficiencies. The rejection of a Pre-Application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(b) Communication with the Department. Applicants that submit a Pre-Application are restricted from communication with Department staff as provided in §50.9(b) of this title. (2306.1113)

(c) Pre-Application Evaluation Process. Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria. A TX-USDA-RHS 515 Development (only for Rehabilitation) will receive the Pre-Application points further outlined in §50.9(i) of this title upon submission to the Department of an executed TX-USDA-RHS letter indication TX-USDA-RHS has received a Consent Request, also referred to as a preliminary Submittal, as described in 7 CFR 3560.406. Applications involving New Construction that are associated with a TX-USDA-RHS Development are not exempt from Pre-Application and are eligible to compete for the Pre-Application points further outlined in §50.9(i) of this title. An Application that has not received confirmation from the state office of RHS of its financing from TX-USDA-RHS may qualify for Pre-Application points, but such points shall be withdrawn upon the Development's receipt of TX-USDA-RHS financing. Pre-Applications that are found to have Administrative Deficiencies will be handled in accordance with §50.9(d)(4) of this title. Department review at this stage is limited and not all issues of eligibility and threshold are reviewed at Pre-Application. Acceptance by staff of a Pre-Application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of Pre-Application.

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

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

(2) Evidence of property control through March 1, 2006 as evidenced by the documentation required under §50.9(h)(7)(A) of this title.

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

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

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

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

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

(iv) Statement of whether the Development proposes New Construction or Rehabilitation;

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

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

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

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

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

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

(i) Notification to Local Elected Officials for Neighborhood Organization Input. Evidence in the form of a certification must be provided that a letter requesting information on neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site and other impacted homeowner's associations and meeting the requirements of "Local Elected Official Notification" as outlined in the Application was sent no later than December 20, 2005 to the local elected official for the city or if located outside of a city, then the county where the Development is proposed to be located. If the Development is located in a jurisdiction that has district based local elected officials, or both at-large and district based local elected officials, the notification must be made to the city council member or county commissioner representing that district; if the Development is

located in a jurisdiction that has only at-large local elected officials, the notification must be made to the mayor or county judge for the jurisdiction. For urban/exurban areas, entities identified in the letter from the local elected official whose boundaries include the proposed Development whose listed address has the same zip code as the zip code for the Development and other impacted homeowner's associations must be provided with written notification, and evidence of that notification must be provided. If any other zip codes exist within a half mile of the Development site, then all entities identified in the letters with those adjacent zip codes must also be provided with written notification, and evidence of that notification must be provided. For rural areas, all entities identified in the letters whose listed address is within a half mile of the Development site and other impacted homeowner's associations must be provided with written notification, and evidence of that notification must be provided. If the Applicant can certify that the proposed Development is not located within the boundaries of an entity on a list from the local elected officials and that there are no other impacted homeowner's associations, then such certification in lieu of notification may be acceptable. If no reply letter is received from the local elected officials by January 1, 2006, (or For Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., by 7 days prior to the submission of the Application) then the Applicant must submit a statement attesting to that fact. If an Applicant has knowledge of any neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site or other impacted homeowner's associations, the Applicant must notify those organizations. The Applicant must also certify that any organizations in a response letter that are not notified do not contain the proposed Development site within their boundaries and are not impacted homeowner's associations. In the event that local elected officials refer the Applicant to another source, the Applicant must also notify that source and request the same information. If the Applicant has no knowledge of neighborhood organizations within whose boundaries the Development is proposed to be located or other impacted homeowner's associations, the Applicant must attest to that fact in the format provided by the Department as part of the Application.

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

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

(iv) Mayor of any municipality containing the Development;

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

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

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

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

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

(e) Pre-Application Results. Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in subsection (d) of this section and §50.9(i)(12) of this title, will be eligible for Pre-Application points. The order and scores of those Developments released on the Pre-Application Submission Log do not represent a commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-Application Submission Log. Inclusion of a Development on the Pre-Application Submission Log does not ensure that an Applicant will receive points for a Pre-Application.

§50.9. Application: Submission; Communication with Department Employees; Adherence to Obligations; Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling; Evaluation Process for Tax-Exempt Bond Development Applications; Evaluation Process for Rural Rescue Applications Under the 2007 Credit Ceiling; Experience Pre-Certification Procedures; Threshold Criteria; Selection Criteria; Tiebreaker Factors; Staff Recommendations.

(a) Application Submission. Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application, and the required Application fee as described in §50.20 of this title, to the Department during the Application Acceptance Period. Only complete Applications will be accepted. All required volumes must be appropriately bound as required by the Application Submission Procedures Manual and fully complete for submission and received by the Department not later than 5:00 p.m. on the date the Application is due. Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, Applicants may withdraw their Application and subsequently file a new Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency, including ineligibility criteria, site and development restrictions, and threshold and selection criteria documentation. (2306.6708) An Applicant may not change or supplement an Application in any manner after the filing deadline, and may not add any set-asides, increase their credit amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §50.3(1) of this title or by amendment of an Application after a commitment or allocation of tax credits as further described in §50.17(d) of this title.

(b) Communication with Department Employees. Communication with Department staff by Applicants that submit a Pre-Application or Application must follow the following requirements. During the period beginning on the date a Development Pre-Application or Application is filed and ending on the date the Board makes a final decision with respect to any approval of that Application, the Applicant or a Related Party, and any Person that is active in the construction, rehabilitation, ownership or Control of the proposed Development including a General Partner or contractor and a Principal or Affiliate of a General Partner or contractor, or individual employed as a lobbyist by the Applicant or a Related Party, may communicate with an employee of the Department about the Application orally or in written form, which includes electronic communications through the Internet, so long as that communication satisfies the conditions established under paragraphs (1) - (3) of this subsection. Section 50.5(b)(6) of this title applies to all communication with Board members. Communications with Department employees is unrestricted during any board meeting or public hearing held with respect to that Application.

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

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

(3) a record of the communication must be maintained by the Department and included with the Application for purposes

of board review and must contain the date, time, and means of communication; the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant; the subject matter of the communication; and a summary of any action taken as a result of the communication. (2306.1113)

(c) Adherence to Obligations. (2306.6720, General Appropriation Act, Article VII, Rider 8(a)) All representations, undertakings and commitments made by an Applicant in the application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA.

(d) Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling. Applications submitted for competitive consideration under the State Housing Credit Ceiling will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §50.5; Applicants will be promptly notified in these instances.

(1) Eligibility and Selection Criteria Review. All Applications will first be reviewed as described in this paragraph. Applications will be confirmed for eligibility under §50.5 of this chapter and Set-Aside eligibility will be confirmed. Then, each Application will be preliminarily scored according to the Selection Criteria listed in subsection (i) of this section. When a particular scoring criterion involves multiple points, the Department will award points to the proportionate degree, in its determination, to which a proposed Development complied with that criterion. As necessary to complete this process only, Administrative Deficiencies may be issued to the Applicant. This process will generate a preliminary Department score for every application.

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

(3) Threshold Criteria Review. Applications that are designated as "priority" from the Priority Review Assessment will be evaluated in detail for eligibility under §50.6 of this chapter and against the Threshold Criteria. Applications not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in which event the Applicant is given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria. To the extent that the review of Threshold Criteria documentation, or submission of Administrative Deficiency documentation, alters the score assigned to the Application, Applicants will be notified of their final score. As Applications are evaluated under this Review process, a final score by the Department may remove the Application from "priority" status at which point other Applications may be designated as "priority" and reviewed under this paragraph.

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

(5) Subsequent Evaluation of Prioritized Applications and Methodology for Award Recommendations to the Board. The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division - in general these will be those applications identified as "priority". This prioritization order will also be used in making recommendations to the Board. Assignments will be determined by first selecting the Applications with the highest scores in the At-Risk Set-Aside and TX-USDA-RHS Allocation within each Uniform State Service Region until the minimum requirements stated in §50.7(b) are attained. Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments, regardless of Set-Aside, in accordance with the requirements under §50.7(a) of this title for a Rural Regional Allocation and Urban/Exurban Regional Allocation. After this priority review has occurred, staff will review priority applications to ensure that at least 10% of the priority applications are qualified Nonprofits to satisfy the Nonprofit Set-Aside. If 10% is not met, then the Department will add the highest Qualified Nonprofits statewide until the 10% Nonprofit Set-Aside is met. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban/Exurban Regional Allocation. Funds for the Rural Regional Allocation or Urban/Exurban Regional Allocation within a region, for which there are no eligible feasible applications, will be redistributed as provided in §50.7(c) of this title, Redistribution of Credits. If the Department determines that an allocation recommendation would cause a violation of the $2 million limit described in §50.6(d) of this title, the Department will make its recommendation by selecting the Development(s) that most effectively satisfies(y) the Department's goals in meeting set-aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available housing tax credits according to regional allocation goals and Set-Aside categories. To enable the Board to establish a Waiting List, the Department shall underwrite as many additional Applications as necessary to ensure that all available housing tax

credits are allocated within the period required by law. (2306.6710(a), (b) and (d); 2306.111)

(6) Underwriting Evaluation and Criteria. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of housing tax credits. In determining an appropriate level of housing tax credits, the Department shall, at a minimum, evaluate the cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous housing tax credit allocations for the county in which the Development is to be located; if certifications are unavailable for the county, then the metropolitan statistical area in which the Development is to be located; or if certifications are unavailable under the county or the metropolitan statistical area, then the Uniform State Service Region in which the Development is to be located. Underwriting of a Development will include a determination by the Department, pursuant to the Code, §42, that the amount of credits recommended for commitment to a Development is necessary for the financial feasibility of the Development and its long-term viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title. Receipt of feasibility points under §50.9(i)(1) of this title does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division and conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive points under §50.9(i)(1) of this title. (2306.6711(b); 2306.6710(d))

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

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

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

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

(e) Evaluation Process for Tax-Exempt Bond Development Applications. Applications submitted for consideration as Tax-Exempt Bond Developments will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §50.5 of this chapter; Applicants will be promptly notified in these instances.

(1) Eligibility and Threshold Criteria Review. All Tax-Exempt Bond Development Applications will first be reviewed as described in this paragraph. Tax-Exempt Bond Development Applications will be confirmed for eligibility under §50.5 and §50.6 of this chapter and Applications will be evaluated in detail against the Threshold Criteria. Tax-Exempt Bond Development Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in which event the Applicant is given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria.

(2) 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 as further described in subsection (d)(4) of this section.

(3) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Tax-Exempt Bond Development Applications meeting the eligibility and threshold requirements for review for financial feasibility by the Department's Real Estate Analysis Division The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of housing tax credits as further described in subsection (d)(6) of this section. Tax-Exempt Bond Development Applications will also be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60 of this title.

(4) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(f) Evaluation Process for Rural Rescue Applications Under the 2007 Credit Ceiling. Applications submitted for consideration as Rural Rescue Applications pursuant to §50.10(c) of this title under the 2007 Credit Ceiling will be reviewed according to the process outlined in this subsection. A Rural Rescue Application, during any of these stages of review, may be determined to be ineligible as further described in §50.5 of this chapter; Applicants will be promptly notified in these instances.

(1) Eligibility and Threshold Criteria Review. All Rural Rescue Applications will first be reviewed as described in this paragraph. Rural Rescue Applications will be confirmed for eligibility under §50.5 and §50.6 of this chapter, Set-Aside and Rural Rescue eligibility will be confirmed, and Applications will be evaluated in detail against the Threshold Criteria. Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in which event the Applicant is given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria.

(2) Selection Criteria Review. All Rural Rescue Applications will be evaluated against the Selection Criteria and a score will be assigned to the Application. The minimum score for Selection Criteria is not required to be achieved to be eligible.

(3) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies as further described in subsection (d)(4) of this section.

(4) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Tax-Exempt Bond Development Applications meeting the eligibility and threshold requirements for review for financial feasibility by the Department's Real Estate Analysis Division The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of housing tax credits as further described in subsection (d)(6) of this section. Tax-Exempt Bond Development Applications will also be reviewed for evaluation of the previous participation by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60 of this title.

(5) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(g) Experience Pre-Certification Procedures. No later than 14 days prior to the close of the Application Acceptance Period, an Applicant must submit the documents required in this subsection to obtain the required pre-certification. For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) all of the documents in this section must be submitted with the Application. Upon receipt of the evidence required under this section, a certification from the Department will be provided to the Applicant for inclusion in their Application(s). Evidence must show that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units (single family or multifamily) in the capacity of owner, General Partner or Developer. If a Public Housing Authority organized an entity for the purpose of developing residential units the Public Housing Authority shall be considered a principal for the purpose of this requirement. If the individual requesting the certification was not the Development Owner, General Partner or Developer, but was the individual within one of those entities doing the work associated with the development of the units, the individual must show that the units were successfully developed as required below, and also provide written confirmation from the entity involved stating that the individual was the person responsible for the development. If rehabilitation experience is being claimed to qualify for an Application involving new construction, then the rehabilitation must have been substantial and involved at least $6,000 of direct hard cost per unit.

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

(A) at least 100 residential units or 80 percent of the total number of Units the applicant is applying to build (e.g. you must have 40 units successfully built to apply for 50 Units); or

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

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

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

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

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

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

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

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

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

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

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

(A) A certification of the basic amenities selected for the Development. All Developments, must meet at least the minimum threshold of points. These points are not associated with the selection criteria points in subsection (i) of this section. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use, then the amenity may not be included among those provided to satisfy this requirement. Developments must provide a minimum number of common amenities in relation to the Development size being proposed.

The amenities selected must be selected from clause (ii) of this subparagraph and made available for the benefit of all tenants. Developments proposing Rehabilitation or proposing Single Room Occupancy will receive double points for each item. Applications for scattered site housing, including New Construction, Rehabilitation, and single-family design, will have the threshold test applied based on the number of Units per individual site. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §50.17(d) of this title and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost, or in the cancellation of a Commitment Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

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

(I) Total Units are less than 13, 0 points are required to meet Threshold for Rehabilitation and 1 point is required for New Construction;

(II) Total Units are between 13 and 24, 1 point is required to meet Threshold;

(III) Total Units are between 25 and 40, 3 points are required to meet Threshold;

(IV) Total Units are between 41 and 76, 6 points are required to meet Threshold;

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

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

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

(VIII) Total Units are 200 or more, 18 points are required to meet Threshold.

(ii) Amenities for selection include those items listed in subclauses (I) - (XXIV) of this clause. Both Developments designed for families and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in §50.9(h)(4)(D) and (F) of this title. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population.

(I) Full perimeter fencing (2 points);

(II) Controlled gate access (1 point);

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

(IV) Accessible walking path (1 point);

(V) Community gardens (1 point);

(VI) Community laundry room (1 point);

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

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

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

(X) Swimming pool (3 points);

(XI) Furnished fitness center (2 points);

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

(XIII) Furnished Community room (1 point);

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

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

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

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

(XVIII) Health Screening Room (1 point);

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

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

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

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

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

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

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

(i) All New Construction Units must be built with three networks: One network installed for phone using CAT5e or better wiring; a second network for data installed using CAT5e or better wiring; and a third network for TV services using COAX cable;

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

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

(iv) Refrigerator;

(v) Oven/Range;

(vi) Exhaust/vent fans in bathrooms; and

(vii) Ceiling fans in living areas and bedrooms.

(C) A certification that the Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local

building codes or if no local building codes are in place then to the most recent version of the International Building Code.

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

(E) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses, and that the Applicant will submit a report at least once in each 90-day period following the date of the Commitment Notice until the Cost Certification is submitted, in a format prescribed by the Department and provided at the time a Commitment Notice is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses. (2306.6734)

(F) Pursuant to §2306.6722, Texas Government Code, any Development supported with a housing tax credit allocation shall comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Applicant must provide a certification from an accredited architect or Department-approved third party accessibility specialist, that the Development will comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C and this subparagraph. This includes that for all New Construction Developments, a minimum of five percent of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for individuals with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS), shall be deemed to meet this requirement. An additional two percent of the total dwelling Units, or at least one Unit, whichever is greater, shall be accessible for individuals with hearing or vision impairments. Additionally, in Developments involving New Construction where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level 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 similar certification will also be required after the Development is completed. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code. (2306.6722 and 2306.6730)

(G) A certification that the Development will be equipped with energy saving devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation. All Units must be air-conditioned. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (2306.6725(b)(1))

(H) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 8(c) applicable to the Department which requires that the General Contractor hired by the Development Owner or the Applicant, if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

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

(J) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a neighborhood organization for purposes of subsection 50.9(i)(2) of this title, has not given money or a gift to cause the neighborhood organization to take its position of support or opposition, nor has provided any assistance to a neighborhood organization to meet the requirements of subsection 50.9(i)(2) of this title, as it relates to the Applicant's Application or any other Application under consideration in 2006.

(K) A certification that the Development Owner will cooperate with the local public housing authority, to the extent there are any, in accepting tenants from their waiting lists (42(m)(1)(C)(vi).

(5) Design Items. This exhibit will provide:

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

(i) a site plan which:

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

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

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

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

(iii) Unit floor plans for each type of Unit showing special accessibility and energy features. The net rentable areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" provided in the application; and

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

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

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

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

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

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

(E) Rehabilitation Developments must submit a Property Condition Assessment meeting the requirements of paragraph (14)(C) of this subsection.

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

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

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

(A) Evidence of Property control in the name of the Development Owner. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the 36 months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development team must be identified at the time of Application (not required at Pre-Application). One of the following items described in clauses (i) - (iii) of this subparagraph must be provided:

(i) a recorded warranty deed; or

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

(iii) a contract for sale, an exclusive option to purchase or earnest money contract (which must show that the earnest money has been deposited) which is valid for the entire period the Development is under consideration for tax credits. If the acquisition can be characterized as an identity of interest transaction as described in §1.32(e)(1)(B), the following must be provided:

(I) documentation of the original acquisition cost in the form of a settlement statement or, if a settlement statement is not available, the seller's most recent audited financial statement indicating the asset value for the proposed Property, and

(II) if the original acquisition cost evidenced by (I) of this clause is less than the acquisition cost claimed in the application,

(-a-) an appraisal meeting the requirements of paragraph (14)(D) of this subsection, and

(-b-) any other verifiable costs of owning, holding, or improving the Property that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include Property taxes, interest expense, a calculated return on equity at a rate consistent with the historical returns of similar risks, the cost of any physical improvements made to the Property, the cost of rezoning, replatting or developing the Property, or any costs to provide or improve access to the Property.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, a calculated return on equity at a rate consistent with the historical returns of similar risks, and allow the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure.

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

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

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

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

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

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

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

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

(II) the applicable destruction threshold;

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

(IV) penalties for noncompliance.

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

(i) bona fide financing in place as evidenced by:

(I) a valid and binding loan agreement;

(II) deed(s) of trust in the name of the Development Owner expressly allowing transfer to the Development Owner; and

(III) for TX-USDA-RHS 515 Developments involving Rehabilitation, an executed TX-USDA-RHS letter indicating TX-USDA-RHS has received a Consent Request, also referred to as a Preliminary Submittal, as described in 7 CFR 3560.406; or,

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

(iii) any Federal, State or local gap financing, whether of soft or hard debt, must be identified at the time of Application. At a minimum, evidence from the lending agency that an application for funding has been made and a term sheet which clearly describes the amount and terms of the funding, and the date by which the funding determination will be made and any commitment issued, must be submitted. Evidence of application for funding from another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an application has been filed as required by the Application Submission Procedures Manual. If the commitment from the other funding source has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the other funding source, the Commitment Notice will be rescinded; or

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

(D) Provide the documents in clause (i) - (iii) of this subparagraph:

(i) a copy of the full legal description

(ii) a current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the proposed Property, and

(iii) a copy of:

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

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

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

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

(A) Evidence of notification meeting the requirements identified in clause (i) of this subparagraph to all of the individuals and entities identified in clause (ii) of this subparagraph. Evidence of such notifications must be in the form of a certification provided in the Application and a completed "Notification Information Form" as provided in the Application. Notification must not be older than three months from the first day of the Application Acceptance Period. (2306.6705(a)(9)) If evidence of these notifications was submitted with the Pre-Application Threshold for the same Application and satisfied the Department's review of Pre-Application Threshold, then no additional notification is required at Application, except that re-notification is required by tax credit Applicants who have submitted a change in the Application, whether from Pre-Application to Application or as a result of a deficiency that reflects a total Unit increase of greater than 10%, an increase of greater than 10% for any given level of AMGI,

or a change to the population being served (elderly, family or transitional). For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notification and proof thereof must not be older than three months prior to the date the Volume III of the Application is submitted.

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

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

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

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

(IV) Statement of whether the Development proposes New Construction or Rehabilitation;

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

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

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

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

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

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

(I) Notification to Local Elected Officials for Neighborhood Organization Input. Evidence in the form of a certification must be provided that a letter requesting information on neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site and other impacted homeowner's associations and meeting the requirements of "Local Elected Official Notification" as outlined in the Application was sent no later than January 15, 2006 (or for Tax-Exempt Bond Applications or Rural Rescue Applications not later than 21 days prior to submission of the Threshold documentation) to the local elected official for the city or if located outside of a city, then the county where the Development is proposed to be located. If the Development is located in a jurisdiction that has district based local elected officials, or both at-large and district based local elected officials, the notification must be made to the city council member or county commissioner representing that district; if the Development is located in a jurisdiction that has only at-large local elected officials, the notification must be made to the mayor or county judge for the jurisdiction. For urban/exurban areas, entities identified in the letters from the local elected official whose boundaries include the proposed Development whose listed address has the same zip code as the zip code for the Development and other impacted homeowner's associations must be provided with written notification, and evidence of that notification must be provided. If any other zip codes exist within a half mile of the Development site, then all entities identified in the letters with those adjacent zip codes must also be provided with written notification, and evidence of that notification must be provided. For rural areas, all entities identified in the letters whose listed address is within a half mile of the Development site and other impacted homeowner's associations must be provided with written notification, and evidence of that notification must be provided. If the Applicant can certify that the proposed Development is not located within the boundaries of an entity on a list from the local elected officials and that there are no other impacted homeowner's associations, then such certification in lieu of notification may be acceptable. If no reply letter is received from the local elected officials by February 25, 2006, (or For Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., by 7 days prior to the submission of the Application) then the Applicant must submit a statement attesting to that fact. If an Applicant has knowledge of any neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site and other impacted homeowner's associations, the Applicant must notify those organizations. The Applicant must also certify that any organizations in a response letter that are not notified do not contain the proposed Development site within their boundaries and are not impacted homeowner's associations. In the event that local elected officials refer the Applicant to another source, the Applicant must also notify that source and request the same information. If the Applicant has no knowledge of neighborhood organizations within whose boundaries the Development is proposed to be located or other impacted homeowner's associations, the Applicant must attest to that fact in the format provided by the Department as part of the Application.

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

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

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

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

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

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

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

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

(B) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development site prior to the date the Application is submitted. For Tax-Exempt Bond Developments the sign must be installed no later than 30 days after the Department's receipt of Volumes I and II. Evidence submitted with the Application must include photographs of the site with the installed sign and invoice receipt confirming installation from the entity that installed the sign. The sign must be at least 4 feet by 8 feet in size and located within twenty feet of, and facing, the main road adjacent to the site. The sign

shall be continuously maintained on the site until the day that the Board takes final action on the Application for the Development. The information and lettering on the sign must meet the requirements identified in the Application. For Tax-Exempt Bond Developments for which the Department is not the issuer of the bonds, the Applicant must certify to the fact that the date, time and location of the TEFRA hearing are indicated on the sign as soon as the hearing has been scheduled. As an alternative to installing a Public Notification Sign and at the same required time, the Applicant may instead, at the Applicant's option, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. If the Applicant chooses to provide this mailed notice in lieu of signage, the final Application must include a map of the proposed Development site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If the option in clause (i) of this subparagraph is used, then evidence must be provided affirming the local zoning notification requirements.

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

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

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

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

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

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

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

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

(C) Evidence that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved; documentation for individual board members and executive directors is required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The 2006 versions of these forms, as required in the Uniform Application, must be submitted. Units of local government are also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Person. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

(D) Evidence in the form of a certification from the Applicant, that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, and has, or has had, ownership or Control of affordable housing, being housing that receives any form of financing and/or assistance from any Governmental Entity for the purpose of enhancing affordability to persons of low or moderate income, outside the state of Texas, that such Persons have submitted the appropriate "National Previous Participation and Background Certification Form" to the appropriate Housing Credit Agency for each state in which they have developed or operated affordable housing. Nonprofit entities and public housing authorities are only required to submit documentation for the entity itself; documentation for board members and executive directors is not required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. This form is only necessary when the Developments involved are outside the state of Texas. An original form is not required.

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

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

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

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

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

Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

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

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

(I) Submit at least one of the following:

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

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

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

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

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

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

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

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

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

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

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

(ii) the "Nonprofit Participation Exhibit."

(B) Additionally, all Applications applying under the Nonprofit Set-Aside, established under §50.7(b)(1) of this title, must also provide the following information with respect to the Qualified Nonprofit Organization as described in clauses (i) - (vi) of this subparagraph.

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

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

(iii) a Third Party legal opinion stating:

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

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

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

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

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

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

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

(12) Applicants applying for acquisition credits must provide must provide

(A) an appraisal meeting the requirements of subparagraph (14)(D) of this subsection, and

(B) an "Acquisition of Existing Buildings Form."

(13) Evidence of Financial Statement and Authorization to Release Credit Information. The financial statements and authorization to release credit information must be unbound and clearly labeled. A "Financial Statement and Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has ownership interest in the Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit.

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

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

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

(14) Supplemental Threshold Reports. All Applications must include documents under subparagraph (A) and (B) of this paragraph. If required under paragraph (6) of this subsection, a Property Condition Assessment as described in subparagraph (C) of this paragraph must be submitted. If required under paragraph (7) or (12) of this subsection, an appraisal as described in subparagraph (D) of this paragraph must be submitted. All submissions must meet the requirements stated in subparagraphs (E) - (G) of this paragraph.

(A) A Phase I Environmental Site Assessment (ESA) report:

(i) prepared by a qualified Third Party;

(ii) dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is more than 12 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated not more than three months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report; and

(iii) prepared in accordance with the Department's Environmental Site Assessment Rules and Guidelines, §1.35 of this title.

(iv) Developments whose funds have been obligated by TX-USDA-RHS will not be required to supply this information; however, the Applicants of such Developments are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) A comprehensive Market Analysis report:

(i) prepared by a Third Party Qualified Market Analyst approved by the Department in accordance with the approval process outlined in the Market Analysis Rules and Guidelines, §1.33 of this title;

(ii) dated not more than 6 months prior to the first day of the Application Acceptance Period. In the event that a Market Analysis is more than 6 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however the Department will not accept any Market Analysis which is more than 12 months old as of the first day of the Application Acceptance Period; and

(iii) prepared in accordance with the methodology prescribed in the Department's Market Analysis Rules and Guidelines, §1.33 of this title.

(iv) For Applications in the TX-USDA-RHS Set-Aside, the appraisal, required under paragraph (7) or (12) of this subsection, will satisfy the requirement for a Market Analysis; however the Department may request additional information as needed. (2306.67055) (§42(m)(1)(A)(iii))

(C) A Property Condition Assessment (PCA) report:

(i) prepared by a qualified Third Party;

(ii) dated not more than 6 months prior to the first day of the Application Acceptance Period; and

(iii) prepared in accordance with the Department's Property Condition and Assessment Rules and Guidelines, §1.36 of this title.

(iv) For Developments which require a capital needs assessment from TX-USDA-RHS, the capital needs assessment may be substituted and may be more than 6 months old, as long as TX-USDA-RHS has confirmed in writing that the existing capital needs assessment is still acceptable.

(D) An appraisal report:

(i) prepared by a qualified Third Party;

(ii) dated not more than 6 months prior to the first day of the Application Acceptance Period; and

(iii) prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, §1.34 of this title.

(iv) For Developments which require an appraisal from TX-USDA-RHS, the appraisal may be more than 6 months old, as long as TX-USDA-RHS has confirmed in writing that the existing appraisal is still acceptable.

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

(F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

(G) The requirements for each of the reports identified in subparagraphs (A) - (C) of this paragraph can be satisfied in either of the methods identified in clauses (i) or (ii) of this subparagraph and meet the requirements of clause (iii) of this subparagraph.

(i) Upon Application submission, the documentation for each of these exhibits may be submitted in its entirety; or

(ii) Upon Application submission, the Applicant may provide evidence in the form of an executed engagement letter with the party performing each of the individual reports that the required exhibit has been commissioned to be performed and that the delivery date will be no later than April 1, 2006. In addition to the submission of the engagement letter with the Application, a map must be provided that reflects the Qualified Market Analyst's intended market area. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CST, April 1, 2006. If the entire exhibit is not received by that time, the Application will be terminated and will be removed from consideration.

(iii) A single hard copy of the report and a soft copy in the format of a single file containing all information and exhibits in the hard copy report, presented in the order they appear in the hard copy report on a CD-R clearly labeled with the report type, Development name, and Development location are required.

(15) Self-Scoring. Applicant's self-score must be completed on the "Application Self-Scoring Form." An Applicant may not

adjust the Application Self Scoring Form without a request from the Department as a result of an Administrative Deficiency.

(i) Selection Criteria. All Applications will be scored and ranked using the point system identified in this subsection. When applicable, use normal rounding. All Applications, with the exception of TX-USDA-RHS Applications, must score a minimum of 115 points to be eligible for an allocation of Housing Tax Credits. Maximum Total Points: 191.

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

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

(A) Basic Submission Requirements for Scoring. Each neighborhood organization may submit one letter (and enclosures) that represents the organization's input. In order to receive a point score, the letter (and enclosures) must be received by the Department no later than April 1, 2006. Letters should be addressed to the Texas Department of Housing and Community Affairs, "Attention: Executive Director (Neighborhood Input)." Letters received after April 1, 2006 will be summarized for the Board's information and consideration, but will not affect the score for the Application. The organization's letter (and enclosures) must:

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

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

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

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

(v) include documentation showing that the organization is on record as of March 1, 2006 with the state or county in which the Development is proposed to be located. A record from the Secretary of State showing that the organization is incorporated or from the county clerk showing that the organization is on record with the county is sufficient. For a property owners association, a record from the county showing that the organization's management certificate is on record is sufficient. The documentation must be from the state or county and be current. If an organization's status with the Secretary of State is shown as "forfeited," "dissolved," or any similar status in the documentation provided by the organization, the organization will not be considered on record with the state. It is insufficient to be "on record" to provide only a request to the county or a state entity to be placed on record or to show that the organization has corresponded with such an entity or used its services or programs. It is insufficient to show that the organization is on record with a city. As an option to be considered on record with the state, a letter including a contact name with a mailing address and phone number; name and position of officers; and a written description and map of the organization's geographical boundaries must be received by the Department no later than March 1, 2006 to place the organization on record with the state. The letter should be addressed to the Texas Department of Housing and Community Affairs, "Attention: Executive Director (Recording of Neighborhood Organization)". Acceptance of this documentation by the Department will satisfy the "on record with the state" requirement, but is not a determination that the organization is a "neighborhood organization" or that other requirements are met. The Department is permitted to issue a deficiency notice for this registration process and if satisfied, the organization will still be deemed to be timely placed on record with the state.

(vi) accurately state that the neighborhood organization was not formed by any Applicant, Developer, or any employee or agent of any Applicant in the 2006 tax credit Application Round, that the organization and any member did not accept money or a gift to cause the neighborhood organization to take its position of support or opposition, and has not provided any assistance to the neighborhood organization to meet the requirements of this subparagraph.

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

(viii) include the organization's articles of incorporation and/or bylaws created on or before March 1, 2006, that, at a minimum, identify the boundaries of the organization, identify the officers of the organization and clearly indicate the purpose of the organization.

(ix) The boundaries in effect for the organization on March 1, 2006, will be those boundaries utilized for the purposes of evaluating these letters and determining eligibility. Annexations occurring after that time to include a Development site will not be considered eligible. A Development site must be entirely contained within the boundaries of the organization to satisfy eligibility for this item; a site that is only partially within the boundaries will not satisfy the requirement that the boundaries contain the proposed Development site.

(x) Letters from organizations, and subsequent correspondence from organizations, may not be provided via the Applicant which includes facsimile and email communication.

(B) Scoring of Letters (and Enclosures). The input must clearly and concisely state each reason for the organization's support for or opposition to the proposed Development.

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

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

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

(I) establish three or more reasons for support or opposition will be scored the maximum points for either support (+12 points) or opposition (-12);

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

(III) establish one reason for support or opposition will be scored +1 points for support or -1 points for opposition;

(IV) that do not establish a reason for support or opposition or that are unclear will be scored as neutral (0 points).

(iv) Applications for which no letters from neighborhood organizations are scored will receive a neutral score of 0 points.

(C) Basic Submission Deficiencies. The Department is authorized but not required to request that the neighborhood organization provide additional information or documentation the Department deems relevant to clarify information contained in the organization's letter (and enclosures). If the Department determines to request additional information from an organization, it will do so by e-mail or facsimile to the e-mail address or facsimile number provided with the organization's letter. If the deficiencies are not clarified or corrected in the Department's determination within seven business days from the date the e-mail or facsimile is sent to the organization, the organization's letter will not be considered further for scoring and the organization will be so advised. This potential deficiency process does not extend any deadline required above for the "Quantifiable Community Participation" process. An organization may not submit additional information or documentation after the April 1, 2006 deadline except in response to an e-mail or facsimile from the Department specifically requesting additional information.

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

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

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

(C) 20 points if at least 60% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

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

(E) 16 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(F) 14 points if at least 35% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI.

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

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

(i) 500 square feet for an efficiency unit;

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

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

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

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

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

(i) Covered entries (1 point);

(ii) Nine foot ceilings (1 point);

(iii) Microwave ovens (1 point);

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

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

(vi) Refrigerator with icemaker (1 point);

(vii) Laundry connections (2 points);

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

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

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

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

(xii) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS or synthetic stucco (3 points);

(xiii) Greater than 75% masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS or synthetic stucco EFIS (1 points);

(xiv) Use of energy efficient alternative construction materials (Structural Insulated Panel construction) with wall insulation at a minimum of R-20 (3 points).

(xv) An insulation R-value (not wall system R-value) 10% greater than that required by local code (3 points);

(xvi) 14 SEER HVAC for New Construction or radiant barrier in the attic for Rehabilitation (3 points);(WG)

(xvii) Energy Star or equivalently rated refrigerators and dishwashers (2 points); or

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

(xix) Fire sprinklers in all Units (2 points).

(5) The Commitment of Development Funding by Local Political Subdivisions. Applications may qualify to receive up to 18 points for qualifying under this paragraph. An Applicant may submit several sources to substantiate points for this section in the Application, but may not substitute any source after the Application has been submitted to the Department. (2306.6710(b)(1)(E)) Evidence that the proposed Development has received an allocation of funds for on-site development costs from a Local Political Subdivision or a properly-created governmental instrumentality thereof. An Applicant may receive points under this subparagraph even if the government instrumentality's creating statute states that the entity is not itself a "political subdivision." An Applicant whose Development receives a commitment from a governmental instrumentality with the legal authority to act on behalf of a Local Political Subdivision is also eligible for such points. In addition to loans or grants, in-kind contributions such as donation of land or waivers of fees such as building permits, water and sewer tap fees, or similar contributions that benefit the Development will be acceptable to qualify for these points. Points will be determined on a sliding scale based on the amount per Unit. Evidence to be submitted with the Application must include a copy of the commitment of funds; a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received; or a certification of intent to apply for funding that indicates the funding entity and program to which the application will be submitted, the loan amount to be applied for and the specific proposed terms. For in-kind contributions, evidence must be submitted to substantiate the value claimed for points as well as a statement of how the contribution will benefit the Development. No later than May 1, 2006, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the local political subdivision for the sufficient local funding to the Department. No funds from TDHCA's HOME or Housing Trust Fund sources will qualify under this category. The Local Political Subdivision must attest to the fact that any funds committed were not first provided to the Local Political Subdivision by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application.

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

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

(C) A contribution of $3,501 or more per Low-income Unit receives 18 points; or

(6) The Level of Community Support from State Elected Officials. The level of community support for the application, evaluated on the basis of written statements from state elected officials. (2306.6710(b)(1)(F) and (f) and (g); 2306.6725(a)(2)) Applications may qualify to receive up to 8 points for this item. Points will be awarded based on the written statements of support or opposition from state elected officials representing constituents in areas that include the location of the Development. Letters of support must identify the specific Development and must clearly state support for or opposition

to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or official by April 1, 2005. Officials to be considered are those officials in office at the time the Application is submitted. Letters of support from state officials that do not represent constituents in areas that include the location of the Development will not qualify for points under this Exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. Letters from State of Texas Representative or Senator: support letters are 4 points each for a maximum of 8 points; opposition letters are -4 points each for a maximum of -8 points.

(7) The Rent Levels of the Units. Applications may qualify to receive up to 12 points for qualifying under this exhibit. (2306.6710(b)(1)(G)) If 80% or fewer of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 7 points. If between 81% and 85% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 8 points. If between 86% and 90% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 9 points. If between 91% and 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 10 points. If greater than 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 12 points. Developments that are scattered site or 100% transitional will receive the full 12 points provided that they have received points under paragraph (3) of this subsection.

(8) The Cost of the Development by Square Foot (Development Characteristics). Applications may qualify to receive 10 points for this item. (2306.6710(b)(1)(H); 42(m)(1)(C)(iii)) For this exhibit, costs shall be defined as construction costs, including site work, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of net rentable area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed $80 per square foot for Qualified Elderly, Transitional, and Single Room Occupancy Developments, unless located in a "First Tier County" in which case their costs do not exceed $82 per square foot; and $67 for all other Developments, unless located in a "First Tier County" in which case their costs do not exceed $69 per square foot. For 2005, the First Tier Counties are Aransas, Calhoun, Chambers, Jefferson, Kleberg, Nueces, San Patricio, Brazoria, Cameron, Galveston, Kennedy, Matagorda, Refugio and Willacy. (10 points)

(9) The Services to be Provided to Tenants of the Development. Applications may qualify to receive up to 8 points. Applications may qualify for points under both subparagraphs (A) and (B) of this paragraph. (2306.6710(b)(1)(I); 2306.254; 2306.6725(a)(1); General Appropriation Act, Article VII, Rider 7)

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

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

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

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

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

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

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

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

(11) Development Includes the Use of Existing Housing as part of a Community Revitalization Plan (Development Characteristics). Applications may qualify to receive 7 points for this item. (42(m)(1)(C)(iii)) The Development is an existing Residential Development and the proposed Rehabilitation or demolition and reconstruction is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan and a map showing the boundaries of the Community Revitalization Plan and the location of the Development site within the boundaries must be submitted.

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

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

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

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

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

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

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

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

(13) Development Location. (2306.6725(a)(4)); 42(m)(1)(C)(i)) Applications may qualify to receive 4 points. Evidence, not more than 6 months old from the date of the close of the Application Acceptance Period, that the subject Property is located within one of the geographical areas described in subparagraphs (A) - (H) of this paragraph. Areas qualifying under any one of the subparagraphs (A) - (H) of this paragraph will receive 4 points. An Application may only receive points under one of the subparagraphs (A) - (H) of this paragraph.

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

(B) a designated state or federal empowerment/enterprise zone, urban enterprise community, or urban enhanced enterprise community. Such Developments must submit a letter and a map from a city/county official verifying that the proposed Development is located within such a designated zone. Letter should be no older than 6 months from the first day of the Application Acceptance Period. (General Appropriation Act, Article VII, Rider 6; 2306.127)

(C) a city or county-sponsored area or zone where a city or county has, through a local government initiative, specifically encouraged or channeled growth, neighborhood preservation, or redevelopment. Such Developments must submit all of the following documentation: a letter from a city/county official verifying that the proposed Development is located within the city or county-sponsored zone or district; a map from the city/county official which clearly delineates the boundaries of the district; and a certified copy of the appropriate resolution or documentation from the mayor, local city council, county judge, or county commissioners court which documents that the designated Area was created by the local city council/county commission, and targets a specific geographic Area which was not created solely for the benefit of the Applicant.

(D) the Development is located in a county that has received an award as of November 15, 2005, within the past three years, from the Texas Department of Agriculture's Rural Municipal Finance Program or Real Estate Development and Infrastructure Program. Cities which have received one of these awards are categorized as awards to the county as a whole so Developments located in a different city than the city awarded, but in the same county, will still be eligible for these points.

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

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

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

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

(14) Exurban Developments or Reconstruction or Rehabilitation of Developments (Development characteristics). (2306.6725(a)(4) and (b)(2); 2306.127; 42(m)(1)(C)(i)) Applications may qualify to receive 7 points if the Development is located in an incorporated place or census designated place that is not a Rural Area but has a population no greater than 100,000 based on the most current available information published by the United States Bureau of the Census as of October 1 of the year preceding the applicable program year, or if a Development is proposed for reconstruction or rehabilitation (in whole or in part, on-site or off-site) that will be financed, in part, with HOPE VI financing or HUD capital grant financing provided that the Application is a joint venture partnership between the public housing authority or an entity formed by the public housing authority and private market interests (either for profit or nonprofit).

(15) Tenant Populations with Special Housing Needs. Applications may qualify to receive 4 points for this item. (42(m)(1)(C)(v)) The Department will award these points to Applications in which at least 10% of the Units are set aside for Persons with Special Needs.

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

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

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

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

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

(i) Full service grocery store or supermarket

(ii) Pharmacy

(iii) Convenience Store/Mini-market

(iv) Department or Retail Merchandise Store

(v) Bank/Credit Union

(vi) Restaurant (including fast food)

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

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

(ix) Hospital/medical clinic

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

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

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

(B) Negative Site Features. Sites with the following negative characteristics will have points deducted from their score. For purpose of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development site. The distances are to be measured from all boundaries of the Development site. If an Applicant negligently fails to note a negative feature, double points will be deducted from the score or the Application may be terminated. If none of these negative features exist, the Applicant must sign a certification to that effect. (-5 points)

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

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

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

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

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

(18) Development Size. The Development consists of not more than 36 Units and is not a part of, or contiguous to, a larger existing tax credit development (3 points).

(19) Qualified Census Tracts with Revitalization. Applications may qualify to receive 2 points for this item. (42(m)(1)(B)(ii)(III)) Applications will receive the points for this item if the Development is located within a Qualified Census Tract and contributes to a concerted Community Revitalization Plan. Evidence of the Community Revitalization Plan and a map showing boundaries of the Community Revitalization Plan and the location of the Development site within the boundaries must be submitted.

(20) Sponsor Characteristics. Applications may qualify to receive a maximum of 2 points for this item for qualifying under either subparagraph (A) or (B) of this paragraph. (42(m)(1)(C)(iv))

(A) An Application will receive these two points as long as no individual or entities associated with the Applicant, Development Owner or Developer has had a Carryover Allocation issued in the state of Texas after January 1, 2000, but prior to January 1, 2004, for which the buildings were not placed in service and/or for which IRS Forms 8609 were not issued; or

(B) An Application will receive these two points for submitting a plan to use Historically Underutilized Businesses in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas.

(21) Developments Intended for Eventual Tenant Ownership - Right of First Refusal. Applications may qualify to receive 1 point for this item. (2306.6725(b)(1)) (42(m)(1)(C)(viii)) Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms.

(A) Upon the earlier to occur of:

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

(ii) the Development Owner's request to the Department, pursuant to §42(h)(6)(E)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of

Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to date upon which the Development Owner intends to sell the Development.

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

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

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

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

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

(C) After whichever occurs the later of:

(i) the end of the Compliance Period; or

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

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

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

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

(22) Leveraging of Private, State, and Federal Resources. Applications may qualify to receive 1 point for this item. (2306.6725(a)(3)) Evidence that the proposed Development has received an allocation of private, state or federal resources, including HOPE VI funds, that is equal to or greater than 2% of the Total Development costs reflected in the Application. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. No later than May 1, 2006,, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the entity for the sufficient financing to the Department. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA. To qualify for this point, the Rent Schedule must show that at least 3% of all low-income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.

(23) Third-Party Funding Commitment Outside of Qualified Census Tracts. Applications may qualify to receive 1 point for this item. (2306.6710(e)(1)) Evidence that the proposed Development has documented and committed third-party funding sources and the Development is located outside of a Qualified Census Tract. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the third-party funding source and must be equal to or greater than 2% of the Total Development costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. The third-party funding source cannot be a loan from a commercial lender.

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

(A) Penalties will be imposed on an Application if the Applicant has requested an extension of a Department deadline, and did not meet the original submission deadline, relating to developments receiving a housing tax credit commitment made in the application round preceding the current round. The extension that will receive a penalty is an extension related to the submission of the carryover. For each extension request made, the Applicant will receive a 5 point deduction for not meeting the Carryover deadline. Subsequent extension requests for carryover after the first extension request made for each development from the preceding round will not result in a further point reduction

than already described. No penalty points or fees will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TX-USDA-RHS as a lender if TX-USDA-RHS or the Department is the cause for the Applicant not meeting the deadline.

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

(j) Tie Breaker Factors.

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

(A) Applications involving any Rehabilitation of existing Units will win this first tier tie breaker over Applications involving solely New Construction.

(B) The Application located in the municipality or, if located outside a municipality, the county, that has the lowest state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins as reflected in the Reference Manual will win this second tier tie breaker.

(2) This clause identifies how ties will be handled when dealing with the restrictions on location identified in §50.5(a)(8) of this title, and in dealing with any issues relating to capture rate calculation. When two Tax-Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the reservation docket number issued by the Texas Bond Review Board in making its determination. When two competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breakers identified in paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:

(A) Tax-Exempt Bond Developments that receive their reservation from the Bond Review Board on or before April 30, 2006 will take precedence over the Housing Tax Credit Applications in the 2006 Application Round;

(B) Housing Tax Credit Applications approved by the Board for tax credits in July 2006 will take precedence over the Tax-Exempt Bond Developments that received their reservation from the Bond Review Board on or between May 1, 2006 and July 31, 2006; and

(C) After July 31, 2006, a Tax-Exempt Bond Development with a reservation from the Bond Review Board will take precedence over any Housing Tax Credit Application from the 2006 Application Round on the Waiting List. However, if no reservation has been issued by the date the Board approves an allocation to a Development from the Waiting List of Applications in the 2006 Application Round or a forward commitment, then the Waiting List Application or forward commitment will be eligible for its allocation.

(k) Staff Recommendations. (2306.1112 and 2306.6731) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. The Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial, including all factors provided in subsection §50.10(a) of this section that were used in making this determination.

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

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

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

(2) In making a determination to allocate tax credits, the Board shall be authorized to not rely solely on the number of points scored by an Application. It shall in addition, be entitled to take into account, as it deems appropriate, the discretionary factors listed in this paragraph. The Board may also apply these discretionary factors to its consideration of Tax-Exempt Bond Developments. If the Board disapproves or fails to act upon an Application, the Department shall issue to the Applicant a written notice stating the reason(s) for the Board's disapproval or failure to act. In making tax credit decisions (including those related to Tax-Exempt Bond Developments), the Board, in its discretion, may evaluate, consider and apply any one or more of the following discretionary factors: (2306.111(g)(3); 2306.0661(f))

(A) the developer market study;

(B) the location;

(C) the compliance history of the Developer;

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

(E) the financial feasibility;

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

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

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

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

(J) the anticipated impact on local school districts;

(K) zoning and other land use considerations;

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

(M) the efficient use of the tax credits;

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

(O) the allocation of credits among many different entities without diminishing the quality of the housing; (General Appropriation Act, Article VII, Rider 8(e))

(P) meeting a compelling housing need;

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

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

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

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

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

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

(c) Forward Commitments. The Board may determine to issue commitments of tax credit authority with respect to Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment") to Applications submitted in accordance with the rules and timelines required under this rule and the Application Submission Procedures Manual. The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors. The Board may utilize the forward commitment authority to allocate credits to TX-USDA-RHS Developments which are experiencing foreclosure or loan acceleration at any time during the 2006 calendar year, also referred to as Rural Rescue Developments. Applications that are submitted under the 2006 QAP and granted a Forward Commitment of 2007 Housing Tax Credits are considered by the Board to comply with the 2007 QAP by having satisfied the requirements of this 2006 QAP, except for statutorily required QAP changes.

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

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

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

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

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

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

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

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

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

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

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

(I) The relevant dates affecting the Application including the date on which the Application was filed, the date or dates

on which any hearings on the Application will be held and the date by which a decision on the Application will be made;

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

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

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

(ii) Presiding officer of the governing body of the political subdivision containing the Development (mayor or county judge) to advise such individual that the Development, or a part thereof, will be located in his/her jurisdiction and request any comments which such individual may have concerning such Development.

(iii) If the Department receives a letter from the mayor or county judge of an affected city or county expresses opposition to the Development, the Department will give consideration to the objections raised and will visit the proposed site or Development with the mayor or county judge or their designated representative within 30 days of notification. The site visit must occur before the Housing Tax Credit can be approved by the Board. The Department will obtain reimbursement from the Applicant for the necessary travel and expenses at rates consistent with the state authorized rate (General Appropriation Act, Article VII, Rider 5) (§42(m)(1));

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

(v) state representative and state senator who represent the community where the Development is proposed to be located. If the state representative or senator host a community meeting, the Department will ensure staff are in attendance to provide information regarding the Housing Tax Credit Program; (General Appropriation Act, Article VII, Rider 8(d))

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

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

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

(ix) Any Neighborhood Organizations on record with the city or county in which the Development is to be located and whose boundaries contain the proposed Development site or otherwise known to the Applicant or Department and on record with the state or county; and

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

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

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

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

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

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

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

(A) provide the Application scores to the Board; (2306.6711(a)

(B) if feasible, post to the Department's web site the entire Application, including all supporting documents and exhibits, the Application Log as further described in §50.19(b) of this title, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application. (2306.6717(a)(1) and (2))

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

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

(b) Viewing of Pre-Applications and Applications. Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except

Personal Financial Statements and Social Security numbers, will be made available for public disclosure after the Pre-Application and Application periods close, respectively. The content of Personal Financial Statements may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act.

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

§50.12. Tax-Exempt Bond Developments: Filing of Applications; Applicability of Rules; Supportive Services; Financial Feasibility Evaluation; Satisfaction of Requirements.

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

(1) Applicants which receive advance notice of a Program Year 2006 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 5:00 p.m. on December 30, 2005. Such filing must be accompanied by the Application fee described in §50.20 of this title.

(2) Applicants which receive advance notice of a Program Year 2006 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 and Volume 2 of the Application and the Application fee described in §50.20 of this title prior to the Applicant's bond reservation date as assigned by the TBRB. Any outstanding documentation required under this section must be submitted to the Department at least 60 days prior to the Board meeting at which the decision to issue a Determination Notice would be made unless a waiver is being requested.

(b) Applicability of Rules for Tax-Exempt Bond Developments. Tax-Exempt Bond Development Applications are subject to all rules in this title, with the only exceptions being the following sections: §50.4 of this title (regarding State Housing Credit Ceiling), §50.7 of this title (regarding Regional Allocation and Set-Asides), §50.8 of this title (regarding Pre-Application), §50.9(d) and (f) of this title (regarding Evaluation Processes for Competitive Applications and Rural Rescue Applications), §50.9(i) of this title (regarding Selection Criteria), §50.10(b) and (c) of this title (regarding Waiting List and Forward Commitments), and §50.14(a) and (b) of this title (regarding Carryover and 10% Test). Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in §50.9(h) of this title. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. Consistency with the local municipality's consolidated plan or similar planning document must be demonstrated in those instances where the city or county has a consolidated plan. Applicants will be required to meet all conditions of the Determination Notice by the time the construction loan is closed unless otherwise specified in the Determination Notice. Applicants must meet the requirements identified in §50.15 of this title. No later than 60 days following closing of the bonds, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan (as further described in the Carryover Allocation Procedures Manual), and evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five hours and the Development architect at Department-approved Fair Housing training relating to design issues for at least five hours. Certifications must not be older than two years. Applications that receive a reservation from the Bond Review Board on or before December 31, 2005 will be required to satisfy the requirements of the 2005 QAP; Applications that receive a reservation from the Bond Review Board on or after January 1, 2006 will be required to satisfy the requirements of the 2006 QAP.

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

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

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

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

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

in service will only be permitted if it is determined by the Department, as required by Code §42(m)(2)(D), that the Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director.

(e) Satisfaction of Requirements for Tax-Exempt Bond Developments. If the Department staff determines that all requirements of this QAP and Rules have been met, the Department will recommend that the Board authorize the issuance of a Determination Notice. The Board, however, may utilize the discretionary factors identified in §50.10(a) of this title in determining if they will authorize the Department to issue a Determination Notice to the Development Owner. The Determination Notice, if authorized by the Board, will confirm that the Development satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

§50.13. Commitment and Determination Notices; Agreement and Election Statement; Documentation Submission Requirements.

(a) Commitment and Determination Notices. If the Board approves an Application, within ten days of approval the Department will:

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

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

(B) state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described at §50.16 of this title, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the commitment by executing the Commitment Notice or Determination Notice, pays the required fee specified in §50.20 of this title, and satisfies any other conditions set forth therein by the Department. A Development Owner may request an extension of the Commitment Notice expiration date by submitting an extension request and associated extension fee as described in §50.20 of this title. Any such extension must be approved by the Board. In no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

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

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

(B) state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth at §50.12 of this title and compliance by the Development Owner with all applicable requirements of this title and any other terms and conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice and paying the required fee specified in §50.20 of this title. The Determination Notice shall also expire unless the Development Owner satisfies any conditions set forth therein by the Department within the applicable time period.

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

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

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

(6) The executed Commitment or Determination Notice must be returned to the Department within ten days of the effective date of the Notice.

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

(c) Documentation Submission Requirements at Commitment of Funds. No later than the date the Commitment Notice or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment Fee as further described in §50.20(f) of this title, the following documents must also be provided to the Department. Failure to provide these documents may cause the Commitment to be rescinded. For each Applicant all of the following must be provided:

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

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

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

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

§50.14. Carryover; 10% Test; Commencement of Substantial Construction.

(a) Carryover. All Developments which received a Commitment Notice, and will not be placed in service and receive IRS Form 8609 in the year the Commitment Notice was issued, must submit the Carryover documentation to the Department no later than November 1 of the year in which the Commitment Notice is issued. Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment Notice is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month. If the financing structure, syndication rate, amount of debt or syndication proceeds are revised at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department. The Carryover Allocation format must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual. All Carryover Allocations will be contingent upon the following, in addition to all other conditions placed upon the Application in the Commitment Notice:

(1) The Development Owner for all New Construction Developments must have purchased the property for the Development.

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

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

(4) The Department will not execute a Carryover Allocation Agreement with any Owner in Material Noncompliance on October 1, 2006.

(b) 10% Test. No later than six months from the date the Carryover Allocation Document is executed by the Department and the Development Owner, more than 10% of the Development Owner's reasonably expected basis must have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than June 30 of the year following the execution of the Carryover Allocation Document in a format prescribed by the Department. At the time of submission of the documentation, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan as further described in the Carryover Allocation Procedures Manual. Evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five hours and the Development architect at Department-approved Fair Housing training relating to design issues for at least five hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two years.

(c) Commencement of Substantial Construction. The Development Owner must submit evidence of having commenced and continued substantial construction activities. The evidence must be submitted not later than December 1 of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §50.20 of this title.

§50.15. LURA, Cost Certification.

(a) Land Use Restriction Agreement (LURA). The Development Owner must request a LURA from the Department no later than the date specified in §60.1(p)(6), the Department's Compliance Monitoring Policies and Procedures. The Development Owner must date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution. The initial compliance and monitoring fee must be accompanied by a statement, signed by the Owner, indicating the start of the Development's Credit Period and the earliest placed in service date for the Development buildings. After receipt of the signed LURA from the Department, the Development Owner shall then record the LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department no later than the date that the Cost Certification Documentation is submitted to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development and/or the Property prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA, which are required by §42(h)(6)(E)(ii) of the Code to remain in effect following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department, or assigns, shall physically inspect the Development for compliance with the Application and the representations, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax-Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA.

(b) Cost Certification. The Cost Certification Procedures Manual sets forth the documentation required for the Department to perform a feasibility analysis in accordance with §42(m)(2)(C)(i)(II) of Internal Revenue Code and determine the final Credit to be allocated to the Development.

(1) To request IRS Forms 8609, Developments must have:

(A) Placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; or December 31 of the second year following the year the Carryover Allocation Agreement was executed;

(B) Scheduled a final construction inspection in accordance with §60.1(c) of this title;

(C) Informed the Department of and received written approval for all Development amendments in accordance with §50.17(c) of this title;

(D) Submitted to the Department the LURA in accordance with §50.15(a) of this title;

(E) Paid all applicable Department fees; and

(F) Prepared all Cost Certification documentation in the format prescribed by the Cost Certification Procedures Manual.

(2) Required Cost Certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Commitment Notice or Determination Notice that fails to submit its Cost Certification documentation by this deadline will be reported to the IRS and the Owner will be required to submit a request for extension consistent with §50.20(l) of this title.

(3) The Department will perform an initial evaluation of the Cost Certification documentation within 45 days from the date of receipt and notify the Owner in a deficiency letter of all additional required documentation. Any deficiency letters issued to the Owner pertaining to the Cost Certification documentation will also be copied to the syndicator. The Department will issue IRS Forms 8609 no later than 90 days from the date that all required documents have been received. Tax-Exempt

§50.16. Housing Credit Allocations.

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

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

(c) The General Contractor hired by the Development Owner must meet specific criteria as defined by the General Appropriation Act, Article VII, Rider 8(c). A General Contractor hired by a Development Owner or a Development Owner, if the Development Owner serves as General Contractor must demonstrate a history of constructing similar types of housing without the use of federal tax credits. Evidence must be submitted to the Department, in accordance with §50.9(h)(4)(H) of this title, which sufficiently documents that the General Contractor has constructed some housing without the use of Housing Tax Credits. This documentation will be required as a condition of the commitment notice or carryover agreement, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.

(d) An allocation will be made in the name of the Development Owner identified in the related Commitment Notice or Determination Notice. If an allocation is made to a member or Affiliate of the ownership entity proposed at the time of Application, the Department will transfer the allocation to the ownership entity as consistent with the intention of the Board when the Development was selected for an award of tax credits. Any other transfer of an allocation will be subject to review and approval by the Department consistent with §50.17(c) of this title. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under §42 of the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete current documentation regarding the owner including documentation to show consistency with all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.

(e) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §50.20 of this title have been received by the Department and with respect to which all applicable requirements, terms and conditions have been met. For Tax-Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Cost Certification documentation requirements will include a certification and inspection report prepared by a Third-Party accredited accessibility inspector to certify that the Development meets all required accessibility standards. IRS Form 8609 will not be issued until the certifications are received by the Department. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for Housing Tax Credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification materials. A separate Housing Credit Allocation shall be made with respect to each building within a Development which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings. The Department may delay the issuance of IRS Form 8609 if any Development violates the representations of the Application.

(f) In making a Housing Credit Allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum Applicable Percentage and the maximum Qualified Basis amount, the

Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The Housing Credit Allocation made by the Department shall not exceed the amount necessary to support the extended low-income housing commitment as required by the Code, §42(h)(6)(C)(i).

(g) Development inspections shall be required to show that the Development is built or rehabilitated according to construction threshold criteria and Development characteristics identified at application. At a minimum, all Development inspections must include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent Third Party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §50.20 of this title. For properties receiving financing through TX-USDA-RHS, the Department shall accept the inspections performed by TX-USDA-RHS in lieu of having other Third party Inspections. Details regarding the construction inspection process are set forth in the Department Rule §60.1 of this title (2306.081; General Appropriation Act, Article VII, Rider 8(b)).

(h) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document and as further outlined in §50.15 of this title, the Development Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. For purposes of this title, and consistent with IRS Notice 88-116, the placed in service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function and more specifically when the first Unit in the building is certified as being suitable for occupancy in accordance with state and local law and as certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire Development; therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the New Construction or Rehabilitation and, if applicable, a closing statement for the acquisition of the Development as well as for the closing of all interim and permanent financing for the Development. If the Development Owner does not fulfill all representations and commitments made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609, may withhold issuance of the IRS Form 8609s until these representations and commitments are met, and/or may terminate the allocation, if appropriate corrective action is not taken by the Development Owner.

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

(j) The Department may, at any time and without additional administrative process, determine to award credits to Developments previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity.

§50.17. Board Reevaluation, Appeals Process; Provision of Information or Allegations Regarding Applications; Amendments; Housing Tax Credit and Ownership Transfers; Sale of Tax Credit Properties; Withdrawals; Cancellations; Alternative Dispute Resolution.

(a) Board Reevaluation. (2306.6731(b)) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment Notice or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be those items identified in subsection (d)(4) of this section. The Board may revoke any Commitment Notice or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(b) Appeals Process. (2306.6715) An Applicant may appeal decisions made by the Department as follows.

(1) The decisions that may be appealed are identified in subparagraphs (A) - (D) of this paragraph.

(A) a determination regarding the Application's satisfaction of:

(i) Eligibility Requirements;

(ii) Disqualification or debarment criteria;

(iii) Pre-Application or Application Threshold Criteria;

(iv) Underwriting Criteria;

(B) the scoring of the Application under the Application Selection Criteria; and

(C) a recommendation as to the amount of housing tax credits to be allocated to the Application.

(D) Any Department decision that results in termination of an Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant.

(3) An Applicant must file its appeal in writing with the Department not later than the seventh day after the date the Department publishes the results of any stage of the Application evaluation process identified in §50.9 of this title. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application. If the appeal relates to the amount of housing tax credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request.

(4) The Executive Director of the Department shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

(A) the seventh day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or

(B) the third day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph.

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application and additional documentation filed with the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is final.

(6) The Department will post to its web site an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (2306.6717(a)(5))

(c) Provision of Information or Allegations Regarding Applications from Unrelated Entities to the Application. The Department will address information or allegations received from unrelated entities to a 2006 Application in the following manner.

(1) Within seven days of the receipt of the information or allegation, the Department will post all information and allegations received (including any identifying information) to the Department's website.

(2) Within seven days of the receipt of the information or allegation, the Department will notify the Applicant related to the information or allegation. The Applicant will then have seven days to respond to all information and allegations provided to the Department.

(3) Within 14 days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this evaluation. The Department will post its determination to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant.

(d) Amendment of Application Subsequent to Allocation by Board. (2306.6712 and 2306.6717(a)(4))

(1) If a proposed modification would materially alter a Development approved for an allocation of a housing tax credit, or if the Applicant has altered any selection criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application.

(2) The Executive Director of the Department shall require the Department staff assigned to underwrite Applications to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with §50.18 of this title shall also provide to the Board an analysis and written recommendation regarding the amendment. For amendments which require Board approval, the amendment request must be received by the Department at least 30 days prior to the Board meeting where the amendment will be considered.

(3) The Board must vote on whether to approve an amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of housing tax credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of three percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density of the Development of at least five percent;

(G) an increase or decrease in the site acreage of greater than 10% from the original site under control and proposed in the Application; and

(H) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

(A) reasonably foreseeable by the Applicant at the time the Application was submitted; or

(B) preventable by the Applicant.

(6) This section shall be administered in a manner that is consistent with the Code, §42.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's web site.

(8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the original Application, the following procedure will apply. For amendments that involve a reduction in the total number of low-income Units being served, or a reduction in the number of low-income Units at any level of AMGI represented at the time of Application, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request, however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment (or an alternative Unit adjustment) is necessary for the continued feasibility of the Development. Additionally, if it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (4% or 9%) for 24 months from the time that the amendment is approved.

(e) Housing Tax Credit and Ownership Transfers. (2306.6713) A Development Owner may not transfer an allocation of housing tax credits or ownership of a Development supported with an allocation of housing tax credits to any Person other than an Affiliate of the Development Owner unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

(1) Transfers will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). A Development Owner seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department.

(2) A Development Owner seeking Executive Director approval of a transfer must provide the Department with documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(3) As it relates to the Credit Cap further described in §50.6(d) of this section, the credit cap will not be applied in the following circumstances:

(A) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(B) in cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(f) Sale of Certain Tax Credit Properties. Consistent with §2306.6726, Texas Government Code, not later than two years before the expiration of the Compliance Period, a Development Owner who agreed to provide a right of first refusal under §2306.6725(b)(1), Texas Government Code and who intends to sell the property shall notify the Department of its intent to sell.

(1) The Development Owner shall notify Qualified Nonprofit Organizations and tenant organizations of the opportunity to purchase the Development. The Development Owner may:

(A) during the first six-month period after notifying the Department, negotiate or enter into a purchase agreement only with a Qualified Nonprofit Organization that is also a community housing development organization as defined by the federal home investment partnership program;

(B) during the second six-month period after notifying the Department, negotiate or enter into a purchase agreement with any Qualified Nonprofit Organization or tenant organization; and

(C) during the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the Department or any Qualified Nonprofit Organization or tenant organization approved by the Department.

(2) Notwithstanding items for which points were received consistent with §50.9(i) of this title, a Development Owner may sell the Development to any purchaser after the expiration of the compliance period if a Qualified Nonprofit Organization or tenant organization does not offer to purchase the Development at the minimum price provided by §42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. §42(i)(7)), and the Department declines to purchase the Development.

(g) Withdrawals. An Applicant may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation, and making any required statements as to the return of any tax credits allocated to the Development at issue.

(h) Cancellations. The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

(1) The Applicant or the Development Owner, or the Development, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;

(2) Any statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Development's Application ineligible for funding pursuant to §50.5 of this title if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

(4) The Applicant or the Development Owner or the Development, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

(i) Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

§50.18. Compliance Monitoring and Material Noncompliance.

The Code, §42(m)(1)(B)(iii), requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for compliance with the provisions of the Code, §42 and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules and procedures for monitoring are set forth in Department Rule §60.1 of this title.

§50.19. Department Records; Application Log; IRS Filings.

(a) Department Records. At all times during each calendar year the Department shall maintain a record of the following:

(1) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(2) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(3) the cumulative amount of Housing Credit Allocations made during such calendar year; and

(4) the remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) Application Log. (2306.6702(a)(3) and 2306.6709) The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1) - (9) of this subsection.

(1) the names of the Applicant and all General Partners of the Development Owner, the owner contact name and phone number, and full contact information for all members of the Development Team;

(2) the name, physical location, and address of the Development, including the relevant Uniform State Service Region of the state;

(3) the number of Units and the amount of housing tax credits requested for allocation by the Department to the Applicant;

(4) any Set-Aside category under which the Application is filed;

(5) the requested and awarded score of the Application in each scoring category adopted by the Department under the Qualified Allocation Plan;

(6) any decision made by the Department or Board regarding the Application, including the Department's decision regarding whether to underwrite the Application and the Board's decision regarding whether to allocate housing tax credits to the Development;

(7) the names of individuals making the decisions described by paragraph (6) of this subsection, including the names of Department staff scoring and underwriting the Application, to be recorded next to the description of the applicable decision;

(8) the amount of housing tax credits allocated to the Development; and

(9) a dated record and summary of any contact between the Department staff, the Board, and the Applicant or any Related Parties.

(c) IRS Filings. The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes Housing Credit Allocations, the original of each completed (as to Part I) IRS Form 8609, a copy of which was mailed or delivered by the Department to a Development Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low-income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of the Carryover Allocation Agreement will be mailed or delivered to the Development Owner by the Department in the year in which the building(s) is placed in service, and thereafter the original will be mailed to the Internal Revenue Service in the time sequence in this subsection. The original of the Carryover Allocation Document will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The original of all executed Agreement and Election Statements shall be filed by the Department with the Department's IRS Form 8610 for the year a Housing Credit Allocation is made as provided in this section. The Department shall be authorized to vary from the requirements of this section to the extent required to adapt to changes in IRS requirements.

§50.20. Program Fees; Refunds; Public Information Requests; Adjustments of Fees and Notification of Fees; Extensions; Penalties.

(a) Timely Payment of Fees. All fees must be paid as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, may cause the Application, commitment or allocation to be terminated.

(b) Pre-Application Fee. Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of $10 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a check will not be accepted. Pre-Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Pre-Application fee. (General Appropriation Act, Article VII, Rider 7; 2306.6716(d))

(c) Application Fee. Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be $20 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be $30 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. (General Appropriation Act, Article VII, Rider 7; 2306.6716(d))

(d) Refunds of Pre-Application or Application Fees. (2306.6716(c)) The Department shall refund the balance of any fees collected for a Pre-Application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 20% of the review, the site visit will constitute 20% of the review, Eligibility and Selection review will constitute 20%, and Threshold review will constitute 20% of the review, and underwriting review will constitute 20%. The Department must provide the refund to the Applicant not later than the 30th day after the date the last official action is taken with respect to the Application.

(e) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation of a Development by an independent external underwriter in accordance with §50.9(d)(6) of this title if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the commitment fee established in subsection (f) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Development Owner.

(f) Commitment or Determination Notice Fee. Each Development Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the commitment notice, a non-refundable commitment fee equal to 5% of the annual Housing Credit Allocation amount. The commitment fee shall be paid by check.

(g) Compliance Monitoring Fee. Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per

tax credit unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the beginning month of the compliance period.

(h) Building Inspection Fee. The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is $750. Inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development. Developments receiving financing through TX-USDA-RHS that will not have construction inspections performed through the Department will be exempt from the payment of an inspection fee.

(i) Tax-Exempt Bond Credit Increase Request Fee. As further described in §50.12 of this title, requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to one percent of the first year's credit amount.

(j) Public Information Requests. Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The Department uses the guidelines promulgated by The Texas Building and Procurement Commission to determine the cost of copying, and other costs of production.

(k) Periodic Adjustment of Fees by the Department and Notification of Fees. (2306.6716(b)) All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish each year an updated schedule of Application fees that specifies the amount to be charged at each stage of the Application process. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(l) Extension and Amendment Requests. All extension requests relating to the Commitment Notice, Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements and amendment requests shall be submitted to the Department in writing and be accompanied by a non-refundable extension fee in the form of a check in the amount of $2,500. Such requests must be submitted to the Department no later than the date for which an extension is being requested. For extensions which require Board approval, the extension request must be received by the Department at least 15 business days prior to the Board meeting where the extension will be considered. . The extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment Notice was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required at Cost Certification, the fee of $2,500 must be received by the Department to qualify for issuance of Forms 8609. Amendment requests must be submitted consistent with §50.17(d) of this title. The Board may waive related fees for good cause.

(m) Penalties. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of 8609's. For non tax-exempt bond funded developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of form 8609's if the tax credits are not returned, and 8609's issued, within 60 days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with §42 Internal Revenue Code.

§50.21. Manner and Place of Filing All Required Documentation.

(a) All Applications, letters, documents, or other papers filed with the Department must be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All notices, information, correspondence and other communications under this title shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941 or for hand delivery or courier to 507 Sabine, Suite 400, Austin, Texas 78701 or more current address of the Department as released on the Department's website. Every such correspondence required or contemplated by this title to be given, delivered or sent by any party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

(c) If required by the Department, Development Owners must comply with all requirements to use the Department's web site to provide necessary data to the Department.

§50.22. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(b) The Department may amend this chapter and the Rules contained herein at any time in accordance with the Government Code, Chapter 2001.

§50.23. Deadlines for Allocation of Housing Tax Credits. (2306.6724)

(a) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program.

(b) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year.

(c) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year. (2306.67022)(§42(m)(1))

(d) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for housing tax credits.

(e) Applications for Housing Tax Credits to be issued a Commitment Notice during the Application Round in a calendar year must be submitted to the Department not later than March 1.

(f) The Board shall review the recommendations of Department staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30.

(g) The Board shall approve final commitments for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final commitments for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than September 30. Department staff will subsequently issue Commitment Notices based on the Board's approval. Final commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.

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

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503578
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-4595

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CHAPTER 51. HOUSING TRUST FUND RULES

10 TAC §§51.1 - 51.11, 51.13

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

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §§51.1 - 51.11 and 51.13, concerning the 2005 Housing Trust Fund Rules.

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

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

Public hearings will be held across the state between September 26 and October 7, 2005 to receive input on this proposed rule repeal. More information on the hearings can be found at http://www.tdhca.state.tx.us/hearings.htm. Comments may be submitted to David Danenfelzer, Program Administrator, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941. Comments must be made within 30 days of this notice.

The sections are proposed to be repealed in order to enact new sections conforming to Chapter 2306 of the Texas Government Code, which governs the administration of the Housing Trust Fund.

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

§51.1. Purpose.
§51.2. Program Goals and Objectives.
§51.3. Definitions.
§51.4. Allocation of Housing Trust Funds.
§51.5. Basic Eligible Activities.
§51.6. Ineligible Activities and Restrictions.
§51.7. Application Procedure and Requirements.
§51.8. Criteria for Funding.
§51.9. Other Program Requirements.
§51.10. Citizen Participation.
§51.11. Records to be Maintained.
§51.13. Waiver.

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 August 22, 2005.

TRD-200503530
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-4595

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10 TAC §§51.1 - 51.11

The Texas Department of Housing and Community Affairs (the Department) proposes new §§51.1 - 51.11, concerning the Housing Trust Fund. The new sections are proposed in order to conform to Chapter 2306 of the Texas Government Code, which governs the administration of the Housing Trust Fund.

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

Ms. Carrington has also determined that for each year of the first five-years the sections are in effect the public benefit anticipated as a result of enforcing the sections will enhance the State's ability to provide decent, safe and sanitary housing for Texans. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Public hearings will be held across the state between September 26 and October 7, 2005 to receive input on the proposed new rules. More information on the hearings can be found at http://www.tdhca.state.tx.us/hearings.htm. Comments may be submitted to David Danenfelzer, Program Administrator, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas

78711-3941. Comments must be made within 30 days of this notice.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by the proposed new sections.

§51.1. Purpose.

This Chapter clarifies the use and administration of the Housing Trust Fund. The Department shall use the Housing Trust Fund to provide loans, grants, or other comparable forms of assistance to local units of government, public housing authorities, nonprofit organizations, income-eligible individuals, families, and households to finance, acquire, rehabilitate, and develop decent, safe, and sanitary housing. The fund is created pursuant to §2306.201 of the Texas Government Code. Pursuant to §2306.202 of the Texas Government Code, the use of the Housing Trust Fund is limited to providing:

(1) assistance for individuals and families of low and very low income;

(2) technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income;

(3) security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income; and

(4) subject to the limitations in §2306.251(c) of the Texas Government Code, the Department may also use the fund to acquire property to endow the fund.

§51.2. Definitions.

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

(1) Administrative Deficiencies--The absence of information or a document from the Application which is important to a review and scoring of the Application as required in this rule, and the Notice of Funding Availability (NOFA).

(2) Applicant--An eligible entity which is preparing to submit or has submitted an application for Housing Trust Fund assistance and is assuming contractual liability and legal responsibility by executing the written agreement with the Department.

(3) Board--The governing board of the Department.

(4) Capacity Building--Educational and organizational support assistance to promote the ability of community housing development organizations and nonprofit organizations to maintain, rehabilitate and construct housing for low, very low, and extremely low-income persons and families. This activity may include:

(A) organizational support to cover expenses for housing development or management related training, technical and other assistance to the board of directors, staff, and members of the nonprofit organizations or community housing development organizations;

(B) technical assistance and training related to housing development, housing management, or other subjects related to the provision of housing or housing services; or

(C) studies and analyses of housing needs.

(5) Community Housing Development Organizations (CHDO)--A nonprofit organization that satisfies the requirements of §53.63 of this title.

(6) Competitive Application Cycle--A competition for funding during a defined period when applications may be submitted in response to a NOFA. Applications will be reviewed and scored in accordance with the rules for application review published in the NOFA, and application guidelines.

(7) Department--The Texas Department of Housing and Community Affairs.

(8) Eligible Applicants--Local units of government, public housing authorities, community housing development organizations, nonprofit organizations, for-profit entities, and persons and families of low, very low, and extremely low income.

(9) Extremely Low-Income Persons and Families--Families whose annual incomes do not exceed 30% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size.

(10) Housing Development Costs--The total of all costs incurred, or to be incurred, by the Development Owner in acquiring, constructing, rehabilitating and financing a Development as determined by the Department based on the information contained in the Application. Such costs include reserves and any expenses attributable to commercial areas.

(11) Housing Development--Any real or personal property, project, building, structure, facilities, work, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, which meets or is designed to meet minimum property standards consistent with those prescribed in the Housing Trust Fund Property Standards, found in the Program Guidelines, for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by persons and families of low, very low, and extremely low income, and persons with special needs. The term may include buildings, structures, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other non-housing facilities, such as administrative, community and recreational facilities the Department determines to be necessary, convenient, or desirable appurtenances.

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

(13) Intergenerational Housing--Housing that includes specific units that are restricted to the age requirements of a Qualified Elderly Development and specific units that are not age restricted in the same Development that:

(A) have separate and specific buildings exclusively for the age restricted units;

(B) have separate and specific leasing offices and leasing personnel exclusively for the age restricted units;

(C) have separate and specific entrances, and other appropriate security measures for the age restricted units;

(D) provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group;

(E) share the same Development site;

(F) are developed and financed under a common plan and owned by the same Person for federal tax purposes; and

(G) meet the requirements of the federal Fair Housing Act

(14) Local Units of Government--A county; an incorporated municipality; a special district; a council of governments; any other legally constituted political subdivision of the state; a public, nonprofit housing finance corporation created under the Local Government Code, Chapter 394; or a combination of any of the entities described here.

(15) Low-Income Persons and Families--Families whose annual incomes do not exceed 80% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size.

(16) New construction--Any Development not meeting the definition of Rehabilitation or Reconstruction.

(17) Nonprofit Organization--Any public or private, nonprofit organization that:

(A) is organized under state or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) has a current tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3), a charitable, nonprofit corporation, or Section 501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective throughout the length of any contract agreements; or classification as a subordinate of a central organization non-profit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and

(D) A private nonprofit organization's pending application for Section 501(c)(3) or (c)(4) status cannot be used to comply with the tax status requirement.

(18) NOFA--Notice of Funding Availability, published in the *Texas Register*.

(19) Open Application Cycle--A defined period during which applications may be submitted in response to a published NOFA and which will be reviewed on a first come-first served basis until all funds available are committed, or until the NOFA is closed. Applications will be reviewed in accordance with the rules for application review published in the NOFA and application guidelines.

(20) Person with Special Needs--

(A) persons with disabilities, persons with alcohol or other drug addictions, persons with HIV/AIDS and their families, the elderly, victims of domestic violence, persons living in Colonias, and migrant farm workers, any of whom also meets the income guidelines of a person of low, very low or extremely low income.

(B) Housing Trust Funds may also be awarded through persons legally responsible for caring for an individual described by subparagraph (A) of this paragraph.

(21) Predevelopment Costs--Reimbursable costs related to a specific eligible housing project including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control, and title clearance;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

(22) Public Agency--A branch of National, State or Local Government.

(23) Public Housing Authority--A housing authority established under the Texas Local Government Code, Chapter 392.

(24) Recipient--Community housing development organization, nonprofit organization, for-profit entity, local unit of government, or public housing authority that is approved by the Department to receive and administer housing trust funds in accordance with these rules.

(25) Reconstruction--The rebuilding of a structure on the same lot where housing is standing at the time of project commitment. During reconstruction, the number of rooms per unit may change, but the number of units may not.

(26) Rehabilitation--The alteration, improvement or modification of an existing structure. It also includes moving an existing structure to a newly constructed foundation. Rehabilitation may include adding rooms outside the existing walls of a structure, but adding a housing unit is considered new construction.

(27) Rental Housing Development--A project for the acquisition, new construction, reconstruction or rehabilitation of multifamily or single family rental housing, or conversion of commercial property to rental housing.

(28) Rural Development--A proposed Development located in an area that is:

(A) outside the boundaries of a Primary Metropolitan Statistical Area (PMSA) or Metropolitan Statistical Area (MSA); or

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

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

(29) State--The State of Texas.

(30) Statute--Texas Government Code 2306.

(31) Very Low-Income Persons and Families--Families whose annual incomes do not exceed 60% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size.

§51.3. Allocation of Housing Trust Funds.

(a) Pursuant to §2306.201 of the Texas Government Code, the Housing Trust Fund is a fund administered by the Department, and placed with the Texas Treasury Safekeeping Trust Company.

(b) The fund consists of:

(1) appropriations or transfers made to the fund;

(2) unencumbered fund balances;

(3) public or private gifts or grants;

(4) investment income, including all interest, dividends, capital gains, or other income from the investment of any portion of the fund;

(5) repayments received on loans made from the fund; and

(6) funds from any other source

(c) Each biennium the first $2.6 million available through the housing trust fund for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for local units of government, public housing authorities, and nonprofit organizations. Any additional funds may also be made available to for-profit organizations so long as at least 45 percent of available funds in excess of the first $2.6 million shall be made available to nonprofit organizations The remaining portion shall be competed for by nonprofit organizations, for-profit organizations, and other eligible entities, pursuant to §2306.202 of the Texas Government Code.

(d) Funds shall be allocated to achieve broad geographic dispersion by awarding funds in accordance with §2306.111(d) and (g), Texas Government Code.

(e) The Department shall require that applicants target at least 50% of those units served by housing trust funds to individuals and families earning less than 60% of median family income.

(f) Bond indenture requirements governing expenditure of bond proceeds deposited in the housing trust fund shall govern and prevail over all other allocation requirements established in this section. However, the Department shall distribute these funds in accordance with the requirements of this section to the extent possible.

(g) Housing Trust Funds may also be allocated to the Texas Bootstrap Loan Program and will be awarded in accordance with section §2306.753 of the Texas Government Code.

§51.4. Basic Eligible Activities.

The Department shall make grants and loans from the Housing Trust Fund to Eligible Applicants for purposes consistent with §51.2 of this title and §2306.202 of the Texas Government Code. Eligible program activities for the Housing Trust Fund include, but are not limited to:

(1) the acquisition, rehabilitation, and new construction of affordable rental housing. Refinancing or rehabilitation of properties constructed within the past 5 years and previously funded by the Department are not eligible;

(2) the acquisition, rehabilitation, new construction of affordable homeownership developments. Developments may be completed by a contracted developer or through Self-Help Construction. Housing that is newly constructed or rehabilitated must meet all applicable local and state codes, rehabilitation standards, ordinances, zoning ordinances, §2306.514 of the Texas Government Code, and all additional standards or codes as specified in the application guide;

(3) tenant-based rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant-based rental assistance also includes security and utility deposits for rental of dwelling units;

(4) predevelopment loans to nonprofit housing development organizations for eligible reimbursable costs associated with the planning and implementation of affordable housing activities;

(5) credit enhancements or security for repayment of revenue bonds issued to finance affordable housing; and

(6) technical assistance or other forms of capacity building to nonprofit housing developers.

§51.5. Ineligible Activities and Restrictions.

(a) Displacement of Existing Affordable Housing. Housing Trust Funds shall not be utilized on a development that has the effect of permanently displacing low, very low, and extremely low income persons and families. Low-Income persons who may be temporarily displaced by the rehabilitation of affordable housing may be eligible for compensation of moving and relocation expenses as permitted under Chapter 2306 of the Texas Government Code and this title.

(b) If a Housing Trust Fund recipient violates the permanent dislocation provision of this subsection, that recipient risks loss of Housing Trust Funds and the landlord/developer must pay the affected tenant's costs and all moving expenses.

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

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

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

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

(d) Ineligible Applicants: The following violations will cause an Applicant, and any applications they have submitted, to be ineligible:

(1) Previously funded recipient(s) whose Housing Trust Funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to the current funding cycle;

(2) Applicants who have not satisfied all threshold requirements described in this title, and the NOFA to which they are responding, and for which Administrative Deficiencies were unresolved;

(3) Applicants who have submitted incomplete applications;

(4) Applicants that have been otherwise barred by the Department;

(5) Applicant or Developer, or their staff, who violate the state revolving door policy, Chapter 572 of the Texas Government Code; or

(6) Any applicant who would otherwise be considered ineligible under §50.5 of this title, excluding those requirements at §50.5(a)(5) - (8), (10) and (11) of this title.

(e) The Department will not recommend an application for funding if it includes a principal who is or has been:

(1) Barred, suspended, or terminated from procurement in a state or federal program and listed in the List of Parties Excluded from Federal Procurement of Non-procurement Programs;

(2) The subject of enforcement action under state or federal securities law, or is the subject of an enforcement proceeding with a state or federal agency or another governmental entity;

(3) If the applicant has unresolved compliance or audit findings related to previous or current funding agreements with the Department; or

(4) Has breached a contract with a public agency.

(f) Material Noncompliance. Each Application will be reviewed for its compliance history by the Department, consistent with Chapter 60 of this title. Applications found to be in Material Noncompliance, will be terminated.

(g) Rental Housing Development Site and Development Restrictions. Restrictions include all those items referred to in Chapter 2306 of the Texas Government Code and any additional items included in the NOFA for rental housing developments.

(h) Limitations on the Size of Developments. 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.

§51.6. Application Procedure and Requirements.

(a) In distributing funds, the Department will release a NOFA and/or request for proposals that identifies the uses of the available funds and the specific criteria that will be utilized in evaluating applicants.

(b) Applicants must submit a complete application to be considered for funding, along with an application fee determined by the Department and outlined in the NOFA. Applications containing false information will be disqualified. Applications submitted under a Competitive Application Cycle must be received by the application deadline or they will be disqualified. Disqualified Applicants will be notified in writing. All applications must be received by the Department by 5:00 p.m. regardless of method of delivery.

(c) Applications received by the Department in response to an Open Application Cycle NOFA for housing development activities will be handled in the following manner:

(1) The Department will accept applications on an ongoing basis, until such date when the Department makes notice to the public that the Open Application Cycle has been closed. All applications must be received during business hours and no later than 5:00 p.m. on any business day. The Department may limit the eligibility of applications in the NOFA.

(2) Each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review.

(A) Phase One will begin as of the received date. Applications not being considered as CHDOs will be passed through to Phase Two upon receipt. Phase One will only entail the review of the CHDO Certification package. The Department will ensure review of these materials and issue notice of any deficiencies on the CHDO Certification package within 30 days of the received date. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Two and will continue to be prioritized by their received date. Applications which do not resolve all deficiencies seven business days will be retained in Phase One until all deficiencies have been addressed or resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to Phase Two. Applications that have not proceeded out of Phase One within 50 days of the received date will be terminated and must reapply for consideration of funds.

(B) Phase Two will include a review of all application requirements. The Department will ensure review of all application materials required under the NOFA and issue notice of any deficiencies on the application's satisfaction of threshold and eligibility within 45 days of the date it enters Phase Two. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Three and will continue to be prioritized by their received date. Applications which do not resolve all deficiencies within seven business days, will be retained in Phase Two until all deficiencies have been addressed or resolved by the Applicant to the Department's satisfaction. Only upon resolution of all deficiencies will the Application be forwarded to Phase Three. Applications that have not left Phase Two within 65 days of the date it entered Phase Two will be terminated and must reapply for consideration of funds.

(C) Phase Three will include a comprehensive review for material noncompliance and financial feasibility by the Department. Financial feasibility reviews will be conducted by the Department's Real Estate Analysis (REA) Division consistent with 10 TAC §1.32, Underwriting Rules and Guidelines. REA will draft an underwriting report that will identify staff's recommended loan terms, the loan or grant amount and any conditions to be placed on the development. The Department will ensure financial feasibility review and issue notice of any required deficiencies for that feasibility review within 45 days of the date it enters Phase Three. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into "Recommended Status" and will continue to be prioritized by their received date. Applications with deficiencies not satisfied within seven business days, will be retained in Phase Three until Applicant resolves all deficiencies to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to the Department's Executive Award Review and Advisory Committee for final approval before recommendation to the Board. Any application that has not left Phase Three after 65 days of the date it entered Phase Three will be terminated and must reapply for consideration of funds.

(D) Upon completion of Phase Three, applications will be presented to the Executive Awards Review and Advisory Committee (the Committee). If satisfactory, the Committee will then recommend the award of funds to the Board, as long as funds are still available for this activity under the applicable NOFA. If Phase Three is completed at least 14 days prior to the next Board meeting, it will be placed on the next Board meeting's agenda. If Phase Three is completed with less than 14 days before the next Board meeting, the recommendation will be placed on the following month's Board meeting agenda.

(E) Because applications are prioritized by "received date," it is possible that the Department will expend all available funds before an application has been completely reviewed. If all funds are committed before an application has completed all phases

of the review process, the Department will notify the applicant that their application will remain active for 90 days in its current phase. If new funds become available applications already under review will continue with their review without losing their received date status. If new funds do not become available within 90 days of the notification, the applicant will be notified that their application is no longer under consideration and in the event of future funding, they would be required to reapply. If on the date an application is received by the Department, no funds are available under this NOFA, the applicant will be notified that no funds remain under the NOFA and that the application will not be processed.

(F) The Department may decline to consider any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. Beyond the use of the "received date", staff will make selections based upon the need for housing in the community where the development is located, the effectiveness with which the proposed use of funds would aid in continuing to provide affordable housing, the general feasibility of the proposed transaction, and the credibility of the applicant. The Department is not obligated to proceed with any action pertaining to any applications which are received, and may decide it is in the Department's best interest to refrain from funding any application. The Department strives, through its terms, to maximize the return on its funds while ensuring the financial feasibility of a development. The Department reserves the right to negotiate individual elements of any application.

(d) Administrative Deficiencies. If an application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the application, the Department staff may request clarification or correction of such Administrative Deficiencies including both threshold and/or scoring documentation. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. Administrative Deficiencies given to Applications submitted under an Open Application Cycle NOFA will be handled in the manner described under Part B of this Section. Applications submitted under a Competitive Application Cycle NOFA will be treated in the following manner. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within five business days of the deficiency notice date, then five points shall be deducted from the application score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement an application in any manner after the filing deadline, except in response to a direct request from the Department.

(e) Applications received by the Department in response to a Competitive Application Cycle NOFA for housing development activities will be handled in the following manner:

(1) Threshold Evaluation. Applications submitted for Rental Housing Developments will be required to meet the Threshold Criteria defined by the NOFA and any Threshold Criteria that may be applicable to the Housing Trust Fund as defined by Chapter 2306 of the Texas Government Code.

(2) Scoring Evaluation. For an Application to be scored, the Application must demonstrate that the Development meets all of the Threshold Criteria requirements. Applications that satisfy the Threshold Criteria will then be scored and ranked according to the Scoring Criteria identified in the NOFA.

(3) Financial Feasibility Evaluation. After the Application is scored, the Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate funding amount and terms. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title.

(f) All applications for housing development activities will be reviewed in the following manner:

(1) A site visit will be conducted. Applicants must receive recommendation for approval from the Department to be considered for funding by the Board.

(2) Board approval for the award of Development activity funds is conditioned upon a completed loan closing and any other conditions deemed necessary by the Department.

(g) Applications other than Rental Housing Developments will be reviewed and evaluated in accordance with the NOFA for that activity.

(h) Applicants may appeal staff's decisions regarding their applications consistent with §1.7 of this title.

(i) Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. 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.

(j) Public Notification. 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 lose its "received by date" under open application cycles, or be terminated under competitive application cycles. Applicants must provide notifications to:

(1) 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;

(2) all neighborhood organizations whose defined boundaries include the location of the Development;

(3) executive officer and Board President of the school district that covers the location of the Development;

(4) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

(5) the State Representative and State Senator whose district covers the location of the Development.

(6) 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.

§51.7. Criteria for Funding.

(a) In considering applications for funding, the Department considers the following requirements under §2306.203, Texas Government Code, and such others as may be enumerated during the funding cycle:

(1) Minimum Eligibility Criteria. To be considered for funding, an Applicant must first demonstrate that it meets each of the following threshold criteria:

(A) the application is consistent with the requirements established in this rule and the NOFA;

(B) the applicant provides evidence of its ability to carry out the proposal in the areas of financing, acquiring, rehabilitating, developing or managing an affordable housing development; and

(C) the proposal addresses and identifies a housing need. This assessment will be based on statistical data, surveys and other indicators of need as appropriate.

(2) Evaluation Factors. Pursuant to §2306.203(c), Texas Government Code, the criteria used to evaluate applications, as more fully reflected in the NOFA, will include at a minimum the:

(A) leveraging of federal funds including the extent to which the project will leverage State funds with other resources, including federal resources, and private sector funds;

(B) cost-effectiveness of a proposed development; and

(C) extent to which individuals and families of very low income and extremely low income are served by the development.

(b) The Board has final approval on all recommendations for funding.

(c) Eligible Applicants that have been approved for funding and that require a material change in the project description must provide a written request for the material change to the Department prior to implementing the change.

(1) A material change may include, but is not limited to, the following:

(A) Change in project site;

(B) Change in the number of units or set asides; and

(C) An increase in funding that is not permitted under subsection (d) of this section.

(2) Failure to comply with this subsection may result in the termination of funding to Applicant.

(d) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to any Housing Trust Fund development proposal or written agreement provided that:

(1) in the case of a modification or amendment to the dollar amount of the request or award, such modification or amendment does not increase the dollar amount by more than 25% of the original request or award, or $50,000, whichever is greater;

(2) in the case of all other modifications or amendments, such modification or amendment does not, in the estimation of the Executive Director, significantly decrease the benefits to be received by the Department as a result of the award; and

(3) Modifications and/or amendments that increase the dollar amount by more than 25% of the original award or $50,000, whichever is greater; or significantly decrease the benefits to be received by the Department, in the estimation of the Executive Director, will be presented to the Board for approval.

§51.8. Other Program Requirements.

(a) Employment opportunities. In connection with the planning and carrying out of any project assisted under the Act, to the greatest extent feasible, opportunities for training and employment shall be given to low, very low, and extremely low-income persons residing within the area in which the project is located.

(b) Conflict of Interest.

(1) Conflict Prohibited. No person described in paragraph (2) of this subsection who exercises or has exercised any functions or responsibilities with respect to Housing Trust Fund activities under the Statute or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from a Housing Trust Fund assisted activity, or have an interest in any Housing Trust Fund contract, subcontract or agreement or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(2) Persons Covered. The conflict of interest provisions of paragraph (1) of this subsection apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of the Recipient.

(c) Right to Inspect and Monitor.

(1) The Department may, at any time, inspect and monitor the records and the work of the project so as to ascertain the level of project completion, quality of work performed, inventory levels of stored material, compliance with the approval plans and specifications, property standards, and program rules and requirements.

(2) Any unsatisfactory findings in the inspection may result in a reduction in the amount of funds requested or termination of funding.

(3) Within 45 days of completion of any construction, and before the release of any retainage funds, Recipients are required to notify the Department of the completion by submitting a certificate of completion and any other documents required by program guidelines, including, but not limited to, the following:

(A) Architect's Certification of Substantial Compliance;

(B) Recipient's Certificate of Substantial Completion; and

(C) Recipient's and Supplier's Release of Lien and warrantee.

(4) The Department performs a final close-out visit and assists owners in preparing for long-term compliance requirements upon completion of project development.

(d) Compliance.

(1) Recipient must maintain compliance with each of its written agreements with the Department.

(2) Restrictions are stated and enforced through a regulatory agreement.

(3) These restrictions include, but are not limited to the following:

(A) Rent restrictions;

(B) Record keeping and reporting; and

(C) Income targeting of tenants.

(4) The Department monitors compliance with project restrictions and any other covenants by Recipient in any Housing Trust Fund agreement. An annual per unit compliance fee of $25.00 may be charged for this review.

(5) Prior to the leasing of any units, project owners are provided guidance and training by the Department to assist project owners in adhering to restrictions and reporting requirements.

(e) For funds being used for multifamily rental properties, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in §1.37 of this title.

(f) Accounting Requirements. Within 60 days following the conclusion of a contract issued by the Department the Recipient shall provide a full accounting of funds expended under the terms of the contract. Failure of a recipient to provide full accounting of funds expended under the terms of a contract shall be sufficient reason to terminate the contract and for the Department to deny any future contract to the recipient.

§51.9. Citizen Participation.

(a) The Department holds at least one public hearing annually, and additional public hearings prior to consideration of any proposed significant changes to these rules, to solicit comments from the public, eligible applicants, and Recipients on the Department's rules, guidelines, and procedures for the Housing Trust Fund.

(b) The Department considers the comments it receives at public hearings. The Board annually reviews the performance, administration, and implementation of the Housing Trust Fund in light of the comments it receives. The Board also reviews funding goals and set-asides relating to Allocation of Housing Trust Funds.

(c) Unless the request is made during a competitive application cycle, Applications for Housing Trust Funds are public information and the Department shall afford the public an opportunity to comment on proposed housing applications prior to making awards.

(d) Complaints will be handled in accordance with the Department's complaint procedures of §1.2 of this title.

§51.10. Records to be Maintained.

(a) Recipients are required, at least on an annual basis, to submit to the Department information required under Chapter 1 of this title, which may include, but is not limited to:

(1) such information as may be necessary to determine whether a project is benefiting low, very low, and extremely low-income persons and families;

(2) the monthly rent or mortgage payment for each dwelling unit in each structure assisted;

(3) such information as may be necessary to determine whether Recipients have carried out their housing activities in accordance with the requirements and primary objectives of the Housing Trust Fund and implementing regulations;

(4) the size and income of the household for each unit occupied by a low, very low, or extremely low-income person or family;

(5) data on the extent to which each racial and ethnic group and households have applied for and benefited from any project or activity funded in whole or in part with funds made available under the Statute. This data shall be updated annually; and

(6) A final statement of accounting upon completion of the project.

(b) Recipients shall maintain records pertinent to the tenant's files for a period of at least three years.

(c) Recipients shall maintain records pertinent to funding awards including but not limited to project costs and certification work papers for a period of at least five years.

(d) Recipient shall maintain records in an accessible location.

§51.11. Waiver.

The Board may, in its discretion, waive any one or more of the rules set forth in this chapter to accomplish its legislative mandates or for other compelling circumstances.

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 August 22, 2005.

TRD-200503526
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-4595

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CHAPTER 53. HOME INVESTMENT PARTNERSHIP PROGRAM

10 TAC §§53.50 - 53.58, 53.60 - 53.63

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

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §§53.50-53.58 and 53.60-53.63, concerning the 2005 HOME Investment Partnerships Program (HOME) Rules.

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

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

Public hearings will be held across the state between September 26 and October 7, 2005 to receive input on this proposed rule repeal. More information on the hearings can be found at http://www.tdhca.state.tx.us/hearings.htm. Comments may be submitted to David Danenfelzer, Program Administrator, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941. Comments must be made within 30 days of this notice.

The sections are proposed to be repealed in order to enact new sections conforming to the requirements of regulations enacted by the United States Department of Housing and Urban Development, Chapter 24 Part 92 of the Code of Federal Regulations, which governs the administration of the HOME program.

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

§53.50. Scope.

§53.51. Definitions.

§53.52. Applicant Requirements.

§53.53. Application Limitations.

§53.54. Program Activities.

§53.55. Prohibited Activities.

§53.56. Distribution of Funds.

§53.57. Allocation Plan.

§53.58. Application Process.

§53.60. Process for Awards.

§53.61. General Selection Criteria.

§53.62. Program Administration.

§53.63. Community Housing Development Organization (CHDO) Certification.

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 August 22, 2005.

TRD-200503529
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-4595

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10 TAC §§53.50 - 53.62

The Texas Department of Housing and Community Affairs (the Department) proposes new §§53.50- 53.62, concerning the HOME Investment Partnerships Program. The new sections are proposed in order to conform to the requirements of regulations enacted by the United States Department of Housing and Urban Development, Chapter 24 Part 92 of the Code of Federal Regulations, which governs the administration of the HOME program.

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

Ms. Carrington has also determined that for each year of the first five-years the sections are in effect the public benefit anticipated as a result of enforcing the section will enhance the State's ability to provide decent, safe and sanitary housing for Texans. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Public hearings will be held across the state between September 26 and October 7, 2005 to receive input on this proposed new rule. More information on the hearings can be found at http://www.tdhca.state.tx.us/hearings.htm. Comments may be submitted to David Danenfelzer, Program Administrator, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941. Comments must be made within 30 days of this notice.

These sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by this section.

§53.50. Purpose.

This Chapter clarifies the use and administration of all funds provided to the Texas Department of Housing and Community Affairs (Department) by the United States Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 United States Code §§12701-12839) and HUD regulations at 24 Code of Federal Regulations (CFR) Part 92. The State's HOME Program is designed to:

(1) focus on the areas with the greatest housing need described in the State Consolidated Plan;

(2) provide funds for home ownership and rental housing through acquisition, new construction, rehabilitation, reconstruction, tenant-based rental assistance, and pre-development loans;

(3) promote partnerships among all levels of government and the private sector, including non-profit and for-profit organizations; and

(4) provide low, very low, and extremely low income Texans with affordable, decent, safe and sanitary housing.

§53.51. Definitions.

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

(1) Activity--A form of assistance by which HOME funds are used to provide incentives to develop and support affordable housing and homeownership through acquisition, new construction, reconstruction, and rehabilitation of housing.

(2) Administrative Deficiencies--The absence of information or a document from the application as required in this rule.

(3) Applicant--An eligible entity which is preparing to submit or has submitted an application for HOME funds and is designated in the application to assume contractual liability and legal responsibility as the Recipient executing the written agreement with the Department.

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

(5) CFR--Code of Federal Regulations.

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

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

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

(7) Community Housing Development Organization (CHDO)--A private nonprofit organization that satisfies the requirements of 24 CFR 92.2 and is certified as such by the Department.

(8) Community Housing Development Organization Pre-Development Loan--A form of assistance in which funds are made available as loans to cover those costs outlined in 24 CFR 92.301.

(9) Competitive Application Cycle--A defined period during which applications may be submitted according to a published Notice of Funding Availability (NOFA). Applications will be reviewed in accordance with the rules for application review published in the NOFA, and application guidelines.

(10) Consolidated Plan--The State Consolidated Plan prepared in accordance with 24 CFR Part 91, which describes the needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs and is subject to approval annually by HUD.

(11) Demonstration Fund--A reserve fund for use alone or in combination and coordination with other programs administered by the Department. This Fund will be available for out of cycle applications, innovative programs brought to the Department for consideration and emergency programs. Additionally, this fund may be used with other programs administered by the Department as outlined in the Consolidated Plan, as approved by the Board.

(12) Department--The Texas Department of Housing and Community Affairs.

(13) Development--Projects that have a construction component, either in the form of new construction or the rehabilitation of multi-unit or single family residential housing that meet the affordability requirements.

(14) Expenditure--Approved expense evidenced by documentation submitted by the Recipient to the Department for purposes of drawing funds from HUD's Integrated Disbursement and Information System (IDIS) for work completed, inspected and certified as complete, and as otherwise required by the Department.

(15) Family--Includes but is not limited to the following types of families as defined in 24 CFR 5.403:

(A) A family with or without children;

(B) An elderly family;

(C) A near elderly family;

(D) A disabled family;

(E) A displaced family;

(F) The remaining member of a tenant family; or

(G) A single person who is not an elderly or displaced person or a person with disabilities or the remaining member of a tenant family.

(16) Homebuyer Assistance--Down payment, closing costs, and gap financing assistance provided to eligible homebuyers. Minor rehabilitation may be combined with Homebuyer Assistance.

(17) HOME--The HOME Investment Partnerships Program at 42 United States Code §§12701-12839 and the regulations promulgated thereafter at 24 CFR Part 92.

(18) Household--One or more persons occupying a housing unit.

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

(20) IDIS--Integrated Disbursement and Information System established by HUD.

(21) Income Eligible Families:

(A) Low-Income Families--Families whose annual incomes do not exceed 80% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size.

(B) Very Low-Income Families--Families whose annual incomes do not exceed 50% of the median family income for the area, as determined by HUD and published by the Department, with adjustments for family size.

(C) Extremely Low Income Families--Families whose annual incomes do not exceed 30% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size.

(22) Intergenerational Housing--Housing that includes specific units that are restricted to the age requirements of a Qualified Elderly Development and specific units that are not age restricted in the same Development that:

(A) have separate and specific buildings exclusively for the age restricted units;

(B) have separate and specific leasing offices and leasing personnel exclusively for the age restricted units;

(C) have separate and specific entrances, and other appropriate security measures for the age restricted units;

(D) provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group;

(E) share the same Development site;

(F) are developed and financed under a common plan and owned by the same Person for federal tax purposes; and

(G) meet the requirements of the federal Fair Housing Act

(23) Match--Eligible forms of non-federal contributions to a program or project in the forms specified in 24 CFR 92.220.

(24) Neighborhood--As defined by HUD, a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

(25) New construction--Any Development not meeting the definition of Rehabilitation or Reconstruction.

(26) NOFA--Notice of Funding Availability, published in the Texas Register.

(27) Nonprofit organization--A public or private organization that:

(A) is organized under state or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) has a current tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3), a charitable, nonprofit corporation, or Section 501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective throughout the length of any contract agreements; or classification as a subordinate of a central organization non-profit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and

(D) A private nonprofit organization's pending application for 501(c) (3) or (c) (4) status cannot be used to comply with the tax status requirement.

(28) Open Application Cycle--A defined period during which applications may be submitted according to a published NOFA and which will be reviewed on a first come-first served basis until all funds available are committed, or until the NOFA is closed. Applications will be reviewed in accordance with the rules for application review published in the NOFA, and/or application guidelines.

(29) Owner-Occupied Housing Assistance--A form of assistance for the purpose of rehabilitating or reconstructing existing owner-occupied housing.

(30) Participating Jurisdiction (PJ)--Any state or unit of general local government, including consortia as specified in 24 CFR 92.101, designated by HUD in accordance with 24 CFR 92.105.

(31) Predevelopment Costs--Reimbursable costs related to a specific eligible housing project including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control, and title clearance;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees;

(C) Predevelopment costs do not include general operational or administrative costs.

(32) Program--Funds provided in the form of a contract to an eligible Applicant for the purpose of administering more than one Project or assisting more than one household.

(33) Program Income--Gross income received by the Department or program administrators directly generated from the use of HOME funds or matching contributions as further described in 24 CFR 92.2.

(34) Project--A site or an entire building (including a manufactured housing unit), or two or more buildings, together with the site or sites on which the building or buildings are located, that are under common ownership, management, and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking under 24 CFR 92.2.

(35) Recipient--A successful applicant that has been awarded funds by the Department to administer a HOME program, including a State Recipient, Subrecipient, for-profit entity, nonprofit entity, or CHDO.

(36) Reconstruction--The rebuilding of a structure on the same lot where housing is standing at the time of Development Application. HOME funds may be used to build a new foundation or repair an existing foundation. During reconstruction, the number of rooms per unit may change, but the number of units may not.

(37) Rehabilitation--Includes the alteration, improvement or modification of an existing structure. It also includes moving an existing structure to a foundation constructed with HOME funds. Rehabilitation may include adding rooms outside the existing walls of a structure, but adding a housing unit is considered new construction.

(38) Rental Housing Development--A project for the acquisition, new construction, reconstruction or rehabilitation of multifamily or single family rental housing, or conversion of commercial property to rental housing.

(39) Rural Development--A Development located within an area which:

(A) is situated outside the boundaries of a primary metropolitan statistical area (PMSA) or a metropolitan statistical area (MSA);

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

(C) in an area that is eligible for new construction or rehabilitation funding by the Texas-United States Department of Agriculture-Rural Housing Service (TX-USDA-RHS).

(40) Single Family Housing Development--A form of assistance to make funds available to HOME eligible Applicants including non-profit organizations, CHDOs, units of general local government, for-profit housing organizations, sole proprietors and public housing agencies for the purpose of constructing single family affordable housing units for homeownership.

(41) Special Needs--Those individuals or categories of individuals determined by the Department to have unmet housing needs consistent with 42 USC §12701 et seq. and as provided in the Consolidated Plan.

(42) State Recipient--A unit of general local government designated by the Department to receive HOME funds.

(43) Subrecipient--A public agency or nonprofit organization selected by the Department to administer all or a portion of the Department's HOME program. A public agency or nonprofit that receives HOME funds solely as a developer or owner of housing is not a Subrecipient. The Department's selection of a Subrecipient is not subject to the procurement procedures and requirements.

(44) Tenant-Based Rental Assistance (TBRA)--A form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant-based rental assistance also includes security deposits and utility deposits for rental of dwelling units.

(45) Unit of General Local Government--A city, town, county, or other general purpose political subdivision of the State; a

consortium of such subdivisions recognized by HUD in accordance with 24 CFR 92.101 and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction. An urban county is considered a unit of general local government under the HOME Program.

§53.52. Allocation of Funds

(a) The Department shall administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12704 et seq.) in accordance with HUD's final HOME rule, 24 CFR Part 92 and Chapter 2306, Texas Government Code. Consistent with the federal HOME rule and the Department annual Consolidated Plan. The HOME program shall:

(1) adopt a goal to apply an aggregate minimum of 25 percent of the division's total housing funds toward housing assistance for individuals and families of extremely low and very low income, pursuant to §2306.111(a) of the Texas Government Code;

(2) expend at least 95 percent of these funds for the benefit of non-participating areas that do not qualify to receive funds under the Cranston-Gonzalez National Affordable Housing Act directly from the United States Department of Housing and Urban Development. All funds not set aside under this subsection shall be used for the benefit of persons with disabilities who live in areas other than non-participating areas, pursuant to §2306.111(c) of the Texas Government Code; and

(3) Allocate funds to all urban/exurban areas and rural areas of each uniform state service region consistent with the Department's Regional Allocation Plan, unless funds are reserved for contract-for-deed conversions or for set-asides mandated by state or federal law, or each contract-for-deed allocation or set-aside allocation equals not more than 10 percent of the total allocation of funds for the program year, pursuant to §2306.111(d) of the Texas Government Code.

(b) The Department shall release an annual allocation plan based on the funding allocation outlined in the Department's Consolidated Plan, and consistent with the Chapter 2306 of the Texas Government Code, after a full accounting of available funds has been determined.

§53.53. Applicant Requirements.

(a) Eligible Applicant. The following organizations or entities are eligible to apply for HOME eligible activities:

(1) nonprofit organizations;

(2) CHDOs;

(3) units of general local government;

(4) for-profit entities and sole proprietors; and

(5) public housing agencies.

(b) Ineligible Applicant: The following violations will cause an Applicant, and any applications they have submitted, to be ineligible:

(1) previously funded Recipient(s) whose HOME funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to the current funding cycle;

(2) applicants who have not satisfied all eligibility requirements described in subsection (f) of this section and the NOFA, and application guidelines to which they are responding, and for which Administrative Deficiencies were unresolved (relating to Applicant Requirements);

(3) Applicants that have failed to make payment on any loans or fee commitments made with the Department;

(4) applicants that have been otherwise barred by HUD and/or the Department;

(5) applicant or developer, or their staff, that violate the state's revolving door policy; or

(6) applicants that may be ineligible in accordance with those requirements at §50.5 of this title, excluding those requirements at §§50.5(a)(5) - (8), (10) and (11) of this Title.

(c) Communication with Department Employees. Communication with Department staff by Applicants that submit a Pre-Application or Application must follow the following requirements. During the period beginning on the date a Development Pre-Application or Application is filed and ending on the date the Board makes a final decision with respect to any approval of that Application, the Applicant or a Related Party, and any Person that is active in the construction, rehabilitation, ownership or Control of the proposed Development including a General Partner or contractor and a Principal or Affiliate of a General Partner or contractor, or individual employed as a lobbyist by the Applicant or a Related Party, may communicate with an employee of the Department about the Application orally or in written form, which includes electronic communications through the Internet, so long as that communication satisfies the conditions established under paragraphs (1) - (3) of this subsection. §50.5(b)(7) of this title applies to all communication with Board members. Communications with Department employees is unrestricted during any board meeting or public hearing held with respect to that Application.

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

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

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

(d) Noncompliance. Each application will be reviewed for its compliance history by the Department, consistent with Chapter 60 of this title. Applications found to be in Material Noncompliance, or otherwise violating the compliance rules of the Department, will be terminated.

(e) Rental Housing Development Site and Development Restrictions. Restrictions include all those items referred to in 24 CFR Part 92 of the HUD HOME program rules, and any additional items included in the NOFA for rental housing developments.

(f) Limitations on the Size of Developments. 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.

(g) Eligibility requirements. An Applicant must satisfy each of the following requirements in order to be eligible to apply for HOME funding and as more fully described in the NOFA and application guidelines, when applicable:

(1) provide evidence of its ability to carry out the Program in the areas of financing, acquiring, rehabilitating, developing or managing affordable housing developments;

(2) demonstrate fiscal, programmatic, and contractual compliance on previously awarded Department contracts or loan agreements;

(3) submit any past due audit to the department in a satisfactory format on or before the application deadline, in accordance with §1.3(b) of this Title;

(4) demonstrate reasonable HOME Program expenditure and project performance on contract(s), as determined through program monitoring; and

(5) demonstrate satisfactory performance otherwise required by the Department and set out in the application guidelines.

(h) If indicated by the Department, Recipients must comply with all requirements to utilize the Department's website to provide necessary data to the Department.

(i) 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 §1.37 of this title.

(j) Public Notification. 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 lose its "received by date" under open application cycles, or be terminated under competitive application cycles. Applicants must provide notifications to:

(1) 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;

(2) all neighborhood organizations whose defined boundaries include the location of the Development;

(3) executive officer and Board President of the school district that covers the location of the Development;

(4) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

(5) the State Representative and State Senator whose district covers the location of the Development.

(6) 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.

(k) An applicant shall 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.

§53.54. Application Limitations.

An eligible Applicant may apply for several eligible activities provided that the total amount requested does not exceed the funding limits established in this section. The Department reserves the right to reduce the amount requested in an application based on program or project feasibility, underwriting analysis, or availability of funds:

(1) Award amount for Owner-Occupied Housing Assistance, Homebuyer Assistance, and Tenant-Based Rental Assistance shall not exceed $500,000 per Activity, per NOFA, except as may be otherwise allowed by the Board.

(2) Award amount for Development activities shall not exceed $3 million, except as may be recommended by staff and otherwise approved by the Board. The Department reserves the right to set maximum loan to value limitations and minimum match requirements on all Development activities.

(3) Award amount for CHDO Operating Expenses shall not exceed in any fiscal year 50% of the CHDO's total annual operating expenses in that fiscal year, or $50,000, whichever is greater. The Department reserves the right to limit an Applicant to receiving no more than one award of CHDO operating funds during the same fiscal year and to further limit the award of CHDO Operating Expenses.

(4) Per unit subsidy for all HOME-assisted housing may not exceed the per-unit dollar limits established by HUD under §221(d)(3) of the National Housing Act which are applicable to the area in which the housing is located, and published by the Department.

(5) Award amount for Disaster Relief shall not exceed $500,000 per State declared disaster, or as may be otherwise allowed by the Board. Only one application per affected unit of general local government may be submitted for each designated disaster. Public housing authorities (PHAs) and Nonprofit organizations may only act as an Applicant, in lieu of the unit of local government, if they are so designated by the affected unit of general local government. Award amount for designated Applicants may not exceed $500,000 per State declared disaster, or as may be otherwise allowed by the Board.

(6) Award amount for CHDO Predevelopment Loans may not exceed $50,000 per application. Applicants may submit only one application per NOFA to cover eligible costs, as defined under §53.54(f) of this title.

§53.55. Program Activities.

All eligible applicants that satisfy the requirements of §53.52 may apply for the following Program Activities:

(1) Owner-Occupied Housing Assistance: Assisted homeowners must be income eligible and must occupy the property as their principal residence. Housing assisted with HOME funds must meet all applicable codes and standards, as specified in the application guide. In addition, housing that is reconstructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR 92.251(a).

(2) Homebuyer Assistance: HOME funds utilized for Homebuyer Assistance are subject to the Department's recapture provisions as approved by HUD in the Consolidated Plan and as outlined in the application guidelines. The eligible uses for Homebuyer Assistance are down-payment assistance, closing cost assistance, gap financing, and in some instances, rehabilitation. The total assistance provided per eligible homebuyer may not exceed the limits as determined or allowed by the Board or the HOME Final Rule.

(3) Rental Housing Development: Eligible Activities include acquisition, new construction, and rehabilitation. Refinancing or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible. Owners of rental units assisted with HOME funds must comply with income and rent restrictions pursuant to 24 CFR 92.252 and keep the units affordable for a period of time, depending upon the amount of HOME assistance provided. Housing assisted with HOME funds must meet all applicable codes and standards, as specified in the application guide. In addition, housing that is newly constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR 92.251(a).

(4) Tenant-Based Rental Assistance: Provides rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant Based Rental Assistance also includes security and utility deposits for rental of dwelling units. Recipients must comply with 24 CFR 92.209 and 92.216.

(5) Single Family Housing Development: Newly constructed housing must meet all applicable codes and standards, as specified in the application guide. In addition, housing that is newly constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR 92.251(a). If eligible, an Applicant that applies for Single Family Housing Development may also apply for Homebuyer Assistance.

(6) CHDO Pre-Development Loans: The Department may set-aside up to 10% of the annual CHDO 15% Set-Aside for pre-development loans in accordance with 24 CFR 92.300(c). Applicants for pre-development loans will be required to have a summary description of a proposed Development and be able to show the necessary development experience to apply, as outlined in the NOFA and application guidelines. Predevelopment loan funds may only be used for activities such as project-specific technical assistance, site control loans, and project-specific seed money. Pre-development loans must be repaid from construction loan proceeds or other project income. In accordance with 24 CFR 92.301, the Board may elect to waive pre-development loan repayment, in whole or in part, if there are impediments to a development that the Department determines are reasonably beyond the control of the CHDO.

(7) Set-Asides: other activities deemed eligible under set-asides defined by the Department and outlined in the Consolidated Plan.

§53.56. Prohibited Activities.

In accordance with 24 CFR 92.214, HOME funds may not be used to:

(1) Provide project reserve accounts, except as provided in §92.206(d)(5), or operating subsidies;

(2) Provide tenant-based rental assistance for the special purposes of the existing Section 8 program, in accordance with Section 212(d) of the Act;

(3) Provide non-federal matching contributions required under any other Federal program;

(4) Provide assistance authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds);

(5) Provide assistance to eligible low-income housing under 24 CFR part 248 (Prepayment of Low Income Housing Mortgages), except that assistance may be provided to priority purchasers as defined in 24 CFR 248.101;

(6) Provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction in the written agreement under 24 CFR §92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see 24 CFR §92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under 24 CFR §92.250;

(7) Pay for the acquisition of property owned by the participating jurisdiction, except for property acquired by the participating jurisdiction with HOME funds, or property acquired in anticipation of carrying out a HOME project;

(8) Pay delinquent taxes, fees or charges on properties to be assisted with HOME funds; or

(9) Pay for any cost that is not eligible under 24 CFR §§92.206 through 92.209.

§53.57. Distribution of Funds.

In accordance with 24 CFR §92.201(b)(1), the Department makes every effort to distribute HOME funds throughout the state according to the Department's assessment of the geographic distribution of housing needs, as identified in the Consolidated Plan. Funds shall also be allocated in accordance with §2306.111(d) and (g), Texas Government Code. The Department receives HOME funds for areas of the state which have not received Participating Jurisdiction (PJ) status from HUD. Section 2306.111(c) of the Texas Government Code requires the Department to award at least 95% of HOME Program funds to entities in nonparticipating jurisdictions. All funds not set aside under this section shall be used for the benefit of persons with disabilities who live in areas other than nonparticipating areas.

(1) CHDO Set-Aside. In accordance with 24 CFR §92.300, not less than 15% of the HOME allocation will be set aside by the Department for CHDO eligible activities. CHDO set-aside projects are owned, developed, or sponsored by the CHDO, and result in the development of rental units or homeownership. Development includes projects that have a construction component, either in the form of new construction or the rehabilitation of existing units. If an insufficient number of qualified applications are received by the deadline, the Department reserves the right to hold additional competitions in order to meet federal set-aside requirements.

(2) Special Needs: In accordance with the Consolidated Plan, funds will be available to eligible Applicants, as defined in §53.52(a) of this title (relating to Applicant Requirements), with a documented history of working with special needs populations and with relevant housing related experience. Applicants may submit applications for eligible activities, as outlined in the Consolidated Plan. If an insufficient number of qualified applications are received, the Department reserves the right to transfer funds remaining in accordance with paragraph (6) of this subsection regarding Redistribution.

(3) Other Set-Asides. In accordance with the Consolidated Plan, funds will be available to eligible Applicants, as defined in §53.52(a) of this title (relating to Applicant Requirements), for those eligible activities outlined under Set-Asides.

(4) Administrative Funds. In accordance with 24 CFR §92.207 up to 10% of the Department's HOME allocation plus 10% of any program income received may be used for eligible and reasonable planning and administrative costs. Administrative and planning costs may be incurred by the Department, State Recipient, Subrecipient, nonprofit entity, or CHDO.

(5) CHDO Operating Expenses. In accordance with 24 CFR §92.208 up to 5% of the Department's HOME allocation may be used for the operating expenses of CHDOs. The Department may award CHDO Operating Expenses in conjunction with the award of CHDO Funds, or through a separate application cycle not tied to a specific Activity.

(6) Redistribution. In an effort to commit HOME funds in a timely manner, the Department may reallocate funds set-aside in accordance with the Consolidated Plan, at its own discretion, to other regions or activities if:

(A) the Department fails to receive a sufficient number of applications from a particular region or Activity;

(B) no applications are submitted for a region; or

(C) applications for a region or Activity do not meet eligibility requirements or minimum threshold scores (when applicable), or are financially infeasible as applicable.

(7) Marginal Applications. When the remainder of the allocation within a region is insufficient to completely fund the next ranked application in the region or Activity, it is within the discretion of the Department to:

(A) fund the next ranked application for the partial amount, reducing the scope of the application proportionally;

(B) make necessary adjustments to fully fund the application; or

(C) transfer the remaining funds to other regions or activities.

(8) HOME Demonstration Fund. The Department, with Board approval, may reserve HOME funds to combine and coordinate with other programs administered by the Department as outlined in the Consolidated Plan, or for housing activities the Department is permitted to fund under applicable law.

§53.58. Application Process.

(a) An Applicant must submit a completed application to be considered for funding, along with an application fee determined by the Department and outlined in the NOFA, and application guidelines. Applications containing false information and applications not received by the deadline will be disqualified. Disqualified Applicants are notified in writing. All applications must be received by the Department by 5:00 p.m. on the date identified in the NOFA, and application guidelines, regardless of method of delivery.

(b) Applications received by the Department in response to an Open Application Cycle NOFA will be handled in the following manner:

(1) The Department will accept applications on an ongoing basis, until such date when the Department makes notice to the public that the Open Application Cycle has been closed. All applications must be received during business hours (8:00 a.m. to 5:00 p.m.) on any business day. The Department may limit the eligibility of applications in the NOFA, and application guidelines.

(2) Each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review.

(A) Phase One will begin as of the received date. Applications not being considered under the CHDO Set-Aside will be passed through to Phase Two upon receipt. Phase One will only entail the review of the CHDO Certification package. The Department will ensure review of these materials and issue notice of any deficiencies on the CHDO Certification package within 30 days of the received date. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Two and will continue to be prioritized by their received date. Applications with deficiencies not cured within seven business days, will be retained in Phase One until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to Phase Two. Applications that have not proceeded out of Phase One within 50 days of the received date will be terminated and must reapply for consideration of funds.

(B) Phase Two will include a review of all application requirements. The Department will ensure review of materials required under the NOFA, and application guidelines and will issue notice of any deficiencies as to threshold and eligibility within 45 days of the date it enters Phase Two. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into Phase Three and will continue to be prioritized by their received date. Applications with deficiencies not cured within seven business days, will be retained in Phase Two until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies, and of threshold and eligibility requirements will the Application be forwarded to Phase Three. An Application that has not proceeded out of Phase Two within 65 days of the date it entered Phase Two will be terminated and must reapply for consideration of funds. Application submitted for non-development Activities will not go through a Phase Three evaluation.

(C) Phase Three will include a comprehensive review for material noncompliance and financial feasibility by the Department. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with §1.32 of this title. REA will create an underwriting report identifying staff's recommended loan terms, the loan or grant amount and any conditions to be placed on the development. The Department will ensure financial feasibility review and issue notice of any required deficiencies for that feasibility review within 45 days of the date it enters Phase Three. Applicants who are able to resolve their deficiencies within seven business days will be forwarded into "Recommended Status" and will continue to be prioritized by their received date. Applications with deficiencies not satisfied within seven business days, will be retained in Phase Three until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon resolution of all deficiencies will the Application be forwarded to the Department's Executive Awards Review and Advisory Committee for recommendation to the Board. Any application that has not finished Phase Three within 65 days of the date it entered Phase Three will be terminated and must reapply for consideration of funds.

(D) Upon completion of the applicable final review Phase, applications will be presented to the Executive Awards Review and Advisory Committee (the Committee). If satisfactory, the Committee will then recommend the award of funds to the Board, as long as HOME funds are still available for this Activity under the applicable NOFA. If the Application is recommended at least 14 days prior to the next Board meeting, it will be placed on the next Board meeting's agenda. If the Application is recommended with less than 14 days before the next Board meeting, the recommendation will be placed on the subsequent month's Board meeting agenda. Applications which are not recommended by the committee will be either returned to Department Staff or terminated.

(E) Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an application has completed all phases of its review. In the case that all HOME funds are committed before an application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for 90 days in its current phase. If new HOME funds become available, applications will continue onward with their review without losing their received date priority. If HOME funds do not become available within 90 days of the notification, the Applicant will be notified that their application is no longer under consideration. The applicant must reapply to be considered for future funding. If on the

date an application is received by the Department, no funds are available under this NOFA, the applicant will be notified that no funds exist under the NOFA and the application will not be processed.

(F) The Department may decline to fund any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any application.

(c) Administrative Deficiencies. If an application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the application, the Department staff may request clarification or correction of such Administrative Deficiencies including both threshold and/or scoring documentation. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. Administrative Deficiencies given to Applications submitted under an Open Application Cycle NOFA will be handled in the manner described under Part B of this Section. Applications submitted under a Competitive Application Cycle NOFA will be treated in the following manner. If Administrative Deficiencies are not cured to the satisfaction of the Department within five business days of the deficiency notice date, then five points shall be deducted from the application score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement an application in any manner after the filing deadline, except in response to a direct request from the Department.

(d) Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, and Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 Texas Administrative Code §1.17.

§53.59. Process for Awards.

(a) The Department will publish a NOFA in the Texas Register and on the Department's website. The NOFA may be published as either an Open or Competitive Application Cycle. The NOFA will establish and define the terms and conditions for the submission of applications, and may set a deadline for receiving applications under a Competitive Application Cycle. The NOFA will also indicate the approximate amount of available funds.

(b) Selection Procedures for non-development Activities such as, Owner Occupied Housing Assistance, Homebuyer Assistance, and Tenant-Based Rental Assistance.

(1) Applications must comply with all applicable HOME requirements or regulations established in 24 CFR Part 92 and in these rules. Applications that do not comply with such requirements are disqualified. Disqualified Applicants are notified in writing.

(2) Applications are ranked from highest scores to lowest in their respective regions or Activity according to HOME Program scores. All funds not subject to the Regional Allocation Formula may be awarded on a first-come, first-serve basis.

(3) Applications must meet or exceed a minimum score determined by Department's staff for the respective activities to be considered for funding.

(4) In event of a tie between two or more Applicants, the Department reserves the right to determine which application will receive a recommendation for funding. This decision will be based on housing need factors and feasibility of the proposed project identified in the application. Tied Applicants may also receive a recommendation for partial funding.

(5) Applicants will be notified of their score in writing no later than seven calendar days after all applications received have been scored. Subsequently, the recommendation regarding their application will be made available on the Department's website at least seven calendar days prior to the Board meeting at which the awards may be approved.

(6) Applications receiving a favorable staff recommendation are then presented to the Board for approval, pending the availability of HOME funds for each Activity.

(7) Applicants may appeal staff's decision regarding their applications in accordance with §1.7 of this title.

(c) Selection Procedures for Development activities, such as, Single Family Housing Development and Rental Housing Development.

(1) Applications must comply with all applicable HOME requirements or regulations established in 24 CFR Part 92, and in these rules. Applications that do not comply with HOME requirements are disqualified. Disqualified Applicants are notified in writing.

(2) Housing Developments activities will undergo a review in accordance with §53.58 of this title governing open and competitive application cycles, as appropriate, and as prescribed in the NOFA, and application guidelines.

(3) 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.

(4) In event of a tie between two or more Applicants, the Department reserves the right to determine which application will receive a recommendation for funding. This decision will be based on housing need factors and feasibility of the proposed project identified in the application. Tied Applicants may also receive a partial recommendation for funding.

(5) Each Development application will be notified of its score in writing no later than seven calendar days after all applications received have been scored. Subsequently, the recommendation regarding their application will be made available on the Department's web site at least seven calendar days prior to the Board meeting at which the awards may be approved.

(6) Applications receiving a favorable staff recommendation are then presented to the Board for approval, pending the availability of HOME funds for such Activity.

(7) Even after Board approval for the award of HOME Development Activity funds may be conditional upon a completed loan closing and any other conditions deemed necessary by the Department.

(8) Applicants may appeal staff's decision regarding their applications in accordance with §1.7 of this title.

§53.60. General Selection Criteria.

At a minimum, the following criteria are utilized in evaluating the applications for HOME funds. The applicable criteria are further delineated in the application guidelines and NOFA, which are part of the application package.

(1) Needs Assessment--Whether the proposed project meets the demographic, economic, and special need characteristics of the population residing in the target area and the need that the HOME program is designed to address, using qualitative and quantitative information, market studies, if appropriate, and other source documentation as delineated in the application guidelines, which are part of the application.

(2) Program Design--Whether the proposed project meets the needs identified in the needs assessment, whether the design is complete and whether the project fits within the community setting. Information required includes, but is not limited to: community involvement; support services and resources; scope of program; income and population targeting; marketing, fair housing and relocation plans, as applicable.

(3) Capability of Applicant--Whether the Applicant has the capacity to administer and manage the proposed program/project, demonstrated through previous experience either by the Applicant, cooperating entity or key staff (including other contracted service providers), in program management, property management, acquisition, rehabilitation, construction, real estate finance counseling and training or other activities relevant to the proposed program, and the extent to which Applicant has the capability to manage financial resources, as evidenced by previous experience, documentation of the Applicant or key staff, and existing financial control procedures.

(4) Financial Feasibility. Applications for funding will be reviewed for financial feasibility based on the Department's underwriting standards for development activities and as outlined in the NOFA and application guidelines . The review will be based on the supporting financial data provided by Applicants and third party reports submitted with the application.

§53.61. Program Administration.

(a) Agreement. Upon approval by the Board, Applicants receiving HOME funds shall enter into, execute, and deliver to the Department all written agreements between the Department and Recipient, including land use restriction agreements and compliance agreements as required by the Department.

(b) Amendments. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to any HOME written agreement provided that:

(1) in the case of a modification or amendment to the dollar amount of the award, such modification or amendment does not increase the dollar amount by more than 25% of the original award or $50,000, whichever is greater; and

(2) in the case of all other modifications or amendments, such modification or amendment does not, in the estimation of the Executive Director, significantly decrease the benefits to be received by the Department as a result of the award.

(3) Modifications and/or amendments that increase the dollar amount by more than 25% of the original award or $50,000, whichever is greater; or significantly decrease the benefits to be received by the Department, in the estimation of the Executive Director, will be presented to the Board for approval.

(c) Deobligation.

(1) The Department reserves the right to deobligate funds in the following situations:

(A) Recipient has any unresolved compliance issues on existing or prior contracts with the Department;

(B) Recipient fails to set-up programs/projects or expend funds in a timely manner;

(C) Recipient defaults on any agreement by and between Recipient and the Department;

(D) Recipient misrepresents any facts to the Department during the HOME application process, award of contracts, or administration of any HOME contract;

(E) Recipient's inability to provide adequate financial support to administer the HOME contract or withdrawal of significant financial support;

(F) Recipient is not in compliance with 24 CFR Part 92, or these rules;

(G) Recipient declines funds; or

(H) Recipient fails to expend all funds awarded.

(2) The Department, with approval of the Board, may elect to reassign funds following the Deobligation Policy, adopted by the Board on January 17, 2002, in the order prioritized as follows:

(A) Successful appeals (as allowable under program rules and regulations);

(B) Disaster Relief (disaster declarations or documented extenuating circumstances such as imminent threat to health and safety);

(C) Special Needs;

(D) Colonias; or

(E) Other projects/uses as determined by the Executive Director and/or Board including the next year's funding cycle for each respective program.

(d) Waiver. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for good cause, as determined by the Board.

(e) Additional Funds. In the event the Department receives additional funds from HUD, the Department, with Board approval, may elect to distribute funds to other Recipients.

(f) Accounting Requirements. Within 60 days following the conclusion of a contract issued by the Department the recipient shall provide a full accounting of funds expended under the terms of the

contract. Failure of a recipient to provide full accounting of funds expended under the terms of a contract shall be sufficient reason to terminate the contract and for the Department to deny any future contract to the recipient.

§53.62. Community Housing Development Organization (CHDO) Certification.

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

(1) Applicant--A private nonprofit organization that has submitted a request for certification as a Community Housing Development Organization (CHDO) to the Department. An Applicant for the CHDO set aside must be a CHDO certified by the Department or as otherwise certified or designated as described in subsection (d) of this section.

(2) Articles of Incorporation--A document that sets forth the basic terms of a corporation's existence and is the official recognition of the corporation's existence. The documents must evidence that they have been filed with the Secretary of State.

(3) Bylaws--A rule or administrative provision adopted by a corporation for its internal governance. Bylaws are enacted apart from the articles of incorporation. Bylaws and amendments to bylaws must be formally adopted in the manner prescribed by the organization's articles or current bylaws by either the organization's board of directors or the organization's members, whoever has the authority to adopt and amend bylaws.

(4) Community--For urban areas, the term "community" is defined as one or several neighborhoods, a city, county, or metropolitan area. For rural areas, "community" is defined as one or several neighborhoods, a town, village, county, or multi-county area, but not the whole state.

(5) Low income--An annual income that does not exceed eighty percent (80%) of the median income for the area, with adjustments for family size, as defined by the U.S. Department of Housing and Urban Development (HUD).

(6) Memorandum of Understanding (MOU)--A written statement detailing the understanding between parties.

(7) Resolutions--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

(b) Application Procedures for Certification of CHDO. An Applicant requesting certification as a CHDO must submit an application for CHDO certification in a form prescribed by the Department. The CHDO application must be submitted with an application for HOME funding under the CHDO set-aside, and be recertified on an annual basis. The application must include documentation evidencing the requirements of this subsection.

(1) Applicant must have the following required legal status at the time of application to apply for certification as a CHDO:

(A) Organized as a private nonprofit organization under the Texas Nonprofit Corporation Act or other state not-for-profit/nonprofit statute as evidenced by:

(i) Charter; or

(ii) Articles of Incorporation.

(B) The Applicant must be registered with the Secretary of State to do business in the State of Texas.

(C) No part of the private nonprofit organization's net earnings inure to the benefit of any member, founder, contributor, or individual, as evidenced by:

(i) Charter; or

(ii) Articles of Incorporation.

(D) The Applicant must have the following tax status:

(i) A current tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3), a charitable, nonprofit corporation, or Section 501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective while certified as a CHDO; or

(ii) Classification as a subordinate of a central organization non-profit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and

(iii) A private nonprofit organization's pending application for 501(c)(3) or (c)(4) status cannot be used to comply with the tax status requirement under this subparagraph.

(E) The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's:

(i) Articles of Incorporation,

(ii) Charter;

(iii) Resolutions; or

(iv) Bylaws.

(F) The Applicant must have a clearly defined service area. The Applicant may include as its service area an entire community as defined in subsection (a)(4) of this section, but not the whole state. Private nonprofit organizations serving special populations must also define the geographic boundaries of its service areas. This subparagraph does not require a private nonprofit organization to represent only a single neighborhood.

(2) An Applicant must have the following capacity and experience:

(A) Conforms to the financial accountability standards of 24 CFR 84.21, "Standards of Financial Management Systems" as evidenced by:

(i) notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department;

(ii) certification from a Certified Public Accountant; or

(iii) HUD approved audit summary.

(B) Has a demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by:

(i) resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with HOME funds; or

(ii) contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with HOME funds, to train appropriate key staff of the organization.

(C) Has a history of serving the community within which housing to be assisted with HOME funds is to be located as evidenced by:

(i) statement that documents at least one year of experience in serving the community; or

(ii) for newly created organizations formed by local churches, service or community organizations, a statement that documents that its parent organization has at least one year of experience in serving the community; and

(iii) The CHDO or its parent organization must be able to show one year of serving the community prior to the date the participating jurisdiction provides HOME funds to the organization. In the statement, the organization must describe its history (or its parent organization's history) of serving the community by describing activities which it provided (or its parent organization provided), such as, developing new housing, rehabilitating existing stock and managing housing stock, or delivering non-housing services that have had lasting benefits for the community, such as counseling, food relief, or child-care facilities. The statement must be signed by the president or other official of the organization.

(3) An Applicant must have the following organizational structure:

(A) The Applicant must maintain at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations in the Applicant's service area. Low-income neighborhoods are defined as neighborhoods where 51 percent or more of the residents are low-income. Residents of low-income neighborhoods do not have to be low income individuals themselves. If a low-income individual does not live in a low-income neighborhood as herein defined, the low-income individual must certify that he qualifies as a low-income individual. This certification is in addition to the affidavit required in clause (ii) of this subparagraph. For the purpose of this subparagraph, elected representatives of low-income neighborhood organizations include block groups, town watch organizations, civic associations, neighborhood church groups, Neighbor Works organizations and any organization composed primarily of residents of a low-income neighborhood as herein defined whose primary purpose is to serve the interest of the neighborhood residents. Compliance with this subparagraph shall be evidenced by:

(i) written provision or statement in the organizations By-laws, Charter or Articles of Incorporation;

(ii) affidavit in a form prescribed by the Department signed by the organization's Executive Director and notarized; and

(iii) current roster of all Board of Directors, including names and mailing addresses. The required one-third low-income residents or elected representatives must be marked on list as such.

(B) The Applicant must provide a formal process for low-income, program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of affordable housing projects. The formal process should include a system for community involvement in parts of the private nonprofit organization's service areas where housing will be developed, but which are not represented on its boards. Input from the low-income community is not met solely by having low-income representation on the board. The formal process must be in writing and approved or adopted by the private nonprofit organization, as evidenced by:

(i) organization's By-laws;

(ii) Resolution; or

(iii) written statement of operating procedures approved by the governing body. Statement must be original letterhead, signed by the Executive Director and evidence date of board approval.

(C) A local or state government and/or public agency cannot qualify as a CHDO, but may sponsor the creation of a CHDO. A private nonprofit organization may be chartered by a State or local government, but the following restrictions apply:

(i) The state or local government may not appoint more than one-third of the membership of the organization's governing body;

(ii) The board members appointed by the state or local government may not, in turn, appoint the remaining two-thirds of the board members;

(iii) No more than one-third of the governing board members may be public officials. Public officials include elected officials, appointed public officials, employees of the participating jurisdiction, or employees of the sponsoring state or local government, and individuals appointed by a public official. Elected officials include, but are not limited to, state legislators or any other statewide elected officials. Appointed public officials include, but are not limited to, members of any regulatory and/or advisory boards or commissions that are appointed by a State official;

(iv) Public officials who themselves are low-income residents or representatives do not count toward the one-third minimum requirement of community representatives in subparagraph (A) of this paragraph; and

(v) Compliance with clauses (i)-(iv) of this subparagraph shall be evidenced by:

(I) organization's By-laws;

(II) Charter; or

(III) Articles of Incorporation.

(D) If the Applicant is sponsored or created by a for-profit entity, the for-profit entity may not appoint more than one-third of the membership of the Applicant's governing body, and the board members appointed by the for-profit entity may not, in turn, appoint the remaining two-thirds of the board members, as evidenced by the Applicant's:

(i) By-laws;

(ii) Charter; or

(iii) Articles of Incorporation.

(E) An Applicant may be sponsored or created by a for-profit entity provided the for-profit entity's primary purpose does not include the development or management of housing, as evidenced in the for-profit organization's By-laws. If an Applicant is associated or has a relationship with a for-profit entity or entities, the Applicant must prove it is not controlled, nor receives directions from individuals, or entities seeking profit as evidenced by:

(i) organization's By-laws; or

(ii) Memorandum of Understanding (MOU).

(4) Religious or Faith-based Organizations may sponsor a CHDO if the CHDO meets all the requirements of this section. While the governing board of a CHDO sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the faith-based organization may retain control over appointments to the board. If a CHDO is sponsored by a religious organization, the following restrictions also apply:

(A) Housing developed must be made available exclusively for the residential use of program beneficiaries and must be made available to all persons regardless of religious affiliations or beliefs;

(B) A religious organization that participates in the HOME program may not use HOME funds to support any inherently religious activities: such as worship, religious instruction, or proselytizing;

(C) HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Sanctuaries, chapels, or other rooms which a faith-based CHDO uses as its principal place of worship are always ineligible for HOME-funded improvements;

(D) Compliance with clauses (A)-(C) of this subparagraph may be evidenced by:

(i) The Organizations By-laws;

(ii) Charter; or

(iii) Articles of Incorporation.

(c) An application for Community Housing Development Organization (CHDO) Certification will only be accepted if submitted with an application to the Department for HOME funds. If all requirements under this section are met, the Applicant will be certified as a CHDO upon the award of HOME funds by the Department. A new application for CHDO certification must be submitted to the Department with each new application for HOME funds under the CHDO set aside.

(d) If an Applicant submits an application for CHDO certification for a service area that is located in a local Participating Jurisdiction, the Applicant must submit evidence of the local taxing jurisdiction or local Participating Jurisdiction certification or designation of the Applicant as a CHDO.

(e) In the case of an Applicant applying for HOME funds (See 5% Disability requirement at §53.52(a)(2) of this Title) from the Department to be used in a Participating Jurisdiction, where neither the Participating Jurisdiction nor the local taxing entity certifies CHDOs outside of the local HOME application process, the Certification process described in this section applies.

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 August 22, 2005.

TRD-200503528
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-4595

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CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER A. COMPLIANCE MONITORING

10 TAC §60.1

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

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of Subchapter A, §60.1, concerning the Compliance Monitoring Policies and Procedures.

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

Ms. Carrington also has determined that for each year of the first five-years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to permit adoption of new rules administered by the Department. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to any person, small business or micro-business required to comply with the repeal as proposed. The proposed repeal will not have an impact on any local economy.

Comments may be submitted to Mike Garrett, Portfolio Management and Compliance Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or by email at the following address: michael.garrett@tdhca.state.tx.us

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

The proposed repeal affects no other code, article or statute.

§60.1. Compliance Monitoring Policies and Procedures.

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

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503521
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-4595

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10 TAC §§60.1 - 60.22

The Texas Department of Housing and Community Affairs (the Department) proposes new Subchapter A, §§60.1 - 60.22, concerning the Compliance Monitoring Policies and Procedures. These sections are proposed new to reflect changing Federal requirements and to clarify the changing role of the Portfolio Management and Compliance Division (PMC). Section structure has been updated to conform with the structure in

the other rules in Title 10. Minor changes have been made to correct grammatical and formatting errors and to add clarifying language. The goal is to have more understandable Rules to eliminate misinterpretation.

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

Ms. Carrington also has determined that for each year of the first five-years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to permit the adoption of new rules for Compliance Monitoring Policies and Procedures within the State of Texas, thereby enhancing the State's ability to provide decent, safe and sanitary housing for Texans through the programs administered by the Department. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to any person, small business or micro-business required to comply with the new rules as proposed. The proposed new rules will not have an impact on any local economy.

Comments may be submitted to Mike Garrett, Portfolio Management and Compliance Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or by email at the following address: michael.garrett@tdhca.state.tx.us

The new rules are proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The proposed new rules affect no other code, article or statute.

§60.1. Purpose.

The Department monitors rental developments receiving assistance under the Housing Tax Credit program (HTC), the HOME Investment Partnerships program (HOME), the Tax Exempt Bond program (BOND), the Housing Trust Fund program (HTF), and the Federal Deposit Insurance Corporation's Affordable Housing Program (AHP) (formerly the Resolution Trust Corporation's Affordable Housing Disposition Program). Compliance monitoring begins with the commencement of construction and continues to the end of the long term Affordability Period. The Portfolio Management and Compliance Division (PMC) monitors to ensure owners comply with the program rules and regulations, Chapter 2306, 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. PMC's processes, eligibility procedures, forms, and additional programmatic details are set out in individual program regulations and in the Owner's Compliance Manual(s) prepared by PMC, as amended from time to time. The rules under this section address processes, reports and records that are required to facilitate the Department's monitoring of a Development for compliance with a program's federal and state rules and regulations. These rules do not address forms and other records that may be required of Development Owners by the Internal Revenue Service (IRS) or other governmental entities more generally, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS or other governmental audit.

§60.2. Definitions.

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

(1) Affordability Period--the affordability period commences as specified in the LURA, or federal regulation or commences on the first day of the compliance period as defined by §42(i)(1) of the Internal Revenue Code (IRC) and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is later. The term of the affordability period shall be imposed by LURA or other deed restriction and may be terminated upon foreclosure. During this period the Department shall monitor to ensure compliance with programmatic rules, regulations and application representations.

(2) Board--the governing board of the Texas Department of Housing and Community Affairs.

(3) 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.

(4) 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, for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by individuals and families of low and very low income and families of moderate income in need of housing. The term includes:

(A) buildings, structures, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, including streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other non-housing facilities, such as administrative, community, and recreational facilities the Department determines to be necessary, convenient, or desirable appurtenances;

(B) single and multifamily dwellings in rural, urban/exurban areas; and

(C) a proposed qualified low income housing project, as defined by §42(g), of the IRC 1986 (26 U.S.C. §42(g)), that consists of one or more buildings containing multiple units, that is financed under a common plan, and that is owned by the same person(s) for federal tax purposes, including a project consisting of multiple buildings that are located on scattered sites and contain only rent-restricted units.

(5) Low Income Unit--a unit that is intended for occupancy by an income eligible household.

(6) Land Use Restriction Agreement (LURA)--an agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest, that encumbers the Development with respect to the requirements of this chapter; Chapter 2306, Texas Government Code; §42 of the IRC; and the requirements of the various programs administered or funded by the Department.

(7) Material Noncompliance--a HTC 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 or, if the HTC development is located outside the state of Texas, and noncompliance is reported to the Department that would be equal to or exceed a noncompliance threshold score of 30 points if measured in accordance with the methodology and point system set forth in this subsection. 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 120 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 150 points. For all programs, a Development will be in material noncompliance if the noncompliance is stated in §60.18 of this chapter to be material noncompliance.

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

§60.3. Development Inspections.

The Department, through PMC, shall conduct inspections during the construction and rehabilitation process and at final construction completion to monitor for compliance with all program requirements, including construction threshold criteria and application Development characteristics associated with any Development funded or administered by the Department. Development inspections will be conducted by the Department or by an independent third party inspector acceptable to the Department and will include a construction quality evaluation. (§2306.081, Texas Government Code)

(1) Inspection procedures for HTC Developments include:

(A) A review of the evidence of commencement of substantial construction. The minimum activity necessary to meet the requirement of substantial construction for new Developments will be defined as having expended 10% of the construction contract amount for the Development, adjusted for any change orders, and as documented by both the most recent Application and Certification for Payment (or equivalent) and the inspecting architect. The minimum activity necessary to meet the requirement of substantial construction for rehabilitation Developments will be defined as having expended 10% of the construction budget as documented by the inspecting architect. Evidence of such activity shall be provided in a format prescribed by the Department.

(B) An interim development inspection to be conducted within two years of the award.

(C) A final Development inspection performed at construction completion. Evidence of construction completion must be submitted within thirty days of completion and shall be provided in a format prescribed by the Department.

(2) Development inspection procedures for non-HTC multifamily Developments include:

(A) An initial development inspection to be conducted within two years from award.

(B) A final Development inspection performed at construction completion. Evidence of completion must be submitted within thirty days of completion and shall be provided in a format prescribed by the Department. The inspection is required by the Department in order to release retainage.

(3) The Department may require a copy of all reports from all construction inspections performed on behalf of the Applicant as needed. Those reports must indicate that the Department may rely on the information provided in the reports.

(4) Additional inspections may be conducted by the Department or by an independent third party Inspector acceptable to the Department during the construction process, if necessary, based on the level of risk associated with the Development, as determined by the Real Estate Analysis Division or PMC. PMC identifies HTC Developments to be at high risk if inspections identify issues with construction threshold criteria and Development characteristics identified at application. The PMC identifies non-HTC Developments to be at high risk if inspections conducted during the construction process identify issues with program requirements or Development characteristics identified at application.

(5) Developments having financing from the United States Department of Agriculture Rural Development (TX-USDA-RHS) will be exempt from these inspections, provided that the Development Owner provides to the Department copies of all inspections made by TX-USDA-RHS throughout the construction of the Development.

§60.4. Monitoring During the Affordability Period.

The Department will monitor compliance with representations made by the Development Owner in the Application and in the LURA, whether required by the applicable program rules, regulations, including HOME Final Rule, §42 of the IRC, §142(d) of the IRC, Treasury Regulations or other rulings of the IRS, the U. S. Department of Housing and Urban Development (HUD) Community Planning and Development (CPD) Notices and Chapters 51 and 53 of this title.

§60.5. Compliance History.

Before the Board approves any project application submitted under this chapter, the department, through PMC shall, pursuant to §2306.057, Texas Government Code:

(1) assess:

(A) the compliance history of the applicant and any affiliate of the applicant with respect to all applicable requirements; and

(B) the compliance issues associated with the proposed project; and

(2) provide to the Board a written report regarding the results of the assessments described by paragraph (1) of this section.

(3) The written report described by paragraph (2) of this section must be included in the appropriate project file for Board and department review.

(4) 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.

(5) In assessing the compliance of the project, applicant, or affiliate, the Board shall consider any relevant compliance information in the department's database created under §2306.081, Texas Government Code, including compliance information provided to the department by the Texas State Affordable Housing Corporation.

§60.6. Section 8 Voucher Holders.

The Department will monitor to ensure development owners comply with §1.14 of this title regarding residents receiving rental assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437F). (§2306.269 and §2306.6728, Texas Government Code).

§60.7. Monitoring of Compliance.

The Department may contract with an independent third party to monitor a Development during construction or rehabilitation and during operation for compliance with any conditions imposed by the Department in connection with funding or other Department oversight and appropriate state and federal laws, as required by other state law or by the Board. (§2306.6719, Texas Government Code).

§60.8. Recordkeeping.

All Development Owners must comply with program recordkeeping requirements. In addition, records including items listed in paragraphs (1) - (12) of this section must be kept for each qualified 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. The Department requires any reports to be submitted electronically and in the format prescribed by the Department. Records must include:

(1) the total number of residential rental units in the Development, including the number of bedrooms;

(2) the move in and move out date for each residential rental unit in the Development;

(3) which residential rental units are low income units and the income level of the residents broken into 30, 40, 50, 60 or 80 percent of the area median income;

(4) the rent charged for each residential rental unit including, with respect to low income units, documentation to support the utility allowance applicable to such unit and any rental assistance received;

(5) the number of occupants in each low income unit;

(6) the low income rental unit vacancies and information that shows when and to whom all available units were rented;

(7) the annual income certification of each tenant of a low income unit, in the form designated by the Department, as may be modified from time to time;

(8) documentation to support each low income tenant's income certification, consistent with the determination of annual income and verification procedures under Section 8 of the United States Housing Act of 1937 (Section 8);

(9) the total number of units, reported by bedroom size, designed for individuals who are physically challenged or who have special needs and the number of these individuals served annually;

(10) the race and ethnicity of the residents of each Development;

(11) the number of units occupied by households receiving government-supported housing assistance and the type of assistance received; and

(12) any additional information as required by the Department.

§60.9. Reporting.

Each Development shall submit reports as required by the Department. Each Development that receives financial assistance or is administered by the Department, including the FDIC's AHP, shall submit the information required under this Section which describes the Annual Owner's Compliance Report (AOCR) required by §2306.0724, Texas Government Code. The Department requires this information be submitted electronically and in the format prescribed by the Department. Section 1.11 of this title contains procedures regarding filing and penalties for failure to file reports.

(1) Part A, the "Owner's Certification of Program Compliance"; Part B, the "Unit Status Report"; and Part C, "Tenant Services Provided Report" of the AOCR, must be provided to the Department no later than March 1st of each year, reporting data current as of January 1 of each reporting year. Part D, "Owner's Financial Certification", which includes the current audited financial statements and income and expenses of the Development for the prior year, shall be delivered to the Department no later than the last day in April each year. A full description of the AOCR is contained in §60.10 of this chapter.

(2) The Department maintains the information reported by the AOCR pursuant to §2306.0724(c), Texas Government Code in electronic and hard-copy formats available at no charge to the public.

(3) Rental developments funded or administered by the Department, including HOME, HTF, the FDIC's AHP , and any other rental programs funded or administered by the Department shall provide tenant information provided on Part B, "Unit Status Report," at least quarterly during lease up and until occupancy requirements are achieved. Once the Department has determined that all occupancy requirements are satisfied, the Development shall submit the Unit Status Report at least annually and as required by this section.

(4) 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.

(5) The Department requires all Owners of properties administered by the Department to submit the Unit Status Report in the electronic format developed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed with the Department no later than January 31, 2005. Developments awarded funds after that date must submit the required forms no later than January 31st of the year following the award. The Department will provide general instruction regarding the electronic transfer of data. The Department may, at its discretion, waive the online reporting requirements. In the absence of a written waiver, all developments are required to submit the Unit Status Report online.

(6) Information regarding housing for persons with disabilities. Owners of state or federally assisted housing developments with 20 or more housing units must report information regarding housing units designed for persons with disabilities pursuant to §2306.078, Texas Government Code. This information will be reported on the Department's website and will include the following:

(A) the name, if any, of the development;

(B) the street address of the development;

(C) the number of housing units in the development that are designed for persons with disabilities and that are available for lease;

(D) the number of bedrooms in each housing units designed for a person with a disability;

(E) the special features that characterize each housing unit's suitability for a person with a disability;

(F) the rent for each housing unit designed for a person with a disability; and

(G) the telephone number and name of the development manager or agent to whom inquiries by prospective tenants may be made.

§60.10. Annual Owner's Compliance Report Certification and Review.

(a) On or before February 1st of each year of the affordability period, the Department will send each rental Development Owner a reminder that the AOCR must be completed by the Owner and submitted to the Department on or before the applicable deadline. The Department requires the AOCR to be submitted electronically. The AOCR shall consist of:

(1) Part A, "Owner's Certification of Program Compliance";

(2) Part B, "Unit Status Report";

(3) Part C, "Tenant Services Provided Report"; and

(4) Part D, "Owner's Financial Certification".

(b) Penalties and sanctions are assessed in accordance with §1.11(d) of this title for failure to provide the AOCR in part or entirety, including administrative penalties and denial of future requests for Department funding.

(c) Any Development for which the AOCR, Part A, "Owner Certification of Program Compliance," is not received or is received past the due date will be considered not in compliance with these rules. If Part A is incomplete, improperly completed or not signed by the Development Owner, it will be considered not received and not in compliance with these rules. The Department will report to the IRS via form 8823, Low-Income Housing Credit Agencies Report of noncompliance or Building Disposition, any HTC development that fails to comply with this section. The AOCR Part A shall include at a minimum the following statements by the Development Owner:

(1) the Development met the minimum set aside test which was applicable to the Development;

(2) there was no change in the Applicable Fraction or low income set aside of any building, or if there was such a change, the actual Applicable Fraction is reported to the Department (HTC only);

(3) the Development Owner has received an annual income certification from each low income resident and documentation to support that certification, in the manner and form required by the Department's Compliance Manual(s), as may be amended from time to time;

(4) documentation is maintained to support each low income tenant's income certification, consistent with the determination of annual income and verification procedures under Section 8 of the United States Housing Act of 1937 (Section 8), notwithstanding any rules to the contrary for the determination of gross income for federal income tax purposes. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the Development Owner declaring that the tenant's income does not exceed the applicable income limit under §42(g) of the IRC as described in the Compliance Manual(s);

(5) each low income unit in the Development was rent-restricted under the LURA and applicable program regulations, including §42(g)(2) of the IRC, or 24 CFR Part 92, and the owner maintained documentation to support the utility allowance applicable to such unit;

(6) all low income units in the Development are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under §42(i)(3)(B)(iii)) of the IRC (HTC and BOND only);

(7) no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this Development. A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;

(8) each unit or building in the Development is, and has been, suitable for occupancy, taking into account Uniform Physical Condition Standards (UPCS) (24 CFR 5.703) or local health, safety, and building codes, and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the Development during this reporting period. If a violation report or notice was issued by the governmental unit during this reporting period, the Development Owner must provide the Department with a copy of the violation report or notice. In addition, the Development Owner must state whether the violation has been corrected;

(9) each unit has been inspected annually and each unit meets conditions set by HUD Housing Quality Standards (HOME only);

(10) there has been no change in the Eligible Basis (as defined by §42(d) of the IRC) for any building in the Development since the last certification or, if change(s), the nature of the change (HTC only);

(11) all tenant facilities included in the original application, such as swimming pools, other recreational facilities, washer/dryer hook ups, appliances and parking areas, were provided on a comparable basis to any tenants in the Development;

(12) Residents have not been charged for the use of any nonresidential portion of the building that was included in the building's Eligible Basis under §42(d) of the IRC (HTC only);

(13) if a low income unit in the Development became vacant during the year, reasonable attempts were made, or are made, to rent that unit or the next available unit of comparable or smaller size to a qualifying low income household before any other units in the Development were, or will be, rented to non low income households (HTC and BOND only);

(14) if the income of tenants of a low income unit in the Development increased above the appropriate limit allowed, the next available unit of comparable or smaller size was, or will be, rented to residents having a qualifying income;

(15) a LURA including an Extended Low Income Housing Commitment as described in §42(h)(6) of the IRC was in effect for buildings subject to §7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308 - 2311, including the requirement under §42(h)(6)(B)(iv) of the IRC, that a Development Owner cannot refuse to lease a unit in the Development to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to §1314c(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438 - 439) (HTC only);

(16) the Development Owner has not been notified by the IRS that the Development is no longer "a qualified low income housing Development" within the meaning of §42 of the IRC (HTC only);

(17) if the Development Owner is required to be a Qualified Nonprofit Organization under §42(h)(5) IRC, that a Qualified Nonprofit Organization owned an interest in and materially participated in the operation of the Development within the meaning under §469(h) of the IRC (HTC only);

(18) no low income units in the Development were occupied by ineligible full time student households (HTC and BOND only);

(19) no change in the ownership of the Development has occurred during the reporting period or changes and transfers were or are reported;

(20) the Development met all representations of the Development Owner in the Application and complied with all terms and conditions which were recorded in the LURA;

(21) the Development has made all required lender deposits, including annual reserve deposits;

(22) the street address and municipality or county in which the Development is located;

(23) the name, address, contact person, and telephone number of the property management or leasing agent;

(24) that no tenants in low-income units were evicted or had their tenancies terminated, including non-renewal of a lease, other than for good cause and that no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under §42 of the IRC (HTC and HOME only);

(25) any additional information as required by the Department.

(d) Review. Department staff will review Part A of the AOCR for compliance with the requirements of the appropriate program including §42 of the IRC.

§60.11. Record Retention Provisions.

Each Development that is administered by the Department 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 paragraphs (1) - (4) of this section.

(1) HTC records, as described in §60.8 of this chapter, must be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

(2) Retention of records for HOME rental developments must comply with the provisions of 24 CFR 92.508(c), which generally requires retention of rental housing records for five years after the affordability period terminates.

(3) 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 costs and documentation, must be retained for at least five years after the affordability period terminates.

(4) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

§60.12. Inspection Provision.

The Department retains the right to perform an on-site inspection of any low income Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by any Extended Low Income Housing Commitment, whichever is later.

(1) The Department will perform on-site inspections and file reviews of each low income Development. The Department will conduct the first review of HTC Developments by the end of the second calendar year following the year the last building in the Development is placed in service. The Department will schedule the first review of all other Developments as leasing commences. Subsequent reviews will occur at least once every three years during the compliance period. The Department will monitor at least 15% of the low income resident files in each Development, and review the income certifications, the documentation the Development Owner has received to support the certifications, the rent records and any additional information that the Department deems necessary. The Department will also conduct a physical inspection of the Development including the exterior of the development, development amenities, and an interior inspection of a sample of units.

(2) The Department may, at the time and in the form designated by the Department, require the Development Owners to submit information on tenant income and rent for each low income unit and may require a Development Owner to submit copies of the tenant files, including copies of the income certification, the documentation the Development Owner has received to support that certification, and the rent record for any low income tenant.

(3) The Department will select the low income units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular unit, tenant records or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an on-site inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review.

(4) The Department will conduct a limited inspection for compliance with accessibility requirements under the Fair Housing Act or Section 504 of the Rehabilitation Act of 1973. If determined necessary the Department may make referrals to appropriate federal and state agencies or order third-party inspections to be paid for by the Development owner.

(5) Exception: The Department may, at its discretion, enter into a Memorandum of Understanding with the TX-USDA-RHS, whereby the TX-USDA-RHS agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed under its Section 515 program. Owners of such buildings may be exempted from the inspection provisions; however, if the information provided by TX-USDA-RHS is not sufficient for the Department to make a determination that the income limitation and rent restrictions are met, the Development Owner must provide the Department with additional information or the Department will inspect according to the provisions contained herein. TX-USDA-RHS Developments satisfy the definition of Qualified Elderly Development if they meet the definition for elderly used by TX-USDA-RHS, which includes persons with disabilities.

§60.13. Inspection Standard.

To determine compliance with property condition standards the Department shall review any local health, safety, or building code violation reports , or notices in the absence of local health, safety and building code violation reports. If deemed necessary by the Department, inspections by third-party inspectors may be requested and will be relied upon to determine compliance with property condition standards. In addition to the review of any local health, safety or building code violation reports, the Department may conduct inspections of the units using HUD's Housing Quality Standards or UPCS and may use those standards to determine compliance with property condition standards. Developments must be maintained to be decent, safe, sanitary and in good repair throughout the affordability period. HTC Developments that fail to comply with local codes or UPCS must be reported to the IRS.

§60.14. Notices to Owner.

The Department will provide prompt 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. The notice will specify a correction

period which will not exceed 90 days from the date of notice to the Development Owner, during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing documentation or certifications. The Department may extend the correction period for up to six months from the date of the notice to the Development Owner if it determines there is good cause for granting an extension. If any communication to the Development Owner under this section is returned to the Department as refused, unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the Development Owner. The Development Owner is responsible for providing the Department with current contact information, including address(es) and phone number(s).

§60.15. Notice to the IRS (HTC Developments only).

(a) Regardless of whether the noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than 45 days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department) but will not be filed before the end of the correction period. The Department will 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 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 of record copies of any IRS 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.

§60.16. Notices to the Department.

If any of the events in paragraphs (1) - (7) of this section occur, written notice must be provided to the Department within the timeframes listed below:

(1) any sale, transfer, exchange, or renaming of the Development or any portion of the Development. Notification must be provided at least 30 days prior to this event. For Rural Developments that are federally assisted or purchased from HUD, the Department shall not authorize the sale of any portion of the Development. Any transfers of ownership must follow procedures as required by the Department (§2306.852, Texas Government Code);

(2) the mailing address of the owner changes. Notification must be provided within 30 days of the address change;

(3) the date the last building in the Development was placed in service. Notification must be provided within 30 days of the placement in service date of the last building; (HTC only)

(4) the Development suffers in whole or in part a casualty loss. Notification must be provided within 30 days following the event of loss;

(5) commencement of leasing activity. Notification must be provided within 30 days following the commencement of leasing activities. In addition, Owners of BOND Developments shall notify the Department of the date 10 percent of the units are occupied and the date 50 percent of the units are occupied within 90 days of such dates;

(6) request for a LURA. Request for a LURA must be provided no later than September 1st of the calendar year in which the owner intends to have it recorded. A request for a LURA received after September 1st may not be processed by the Department in the same calendar year; and

(7) the Development has completed construction/rehabilitation. Notification must be provided within 30 days of construction completion. Evidence of such activity shall be provided in a format prescribed by the Department.

§60.17. Utility Allowances.

(a) The Department will monitor to determine if HTC and BOND properties comply with published rent limits, which include an allowance for utilities. If residents are responsible for some or all utilities, Development owners must use a Utility Allowance that complies with §1.42-10 of the IRC. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one which most closely reflects the actual utility costs in that Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

(b) The Department will monitor to determine if HOME and HTF Developments comply with published rent limits, which include an allowance for utilities. Unless otherwise approved by the Department, HOME and HTF Developments must use the utility allowance established by the applicable housing authority. Changes in utility allowances must be implemented on the published effective date.

§60.18. Material Noncompliance.

For all programs, a Development will be in material noncompliance if the noncompliance is stated in this section to be material noncompliance. Developments with more than one program administered by the Department will be scored by program. The Development will be considered in material noncompliance if the score for any single program exceeds the noncompliance limit for that program. The Department may take into consideration the representations of the Applicant regarding compliance violations; however, the records of the Department are controlling.

(1) Each development that is funded or administered by the Department will be scored according to the type and number of noncompliance events as it relates to the HTC program or other Department programs. 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. Unless otherwise specified below, under the HTC program, noncompliance events issued on Form 8823 are assigned point values. For other programs administered by the Department, unless otherwise specified below, noncompliance events identified during on-site monitoring reviews are assigned point values.

(2) Uncorrected noncompliance 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.

(A) Under the HTC program, noncompliance events that occurred and were identified by the Department through the issuance of the IRS Form 8823 prior to January 1, 1998, are assigned corrected point values to each noncompliance event. The score for these events will no longer be included in the Development's score three years after the date the corrected Form 8823 was executed.

(B) The score in effect on May 1st of the year the HTC program application is submitted during final application for Developments applying for participation in the BOND program, HOME program or HTF program, or during application review of any other program funded or administered by the Department will determine if any rental development disclosed on previous participation forms is in material noncompliance.

(C) The Department will not execute a Carryover Allocation Agreement with any Owner in Material Noncompliance on October 1, 2006.

(D) Any corrective action documentation affecting the compliance status score must be received by the Department thirty days prior to the date the HTC program Application Round closes, thirty days prior to the submission of Volume I of the application for a BOND Development, or thirty days before the submission of an application for any other program funded or administered by the Department.

(3) Events of noncompliance 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 event rather than a score for each building. Other types of noncompliance are identified individually by unit. This type of noncompliance 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.

(4) Each type of noncompliance is assigned a point value. The point value for noncompliance is reduced upon correction of the noncompliance. The scoring point system and values are as described in subparagraphs (A) and (B) of this paragraph. The point system weighs certain types of noncompliance more heavily than others; therefore certain noncompliance events automatically place the development in Material Noncompliance. However, other types of noncompliance by themselves do not warrant the classification of Material Noncompliance. Multiple occurrences of these types of noncompliance events may produce enough points to cause the development to be in Material Noncompliance.

(A) Development Noncompliance items are identified in clauses (i) - (xxviii) of this subparagraph.

(i) Major property condition violations. The development displays major violations of health, safety and building codes. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(7) of this chapter. Corrected is 10 points.

(ii) Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(7) of this chapter. Corrected is 10 points.

(iii) Development is not available to general public. The IRS will be notified of HTC developments reported to the Department, according to the Memorandum of Understanding among the U.S. Department of Treasury, the Department of Housing and Urban Development, and the Department of Justice, to be under investigation of possible violations of the Fair Housing Act. No points are imposed.

(iv) Determination of a violation under the Fair Housing Act. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(7) of this chapter. Corrected is 10 points.

(v) Development is out of compliance and never expected to comply. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(7) of this chapter. No correction is possible; no corrected score assigned.

(vi) Owner failed to pay fees or allow on-site monitoring review. Points will be assigned to this event after written notification to the Development owner. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(7) of this chapter. Corrected is 5 points.

(vii) LURA not in effect. The LURA was not executed within the required time period. Uncorrected, this is material noncompliance. This event will be assigned points upon written notification to the owner. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(7) of this chapter. Corrected is 5 points.

(viii) Developments awarded HTC January 1, 2004, or later, that are foreclosed by a lender, or the General Partner is removed by a syndicator due to reasons other than market conditions. Points associated with a foreclosure will be assigned at the time the 8823 is sent to the IRS. Points associated with the removal of the General Partner will be assigned upon written notification to the former General Partner. 25 points. No correction is possible; no corrected score assigned.

(ix) Development failed to meet minimum low-income occupancy levels. Development failed to meet required minimum low-income occupancy levels of 20/50 (20% of the units occupied by tenants with household incomes of less than or equal to 50% of Area Median Gross Income) or 40/60. Uncorrected is 20 points. Corrected is 10 points. (HTC and BOND only)

(x) No evidence of, or failure to certify to, non-profit material participation for an Owner having received an allocation from the Nonprofit Set-Aside. Uncorrected is 10 points. Corrected is 3 points.

(xi) The Development failed to meet additional State required rent and occupancy restrictions. The LURA requires the Development to lease units to low income households at multiple income and rent tiers. This event refers to the condition when the lower tiers are not satisfied. Uncorrected is 10 points. Corrected is 3 points.

(xii) The Development failed to provide required supportive services as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(xiii) The Development failed to provide housing to the elderly as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(xiv) Failure to provide special needs housing. Development has failed to provide housing for tenants with special needs as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(xv) The Development Owner failed to provide required annual notification to the local administering agency for the Section 8 program. Uncorrected is 5 points. Corrected is 2 points.

(xvi) Changes in Eligible Basis. Changes occur when common areas become commercial, fees are charged for facilities, etc. Uncorrected is 10 points. Corrected is 3 points. (HTC only)

(xvii) Owner failed to post Fair Housing Logo and/or poster in leasing offices. Uncorrected is 3 points. Corrected is 1 point.

(xviii) Failure to submit part or all of the AOCR or failure to submit any other annual, monthly, or quarterly report required by the Department. Uncorrected is 10 points. Corrected is 3 points.

(xix) Owner failed to make available or maintain a management plan with required language as required under §1.14 of this title. Uncorrected is 3 points. Corrected is 1 point.

(xx) Owner failed to approve and distribute an Affirmative Marketing Plan as required under §1.14 of this title. Uncorrected is 3 points. Corrected is 1 point.

(xxi) Pattern of minor property condition violations. Development displays a pattern of property violations; however, those violations do not impair essential services and safeguards for tenants. Uncorrected is 10 points. Corrected is 5 points.

(xxii) Development failed to comply with requirements limiting minimum income standards for Section 8 residents. Complaints verified by the Department regarding violations of the income standard which cause exclusion from admission of Section 8 resident(s) results in a violation. Uncorrected score 10 points. Corrected 3 points.

(xxiii) Owner defaults on payments of Department loans for a period exceeding 90 days. Uncorrected, this is material noncompliance. Points will be assigned under this event after written notice to the Development Owner. Uncorrected is equal to the material noncompliance status threshold score as defined in §60.2(7) of this chapter. Corrected is 10 points.

(xxiv) Utility Allowance not calculated properly. Uncorrected 3 points. Corrected 1 point.

(xxv) Failure to comply with the Next Available Qualifying Unit Rule. Uncorrected 3 points. Corrected 1 point.

(xxvi) Owner failed to execute required lease provisions or exclude prohibited lease language. Uncorrected 3 points. Corrected 1 point (All programs except HTC)

(xxvii) Failure to provide annual Housing Quality Standards inspection. Uncorrected 10 points. Corrected 3 points. (HOME Only)

(xxviii) Development has failed to establish and maintain a reserve account in accordance with §1.37 of this title. Points will be assigned under this event after written notice to the Development Owner. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in sub §60.2(7) of this chapter. Corrected is 10 points.

(B) Unit Noncompliance items are identified in clauses (i) - (xi) of this subparagraph.

(i) Unit not leased to Low Income Household. Development has units that are leased to households whose income was above the income limit upon initial occupancy. Uncorrected is 3 points. Corrected is 1 point.

(ii) Low-income units occupied by nonqualified full-time students. Uncorrected is 3 points. Corrected is 1 point. (HTC and BOND only)

(iii) Low income units used on transient basis. Uncorrected is 3 points. Corrected is 1 point. (HTC and BOND only)

(iv) Household income increased above the re-certification limit and an available Unit was rented to a market tenant. Uncorrected is 3 points. Corrected is 1 point.

(v) Gross rent exceeds the highest rent allowed under the LURA or other deed restriction. Uncorrected is 3 points. Corrected is 1 point.

(vi) Failure to maintain or provide tenant income certification and documentation. Uncorrected is 3 points. Corrected is 1 point.

(vii) Casualty loss. Units not available for occupancy due to natural disaster or hazard due to no fault of the Owner. This carries no point value. Casualty losses are reported to the IRS on HTC Developments.

(viii) When a low income Unit became vacant, owner failed to lease (or make reasonable efforts to lease) to a low income household before any units were rented to tenants not having a qualifying income. Uncorrected is 3 points. Corrected is 1 point.

(ix) Unit not available for rent. Unit is used for non-residential purposes excluding unavailable Units due to casualty and manager-occupied Units. Uncorrected is 3 points. Corrected is 1 point.

(x) Qualifying unit designation removed from household. Uncorrected is 3 points. Corrected is 1 point. (FDIC's AHP only)

(xi) Development evicted or terminated the tenancy of a low income tenant for other than good cause. Uncorrected is 10 points. Corrected is 3 points. (HTC and HOME only)

§60.19. Alternative Dispute Resolution Policy.

In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act, Chapter 2009 Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants and other interested persons to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expediously resolve disputes. If at any time an applicant or other person would like to engage the Department in an ADR process, the person may send a proposal to the Department's Dispute Resolution Coordinator . 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.

§60.20. 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, HOME program regulations, BOND program requirements, and all other programs monitored by the Department.

§60.21. Applicability to All Programs.

Unless otherwise noted, these provisions apply to all Developments administered by the Department including the FDIC's AHP.

§60.22. Waiver.

The Board, in its discretion and within the limits of law, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

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

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503522
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 475-4595

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.305

The Texas Lottery Commission proposes amendments to 16 TAC §401.305 relating to the "Lotto Texas" on-line game. The proposed amendments provide that the jackpot amount paid is the greater of either the advertised jackpot or the jackpot based on sales determined, in part, by prevailing market rates. The amendments also clarify that the agency receives investment information from the Texas Treasury Safekeeping Trust Company and uses that information to calculate the interest factor. The interest factor is used in determining the advertised jackpot. The amendments also require the commission to develop internal procedures intended to ensure that advertised jackpots are based on a fair and reasonable projection of sales. The amendments clarify the definition of the term "net present cash value option". The amendments also clarify the amount actually paid, for the jackpot prize, as either a winner's share of the advertised jackpot or the winner's share of the jackpot based on sales determined, in part, by prevailing market rates. Additionally, the amendments provide that if insufficient funds exist to pay the advertised jackpot after using available funds from the direct prize category, indirect prize category and the Lotto Texas prize reserve fund, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, Section 466.355. The proposed amendments also require the commission to place on its website information the commission uses to estimate the jackpot that is then advertised as well as information that the commission uses to determine the jackpot amount the commission pays.

Benito Navarro, Acting Financial Administration Manager, has determined for each year of the first five years the section is in effect there will no additional fiscal implications for state or local government as a result of enforcing or administering the rule. Additionally, there is no fiscal impact on small or micro businesses and on local or state employment as a result of implementing the section.

Robert Tirloni, Products Manager, Lottery Operations Division, has determined that for each of the first five years the section as proposed is in effect, the public benefit anticipated as a result of the proposed amendments is that the commission will pay the greater of either the advertised jackpot or the jackpot based on sales determined in part by the cost of securities. As a result, the players will know the jackpot amount, at a minimum, is the advertised jackpot. An additional public benefit anticipated is that, in connection with the jackpot amount, players will know what funds are available to pay that amount. An additional public benefit is anticipated from making available on the agency's website the information the commission uses to estimate the advertised jackpot and to calculate the jackpot amount the commission will pay.

Written comments on the proposed amendment may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, by facsimile, or via the agency's website online public comment form. Comments must be received within 30 days after the proposed amendments are published in the Texas Register to be considered. The Texas Lottery Commission will also conduct a hearing to receive comment on the proposed amendments on September 9, 2005 at 10:00 a.m. at the Commission auditorium, 611 E. Sixth Street, Austin, Texas.

The amendments are proposed under Government Code, Section 466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and under Government Code, Section 467.102 which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The amendments implement Government Code, Chapter 466 and specifically, Government Code, Section 466.451.

§401.305. "Lotto Texas" On-Line Game Rule.

(a) (No change.)

(b) Definitions. In addition to the definitions provided in §401.301 of this title (relating to General Definitions), and unless the context in this section otherwise requires, the following definitions apply.

(1) Advertised jackpot--The jackpot amount the commission estimates for each Lotto Texas drawing and authorizes commission vendors to publicize. The advertised jackpot or share of the advertised jackpot is the minimum amount the commission may pay as the annual payment option in 25 annual payments consistent with the provisions of this rule. The advertised jackpot is determined by the indirect prize category and by estimating the direct prize category and may be increased prior to the draw by the commission based on revised sales projections. Advertised jackpots are based, in part, on an interest factor. The agency calculates the interest factor based on investment information obtained from the Texas Treasury Safekeeping Trust Company. The commission shall develop internal procedures intended to ensure that advertised jackpots are based on a fair and reasonable projection of sales.

(2) Annual payment option--The option for payment in annual payments that can be selected by the player at the time of ticket purchase. This option is chosen automatically for the player if no payment option is selected by the player at time of ticket purchase. The

option is to be paid the jackpot amount in 25 annual payments, in the event the player has a valid winning jackpot ticket and consistent with the provisions of the rule.

(3) Jackpot amount--The [For the first four Lotto Texas drawings in the roll cycle, the] jackpot amount is the greater of either the advertised jackpot or the jackpot based on sales determined in part by the cost of securities [applicable interest rate factor]. [For all subsequent Lotto Texas drawings in the roll cycle, the jackpot amount will be the jackpot based on sales determined in part by the applicable interest rate factor.] The amount actually paid will either be a winner's share of the advertised [net present cash value of the] jackpot [amount] or a winner's share of the jackpot based on sales determined, in part, by the cost of securities [amount], depending on the payment option and consistent with the provisions of the rule.

(4) Net Present Cash value option--An election a player must make at the time the player purchases a ticket in order to be paid the net present cash value of the player's share of the jackpot amount, in the event the player has a valid winning jackpot ticket. The net present cash value of the advertised jackpot is the cost that the Texas Treasury Safekeeping Trust Company [Comptroller of Public Accounts] informs the commission is the cost to purchase a 25-year annuity for the advertised jackpot amount on the first business day after the drawing, plus any funds remaining in the first prize (jackpot) prize category. The net present cash value of the jackpot based on sales is the net present cash value of the advertised jackpot plus any funds remaining in the first prize (jackpot) prize category. The term "net present cash value option" is synonymous with the terms "cash value option", and "cash option"[, and "net present value"].

(5) Number--Any play integer from one through 44 inclusive.

(6) Play--The six numbers selected on each play board and printed on the ticket. Five numbers are selected from the first field of 44 numbers and one number is selected from the second field of 44 numbers.

(7) Play board--Two fields of 44 numbers each found on the playslip.

(8) Playslip--An optically readable card issued by the commission used by players of Lotto Texas to select plays. There shall be five play boards on each playslip identified at A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

[(9) Roll Cycle--Consists of all consecutive drawings in which no jackpot (first prize) ticket is sold. The first drawing after a jackpot ticket is sold is considered the first drawing in the roll cycle.]

(c) - (d) (No change.)

(e) Prizes for Lotto Texas.

(1) Prize amounts. The prize amounts, for each drawing, paid to each Lotto Texas player who selects a matching combination of numbers will vary due to a pari-mutuel calculation, with the exception of the sixth, seventh and eighth prize, which are guaranteed prizes of $5.00, $5.00 and $3.00 respectively. The calculation of pari-mutuel prize categories 2 through 5 shall be rounded down so that prizes can be paid in multiples of whole dollars. Each prize category breakage will carry forward to the next drawing for each respective prize category. The pari-mutuel prize amounts, except the jackpot [prize] amount, are based on the total amount in the prize category for that Lotto Texas drawing distributed equally over the number of matching combinations in each prize category. The [For the first four Lotto drawings in the roll cycle, the] jackpot amount will be the greater of either the advertised jackpot or the jackpot based on sales determined, in part, by the cost of securities [applicable interest rate factor]. [For all subsequent drawings in the roll cycle, the jackpot amount will be the jackpot based on sales determined in part by the applicable interest rate factor.] The amount actually paid will either be a winner's share of the advertised [net present cash value of the] jackpot [amount] or a winner's share of the jackpot based on sales determined, in part, by the cost of securities [amount], depending on the payment option and consistent with the provisions of the rule.
Figure: 16 TAC §401.305(e)(1)

(2) (No change.)

(3) Prize categories.

(A) First prize (jackpot).

(i) A share is the matching combination, in one play, of all five numbers drawn (in any order) by the commission from the first field of 44 numbers in addition to matching the number drawn from the second field of 44 numbers. In the event of a prize winner who does not select the net present cash value option, the prize winner's share of the jackpot amount shall be paid in 25 annual installments. To determine the annuitized future value of each share (prize amount), the annuitized future value of the jackpot amount is divided by the shares. Each share will be paid in 25 installments. The initial payment shall be paid only upon completion of all internal validation procedures. The subsequent 24 payments shall be paid annually by monies generated by the purchase of securities which shall be purchased through the Texas Treasury Safekeeping Trust Company [Comptroller of Public Accounts-Treasury Operations, State of Texas,] after each drawing for which lottery records reflect the sale of one or more winning Lotto Texas first prize or jackpot plays [, and the value of the 24 installments shall be determined by the face or market value of said securities at purchase]. Annual installment payments shall be based on the annual maturity value of the securities purchased. The payment of annual installments [annuities] will be made on the 15th day of the anniversary of the month in which the drawing occurred [ticket won]. If the net present cash value of each share is equal to or greater than the amount required to pay an initial first-year cash installment and 24 subsequent annuitized annual installments yielding total payments greater than $2 million, each share shall be paid in 25 installments in the same manner as described in this paragraph. If the net present cash value of each share is less than the amount required to pay an initial first-year cash installment and 24 subsequent installments yielding total payments of $2 million or less, each share shall be paid the net present cash value of each share in one payment.

(ii) In the event of a prize winner who selects the net present cash value option, the prize winner's share will be paid in a single[, lump sum] payment based on the [discounted,] net present cash value of the prize winner's share of the jackpot amount on the next business day after the drawing. The player must make the election of the net present cash value option at the time of purchasing a Lotto Texas ticket. If the player does not make any election at the time of purchasing a Lotto Texas ticket, the share will be paid in accordance with clause (i) of this subparagraph.

(iii) The jackpot prize must be claimed at the Austin claim center. [The jackpot amount is determined by the indirect prize category and by estimating the direct prize category.] The total prize category contribution for a drawing will include the following.

(I) The direct prize category contribution shall be no less than 75.20% of the prize pool for the drawing.

(II) The indirect prize category contribution[~~, which may be increased by the executive director,~~] will include the roll-over from the previous drawing, if any.

(III) The [~~For the first four Lotto Texas drawings in the roll cycle, the~~] commission will pay the greater of either the advertised jackpot or the jackpot based on sales determined, in part, by the cost of securities [~~applicable interest rate factor. For all subsequent drawings in the roll cycle, the commission will pay the jackpot based on sales determined in part by the applicable interest rate factor.~~] The amount actually paid will either be a winner's share of the advertised [~~net present cash value of the~~] jackpot [~~amount~~] or a winner's share of the jackpot based on sales determined, in part, by the cost of securities [~~amount~~], depending on the payment option and consistent with the provisions of the rule.

(IV) If insufficient funds exist to pay the advertised jackpot after using available funds from the direct prize category, indirect prize category and the Lotto Texas prize reserve fund, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, Section 466.355.

(B) - (H) (No change.)

(4) (No change.)

(f) - (h) (No change.)

(i) Information on the agency website.

(1) For each advertised jackpot, the commission shall place the following information on the agency website once the commission has approved the jackpot amount to be advertised:

(A) The projected and past draw sales, if any;

(B) The interest factor calculated by the commission based on investment information obtained from the Texas Treasury Safekeeping Trust Company and used by the commission to determine the advertised jackpot; and,

(C) Other information the commission uses to estimate the advertised jackpot.

(2) After the commission determines a ticket has been sold matching five numbers from the first field of 44 numbers plus the number drawn from the second field of 44 numbers and the commission has either purchased the 25-year annuity for that jackpot prize or has determined the net present cash value, the commission shall place the following information for each jackpot amount on the agency website.

(A) Net draw sales; and,

(B) Other information the commission uses to calculate the jackpot prize amount, including information received from the Texas Treasury Safekeeping Trust Company.

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 August 19, 2005.

TRD-200503491
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.6

The Texas Funeral Service Commission (Commission) proposes an amendment to §203.6, concerning Provisional Licensees.

The amendment is proposed because existing subsection (c) contains language relating to the oral exit interview and is no longer needed after the approval of the commission at the May, 2004 meeting to discontinue the oral exit interviews. Clarification of a cancelled license is also needed. Clarification is also needed in existing subsections (k) and (l) relating to the examination requirements for licensure.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that for each of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be eliminating the oral exit interviews in order to expedite the licensure of qualified applicants thereby allowing them to be placed into the community sooner. There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment to is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.6. Provisional Licensees.

(a) Participants in the provisional licensure program may serve as provisional licensees only in funeral establishments or commercial embalming establishments licensed by the commission, and all work must be performed under the direct and personal supervision of a duly licensed funeral director or embalmer, depending on the provisional license. The provisional funeral director program may not be served in a commercial embalming establishment.

(b) Provisional licensees must work in a funeral establishment or commercial embalming establishment a minimum of 17 hours per week or 73 hours per month, or as otherwise permitted by the commission, under actual working conditions directly related to funeral directing and/or embalming.

(c) The provisional licensure period is a minimum of 12 and a maximum of 24 consecutive months, beginning on the date of the first training report filed with the commission. [~~The licensure period may be extended pursuant to an exit interview.~~] The provisional licensure

programs for funeral director and embalmer may be served simultaneously. [If a provisional license will be cancelled and may be reinstated only upon petition to the commission after retaking and passing the applicable examinations.]

(d) Provisional licenses issued after the effective date of this amendment expire on the last day of the month twelve months from their issue date. No fees shall be refunded to provisional licensees [licenses] who fail to complete the program. [Provisional licenses must be renewed for any period following the first year if the program has not been completed, the exit interview and all applicable examinations taken and passed, and fees paid in full for a regular license. Fees are not refundable.]

(e) Of the 60 cases required for each provisional licensure program, at least 10 must be complete cases and performed and reported during the last three months of the program. A complete funeral directing case consists of all major actions from the time of first call through interment or other disposition of the body; a complete embalming requires the provisional embalmer to handle all major actions included in §203.16 of this title (relating to Minimum Standards for Embalming and Reporting Embalming Procedures) performed on a particular body. Cases performed in mortuary college may count toward the required cases if the college certifies to the commission that the cases were performed.

(f) Provisional licensees shall retain copies of all training reports with supporting documentation for all case credit claimed for 2 years from the date of the training report.

(g) A provisional embalmer shall assist in the embalming of six autopsied remains during the course of the provisional embalmer program. Autopsied cases completed while in an accredited mortuary college may count toward the six required autopsy cases if the college certifies to the commission that the cases were performed.

(h) Provisional licensees must file with the commission a case report for each month of the provisional license program by the 10th day of the next month. Case report submission post marked after the 10th day of the month will not be accepted. The licensee will not be given credit for those case reports. In any month in which the provisional licensee does not perform a case, the provisional licensee must file a "notwithstanding" report with the commission, and that month will not count toward the 12 required months. If a provisional licensee files "notwithstanding" reports for two consecutive months, the licensee is required to restart the provisional licensee program. Similarly, provisional licensees who fail to file a case report within 90 days after receiving the provisional license shall submit a new provisional license application and pay a new provisional license fee.

(i) It is the responsibility of the sponsor of the provisional, the funeral director in charge of the establishment, and the provisional licensee to schedule case work sufficient for reporting in the provisional program. Penalties for failure to file case reports in a timely manner may lie against the sponsor of the provisional licensee. The commission may start a provisional licensure program over if the provisional licensee fails on two occasions to timely file a case report.

(j) Each case report shall be certified by the licensee under whom the provisional licensee performed the work. The supervising licensee and the provisional licensee both are subject to disciplinary action if the information submitted is not true and accurate.

(k) [Before a provisional licensee is issued an embalmer's license, the professional licensee must take and pass the national Board Examination with at least a grade of 75%. Both tests are administered by the International Conference of Funeral Service Examining Boards, Inc.] Examination Requirements

(1) Applicants for licensure as a funeral director from the certificate program must sit for the Texas State Board Examination administered by the International Conference of Funeral Service Examining Boards, Inc. (International Conference).

(2) Applicants for licensure who hold associate of applied science degrees are required to sit, as applicable, for either or both of the National Board Examinations in Funeral Directing and Embalming administered by the International Conference.

(3) All applicants for licensure shall sit for the State Mortuary Law Examination administered by the commission.

(4) A passing score is 75% for each examination described in paragraphs (1) - (3) of this subsection. Passing scores are not determined by averaging scores on two or more examinations.

[(l) Before a provisional licensee is issued a regular license, a provisional licensee must take and pass the Texas State Mortuary Law Exam with at least a grade of 75%. The test is administered by the commission.]

(l) [(m)] If a provisional licensee leaves the employment of a funeral director or embalmer, the funeral director or embalmer must file an affidavit as described in Texas Occupations code, Section 651.304(d) within fifteen (15) days of employment termination.

(m) [(n)] A student enrolled in an accredited mortuary college must have the college forward a letter of enrollment prior to entering the provisional program.

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 August 17, 2005.

TRD-200503438
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 936-2466

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22 TAC §203.27

The Texas Funeral Service Commission (Commission) proposes an amendment to §203.27, concerning Sponsors of Provisional Licensees.

The amendment is proposed because existing subsection (e) contains language relating to the oral exit interview and is no longer needed after the approval of the commission at the May, 2004 meeting to discontinue the oral exit interviews.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that for each of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be eliminating the oral exit interviews in order to expedite the licensure of qualified applicants thereby allowing them to be placed into the community sooner. There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.27. Sponsors of Provisional Licensees.

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

(e) The commission will not issue a funeral director's or embalmer's license to a provisional licensee until the sponsor executes and provides to the commission an affidavit attesting to the proficiency of the provisional licensee in the areas observed.[~~Prior to the provisional licensee's attendance at the exit interview required by §203.6 of this title (relating to Provisional Licensees), the sponsor shall execute and provide to the commission an affidavit attesting to the proficiency of the provisional licensee in those areas observed.~~]

(f) - (h) (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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TRD-200503451
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 936-2466

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22 TAC §203.29

The Texas Funeral Service Commission (Commission) proposes an amendment to §203.29, concerning Funeral Establishment Names.

The amendment is proposed because the existing rule puts the burden on the affected funeral establishment to object to the application. The Texas Business Corporation Act, Limited Liability Act, and Limited Partnership Act provide that the Secretary of State will not approve a name that is deceptively or substantially similar to the name of another entity, unless that entity agrees in writing to the name's use. The Commission believes this procedure should apply to funeral establishment names, as well.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that for each of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be eliminating the oral exit interviews in order to expedite the licensure of qualified applicants thereby allowing them to be placed into the community sooner. There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.29. Funeral Establishment Names.

(a) Each funeral establishment's application for licensure shall contain the name to be used on the license.

(b) Upon receiving an application for a new or changed funeral establishment license, the executive director shall review establishment names in the commission's database. The executive director shall issue the license in the requested name when all licensing requirements are satisfied, unless the director determines that the name is deceptively or substantially similar to the name of another licensed funeral establishment in the same county, metropolitan area, municipality, or service area [~~that objects to the applicant's name choice~~]. A license shall not be issued to an establishment for a name that is deceptively or substantially similar to the name of another establishment, unless that establishment agrees in writing to the name's use.

(c) A funeral establishment's name may be changed by following the procedure for obtaining the original name.

(d) An applicant for approval of a new or changed name may appeal the executive director's denial of the request to the commission. The commission's decision is final.

(e) No funeral establishment may advertise or provide funeral services under a name other than the name on the establishment license.

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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O.C. Robbins
Executive Director
Texas Funeral Service Commission
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For further information, please call: (512) 936-2466

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §281.22

The Texas State Board of Pharmacy proposes amendments to §281.22, concerning Informal Disposition of a Contested Case. The amendments, if adopted, will clarify that the procedures for the informal disposition of contested cases applies to registered pharmacy technicians.

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

Ms. Dodson has also determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended rule will be to ensure that the procedures for the informal disposition of contested cases applies to registered pharmacy technicians. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with the amended section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., October 21, 2005.

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

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

§281.22. Informal Disposition of a Contested Case.

(a) (No change.)

(b) Prior to the imposition of disciplinary sanction(s) against a license or registration, the board shall provide the licensee or registrant with written notice of the matters asserted, including:

(1) (No change.)

(2) an offer for the licensee or registrant to attend an informal conference at a specified time and place and show compliance with all requirements of law, in accordance with §2001.054(c) of the Administrative Procedure Act;

(3) a statement that the licensee or registrant has an opportunity for a hearing before the State Office of Administrative Hearings on the allegations; and

(4) the following statement in capital letters in 12 point boldface type: FAILURE TO RESPOND TO THE ALLEGATIONS, BY EITHER PERSONAL APPEARANCE AT THE INFORMAL CONFERENCE OR IN WRITING, WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION MADE AT THE INFORMAL CONFERENCE BEING GRANTED BY DEFAULT. The notice shall be served by delivering a copy to the licensee or registrant in person, by courier receipted delivery, by first class mail, or by certified or registered mail, return receipt requested to the licensee's or registrant's last known address of record as shown by agency records.

(c) The licensee or registrant shall respond by either personal appearance at the informal conference or in writing no later than the date of the informal conference. If the licensee or registrant chooses to respond in writing, the response shall admit or deny each of the allegations. If the licensee or registrant intends to deny only a part of an allegation, the licensee or registrant shall specify so much of it is true and shall deny only the remainder. The response shall also include any other matter, whether of law or fact, upon which the licensee or registrant intends to rely for his or her defense. If the licensee or registrant fails to respond to the notice specified in subsection (b) of this section, the matter will be considered as a default case and the licensee or registrant will be deemed to have:

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

(d) (No change.)

(e) Any default judgment granted under this section will be entered on the basis of the factual allegations in the notice specified in subsection (b) of this section, and upon proof of proper notice to the licensee's or registrant's address of record. For purposes of this section, proper notice means notice sufficient to meet the provisions of §2001.054 of the Administrative Procedure Act and §281.25 of this title.

(f) A motion for rehearing which requests that the Board vacate its default order under this section shall be granted if the motion presents convincing evidence that the failure to respond to the notice specified in subsection (b) of this section was not intentional or the result of conscious indifference, but due to accident or mistake, provided that the licensee or registrant has a meritorious defense to the factual allegations contained in the notice specified in subsection (b) of this section and the granting thereof will not result in delay or injury to the public or the Board.

(g) Informal conferences shall be attended by the executive director/secretary or designated representative, legal counsel of the agency or an attorney employed by the office of the attorney general, and other representative(s) of the agency as the executive director/secretary and legal counsel may deem necessary for proper conduct of the conference. The licensee or registrant and/or the licensee's or registrant's authorized representative(s) may attend the informal conference and shall be provided an opportunity to be heard.

(h) - (j) (No change.)

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

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503546
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 305-8028

22 TAC §281.57

The Texas State Board of Pharmacy proposes amendments to §281.57, concerning Disciplinary Guidelines. The amendments, if adopted, will clarify that the disciplinary guidelines apply to registered pharmacy technicians.

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

Ms. Dodson has also determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended rule will be to

ensure that the disciplinary guidelines apply to registered pharmacy technicians. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with the amended section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., October 21, 2005.

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

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

§281.57. Disciplinary Guidelines.

(a) Purpose. This section is promulgated to:

(1) provide guidance and a framework of analysis for administrative law judges in the making of recommendations in contested license or registration matters [~~licensure~~] and disciplinary matters;

(2) promote consistency in the exercise of sound discretion by board members in the imposition of sanctions in contested [~~disciplinary~~] matters; and

(3) (No change.)

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

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

Filed with the Office of the Secretary of State on August 22, 2005.

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.37

The Texas State Board of Pharmacy proposes amendments to §291.37, concerning Centralized Prescription Dispensing. The amendments, if adopted, will allow a Class E (non-resident) pharmacy to dispense or refill prescriptions for another Class A (community) or Class C (institutional) pharmacy.

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

Ms. Dodson has also determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended rule will be to ensure that Class E (non-resident) pharmacies dispensing or refilling prescriptions for Class A (community) or Class C (institutional) pharmacies follow the centralized prescription dispensing rules established by the Board. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with the amended section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., October 21, 2005.

The amendments are proposed under §551.002 and §554.051, of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.051(b) as authorizing the agency to adopt rules concerning the operation of a licensed pharmacy located in this state applicable to a pharmacy licensed by the board that is located in another state, if the board determines the rule is necessary to protect the health and welfare of the citizens of this state.

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

§291.37. Centralized Prescription Dispensing.

(a) Purpose. The purpose of this section is to provide standards for centralized prescription dispensing by a Class A (Community), [~~or~~] Class C (Institutional) pharmacy, or Class E (Non-Resident) Pharmacy.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set out in the Act.

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

(2) Centralized prescription dispensing--The dispensing or refilling of a prescription drug order by a Class A (Community), Class C (Institutional), or Class E (Non-Resident) pharmacy [~~one licensed pharmacy in Texas~~] at the request of another Class A (Community), or Class C (Institutional) [~~licensed pharmacy in Texas~~] and the return of the dispensed prescriptions to the requesting pharmacy for delivery to the patient or patient's agent, or at the request of the requesting pharmacy, direct delivery to the patient.

(3) (No change.)

(c) Operational standards.

(1) General requirements.

(A) A Class A (Community) or Class C (Institutional) pharmacy may outsource prescription drug order dispensing to another Class A (Community), [~~or~~] Class C (Institutional), or Class E (Non-Resident) pharmacy provided the pharmacies:

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

(B) (No change.)

(C) A Class A (Community) or Class C (Institutional) [The] dispensing pharmacy shall comply with the provisions of §§291.31 - 291.35 of this title (relating to Definitions, Personnel, Operational Standards, Records, and Official [Triplicate] Prescription Requirements in Class A (Community) Pharmacies) and this section[, or if dispensing compounded sterile pharmaceuticals, the provisions of §291.36 of this title (relating to Class A Pharmacies Compounding Sterile Pharmaceuticals)].

(D) A Class E (Non-Resident) dispensing pharmacy shall comply with §§291.101 - 291.105 of this title (relating to Purpose, Definitions, Personnel, Operational Standards, and Records in Class E (Non-Resident Pharmacies)) and this section.

(E) Pharmacies dispensing compounded non-sterile or sterile pharmaceuticals shall comply with the provisions of §291.25 of this title (relating to Class A Pharmacies Compounding Non-Sterile Pharmaceuticals) and §291.26 of this title (relating to Class A Pharmacies Compounding Sterile Pharmaceuticals).

(2) - (4) (No change.)

(d) (No change.)

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

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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CHAPTER 309. GENERIC SUBSTITUTION

22 TAC §309.4

The Texas State Board of Pharmacy proposes amendments to §309.4, concerning Patient Notification. The amendments, if adopted, will implement changes made to Chapter 562 of the Texas Pharmacy Act during the 79th Regular Session of the Texas Legislature. House Bill 836, passed during the 79th Regular Session of the Texas Legislature, amended the Texas Pharmacy Act requiring: (1) pharmacists to offer patients the option of paying for a prescription drug at the lower price if the actual price of the prescription drug is lower than the patient's insurance plan copayment; and (2) pharmacists or his or her agent/employee to inform the patient or the patient's agent that a less expensive generically equivalent drug product is available for the brand prescribed and ask the patient to choose between the generically equivalent drug and the brand prescribed. In addition, there were changes made to the wording of the "generic sign" required to be posted in pharmacies.

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

Ms. Dodson has also determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended rule will be to ensure that patients are given the option to choose between the generically equivalent drug and the brand prescribed. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with the amended section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., October 21, 2005.

The amendments are proposed under §§551.002, 554.051, and Chapter 562 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.051(b) as authorizing the agency to adopt rules concerning the operation of a licensed pharmacy located in this state applicable to a pharmacy licensed by the board that is located in another state, if the board determines the rule is necessary to protect the health and welfare of the citizens of this state. The Board interprets Chapter 562 as authorizing the Board to adopt rules concerning the selection of generically equivalent drugs.

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

§309.4. Patient Notification.

(a) Substitution notification. Before delivery of a prescription for a generically equivalent drug products as authorized by Chapter 562, Subchapter A of the Act, a pharmacist must: [A pharmacist who selects a generically equivalent drug product as authorized by Subchapter A, Chapter 562 of the Act shall:]

(1) personally, or through his or her agent or employee [and prior to delivery of a generically equivalent drug product,] inform the patient or the patient's agent that a less expensive generically equivalent drug product is available [has been substituted] for the brand prescribed; and ask the patient or the patient's agent to choose between the generically equivalent drug and the brand prescribed. [and the patient's or the patient's agent's right to refuse such substitution; or]

(2) cause to be displayed, in a prominent place that is in clear public view where prescription drugs are dispensed, a sign in block letters not less than one inch in height that reads, in both English and Spanish: "TEXAS LAW REQUIRES A PHARMACIST TO INFORM YOU IF A LESS EXPENSIVE GENERICALLY EQUIVALENT DRUG IS AVAILABLE FOR CERTAIN BRAND NAME DRUGS AND TO ASK YOU TO CHOOSE BETWEEN THE GENERIC AND THE BRAND NAME DRUG. YOU HAVE A RIGHT TO ACCEPT OR REFUSE THE GENERICALLY EQUIVALENT DRUG." [TEXAS LAW ALLOWS A LESS EXPENSIVE GENERICALLY EQUIVALENT DRUG TO BE SUBSTITUTED FOR CERTAIN BRAND NAME DRUGS UNLESS YOUR PHYSICIAN DIRECTS OTHERWISE. YOU HAVE A RIGHT TO REFUSE SUCH SUBSTITUTION. CONSULT YOUR PHYSICIAN OR PHARMACIST CONCERNING THE AVAILABILITY OF A SAFE, LESS EXPENSIVE DRUG FOR YOUR USE. LAS LEYES DE TEXAS PERMITEN QUE SE SUSTITUYA UNA MEDICINA GENERICAMENTE EQUIVALENTE Y MENOS CARA POR CIERTAS MEDICINAS DE MARCA RECONOCIDA A MENOS QUE SU MEDICO INSTRUYA DE OTRA MANERA. UD. TIENE

~~EL DERECHO DE REHUSAR DICHA SUSTITUCION. CONSULTE A SU MEDICO O FARMACEUTICO CON REFERENCIA A LA DISPONIBILIDAD DE UNA MEDICINA SEGURA Y MENOS CARA PARA SU USO. By the display of a sign as set out in this paragraph, a pharmacy shall be deemed in compliance with this subsection. Only one sign is required to be displayed in a pharmacy in order to be in compliance with this subsection.~~]

(3) A pharmacist shall offer the patient or the patient's agent the option of paying for a prescription drug at a lower price instead of paying the amount of the copayment under the patient's prescription drug insurance plan if the price of the prescribed drug is lower than the amount of the patient's copayment.

[~~(3) A pharmacist complies with the requirements of this subsection if an employee or agent of the pharmacist notifies a purchaser as required by paragraph (1) of this subsection. The patient or patient's agent shall have the right to refuse substitution.~~]

(b) Exceptions. A pharmacy is not required to comply with the provisions of subsection (a) of this section:

(1) in the case of the refill of a prescription for which the pharmacy previously complied with subsection (a) of this section with regard to the same patient or patient's agent; or

(2) if the patient's physician or physician's agent advises the pharmacy that:

(A) the physician has informed the patient or the patient's agent that a less expensive generically equivalent drug is available for the brand prescribed; and

(B) the patient or the patient's agent has chosen either the brand prescribed or the less expensive generically equivalent drug.

[~~(b) Inpatient notification exemption. Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.~~]

(c) Notification by pharmacies delivering prescriptions by mail.

(1) By January 1, 2006, a pharmacy that supplies a prescription by mail is considered to have complied with the provision of subsection (a) of this section if the pharmacy includes on the prescription order form completed by the patient or the patient's agent language that clearly and conspicuously:

(A) states that if a less expensive generically equivalent drug is available for the brand prescribed, the patient or the patient's agent may choose between the generically equivalent drug and the brand prescribed; and

(B) allows the patient or the patient's agent to indicate the choice of the generically equivalent drug or the brand prescribed.

(2) If the patient or patient's agent fails to indicate other wise to a pharmacy on the prescription order form under paragraph (1) of this subsection, the pharmacy may dispense a generically equivalent drug.

(d) Inpatient notification exemption. Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

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

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

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.64

The Texas Real Estate Commission (TREC) proposes amendments to §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors. Section 535.64(g)(5) adopts by reference Form Ed 5-1 Real Estate Provider Bond. The amendments change the cites in the form to the relevant statutory provisions Chapter 1101, Texas Occupations Code, House Bill 2813, 77th Legislature (2003), added Chapter 1101, a nonsubstantive codification of The Real Estate License Act, and repealed Article 6573a, Texas Civil Statutes effective June 1, 2003.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state as a result of enforcing or administering the section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the underlying statutory authority for the rule. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.64. Accreditation of Schools and Approval of Courses and Instructors.

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

(g) Forms. The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) - (4) (No change.)

(5) Form ED 5-1[0], Real Estate Provider Bond;

(6) - (7) (No change.)

(h) - (o) (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 August 15, 2005.

TRD-200503407
Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §535.71

The Texas Real Estate Commission (TREC) proposes amendments to §535.71, concerning Mandatory Continuing Education: Approval of Providers, Courses and Instructors. The amendment revises subsection (d)(4) of §535.71 which adopts by reference MCE Form 3A-3 MCE Course Application to parallel existing language in §535.71(r). Under §535.71(r), an applicant must provide a brief written statement that describes the course objective and how the subject matter is related to activities for which a real estate license is required.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state as a result of enforcing or administering the section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency in the credit approval process. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors.

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

(d) Forms. The commission adopts by reference the following forms published and available from the commission, P.O. Box 12188, Austin, Texas, 78711-2188:

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

(4) MCE Form 3A-3[2], MCE Course Application;

(5) - (13) (No change.)

(e) - (hh) (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 August 15, 2005.

TRD-200503408
Loretta DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.208, §535.209

The Texas Real Estate Commission (TREC) proposes amendments to §535.208, concerning Application for a License, and new §535.209, concerning Professional Inspector Corporations and Limited Liability Companies. The amendments and new rule are proposed to implement revisions to Texas Occupations Code, Chapter 1102 enacted during the 79th Legislative Session, Regular Session, by Senate Bill 810.

Chapter 1102 was revised to required licensing and renewal of corporations and limited liability companies that engage in professional home inspecting for buyers and sellers in Texas. The amendments to §535.208 adopt by reference two new application forms to be used by corporations and limited liability companies applying for a professional inspector license. New §535.209 further clarifies licensing requirements for resident and non-resident corporations and limited liability corporations that act as professional inspectors in Texas. Certain foreign corporations and limited liability companies that are licensed as professional inspectors or the equivalent in another state may apply for a Texas professional inspector license as long as the designated person is a licensed professional inspector.

The proposed rules are being simultaneously adopted as emergency rules in the Emergency Rules section of this issue of the *Texas Register*.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state as a result of enforcing or administering the sections. There are no anticipated fiscal implications

for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarity in the implementation of the statutory requirements for licensing to assist interested person in the application process. The anticipated economic cost to persons who are required to comply with the proposed amendments and new rule will be the $60 fee to apply for a license and the $100 Inspector Recovery Fund fee required of all new licensees.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments and new rule are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102 and Senate Bill 810, 79th Legislature, R.S. No other statute, code or article is affected by the proposed amendments and new rule.

§535.208. Application for a License.

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

(c) The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

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

(3) Application for a License as a Real Estate Inspector, Form REI 4-9; [~~and~~]

(4) Application for a License as a Professional Inspector, Form REI 6-9; [~~.~~]

(5) Application for a License as Professional Inspector by a Corporation, Form REI 7-0; and

(6) Application for a License as Professional Inspector by a Limited Liability Company, Form REI 8-0.

(d) - (f) (No change.)

§535.209. Professional Inspector Corporations and Limited Liability Companies.

(a) For the purposes of qualifying for, maintaining, or renewing a license, a corporation or limited liability company must designate one person holding an active Texas professional inspector license to act for it. The corporation or limited liability company may not act as a professional inspector during any period in which it has not designated a person to act for it who holds an active Texas professional inspector license. A professional inspector may not act as a designated person at any time while the professional inspector's license is inactive, expired, suspended or revoked.

(b) A corporation or limited liability company formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of Chapter 1102, Texas Occupations Code if it is qualified to do business in Texas; its officers or managers, its principal place of business and all of its assets are located in Texas; and all of its officers and directors or managers and members are Texas residents.

(c) Pursuant to §1102.112, Texas Occupations Code, a limited liability company created under the laws of another state or a corporation chartered in a state other than Texas may apply for a Texas professional inspector license if the entity meets one of the following requirements.

(1) The entity is licensed as a professional inspector or equivalent by the state in which it was created or chartered.

(2) The entity is licensed as a professional inspector or equivalent in a state in which it is permitted to engage in real estate brokerage business as a foreign limited liability company or corporation.

(3) The entity was created or chartered in a state that does not license limited liability companies or corporations, as the case may be, and the entity is lawfully engaged in the practice of inspecting homes for buyers or sellers in another state and meets all other requirements for applications for a license in Texas.

(d) The word "state" refers to the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.

(e) Foreign corporations and limited liability companies also must be permitted to engage in business in this state to receive a Texas professional inspector license.

(f) A consent to service of legal process must be filed with the commission by a broker or salesperson who moves to another state.

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 August 15, 2005.

TRD-200503409
Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes the repeal of §§741.1, 741.11 - 741.15, 741.31 - 741.33, 741.41, 741.61 - 741.66, 741.81 - 741.86, 741.91, 741.101 - 741.103, 741.111 - 741.112, 741.121, 741.141 - 741.142, 741.161 - 741.165, 741.181 - 741.182, 741.191 - 741.195 and new §§741.1, 741.11 - 741.15, 741.31 - 741.33, 741.41 - 741.45, 741.61 - 741.65, 741.81 - 741.85, 741.91, 741.101 - 741.103, 741.111 - 741.112, 741.121, 741.141, 741.161 - 741.165, 741.181 - 741.182, 741.191 - 741.201, concerning the licensure and regulation of speech-language pathologists and audiologists. 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 741.1, 741.11 - 741.15, 741.31 - 741.33, 741.41, 741.61 - 741.66, 741.81 - 741.86, 741.91, 741.101 - 741.103, 741.111 - 741.112, 741.121, 741.141 - 741.142, 741.161 - 741.165, 741.181 - 741.182, and 741.191 - 741.195 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensure and regulation of speech-language pathologists and audiologists are still needed; however, the rules will be repealed and proposed as new rules as described in this preamble. The proposed repeals and new sections are the result of the comprehensive rule review undertaken by the board and the board's staff.

In general, each section was reviewed and proposed for repeal and readoption in order to ensure appropriate subchapter, section, and paragraph organization and captioning; to ensure clarity; to improve spelling, grammar, and punctuation; to ensure that the rules reflect current legal, policy, and operational considerations; to ensure accuracy of legal citations; to delete repetitive, obsolete, unenforceable, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable to the extent possible.

The following changes are proposed relating to the repeal and readoption of Subchapter A (Definitions). A definition of the "Act" is proposed for ease in referencing Texas Occupations Code, Chapter 401 throughout the rules. A definition of "Assistant in Audiology" is added in order to clarify that term. The definitions of "Assistant in Speech-Language Pathology", "Dispense", "Ear specialist", and "Fit" are edited to ensure clarity and accuracy.

The following changes are proposed relating to the repeal and readoption of Subchapter B (The Board). Regarding §741.11(a), the requirement that the executive secretary keep a tabulation of the minor decisions made by the chair is deleted as unnecessary. Regarding §741.12(a), the provisions relating to appointment of non-board members to committees and submission of reports to the executive director are deleted as unnecessary and not reflecting current policy considerations. Regarding §741.12(c), the provision relating to previous committee members is deleted as impractical.

Regarding §741.13(b), the rule is edited to reflect current operational considerations and to require officer elections at the meeting held nearest to January 1st of each year. Regarding §741.14, the board's address is deleted as not necessary to specify in rule.

The following changes are proposed relating to the repeal and readoption of Subchapter C (Screening Procedures). Regarding §741.31(a), the rule is proposed to clarify that individuals licensed under Occupations Code, Chapter 401 may participate in communication screening. Regarding §741.31(c), the rule is edited to provide for screening in the dominant, rather than native, language, and in the primary mode of communication. Regarding §741.32(a), the rule is edited to clarify that individuals licensed under Occupations Code, Chapter 401 may participate in hearing screening and to eliminate the list of others who may participate in hearing screening. Regarding §741.32(b) - (c), the rules are edited to reflect delete obsolete language and reflect current screening practices.

The following changes are proposed relating to the repeal and readoption of Subchapter D (Code of Ethics; Duties and Responsibilities of License Holders). The subchapter was renamed to more accurately reflect its content. The subchapter was reorganized into six sections with specific content areas in order to improve usability and enhance convenience for the reader. Regarding §741.41(a)(1), the rule is proposed to clarify that license holders must engage only in practices within their scope of competence. Regarding §741.41(b)(14), the rule is proposed to prohibit a licensee from falsifying records. Regarding §741.41(h), the rule is proposed to require a license holder to use current and accurate diagnostic codes in billing. Regarding §741.44(b)(4), the rule is proposed to limit the number of interns and/or assistants to four per supervisor, unless an exception is granted. The rule is proposed in order to ensure that quality services are provided to clients and to ensure that caseloads are properly managed. Regarding §741.45, the section is proposed to bring together related rules that were formerly located in different places in the chapter concerning consumer information and display of license.

The following changes are proposed relating to the repeal and readoption of Subchapter E (Requirements for Licensure of Speech-Language Pathologists). Regarding §741.61, the rule is proposed to reflect current educational standards. Regarding §741.62(g), the rule is edited to clarify requirements for supervisors of interns and to eliminate the requirement to submit separate supervisory responsibility statements from each supervisor. Regarding §741.62(h)(6)(C), the rule is proposed to provide for internship exceptions to be granted by the board's designee. Regarding §741.63, the section is edited to improve draftsmanship and clarify intent. Regarding §741.64(f), the rule is edited to provide for an exception to be approved in the event a supervisor lacks the requisite experience. Regarding §741.64(f)(1), the rule is edited to eliminate the requirement of submission of a supervisory responsibility statement at the time of renewal unless there is a change in supervision.

The following changes are proposed relating to the repeal and readoption of Subchapter F (Requirements For Licensure of Audiologists.) Regarding §741.81, the rule is proposed to reflect current educational standards. Regarding §741.82(g), the rule is edited to provide for an exception to be approved in the event a supervisor lacks the requisite experience. Regarding §741.82(h)(6)(C), the rule is proposed to provide for internship exceptions to be granted by the board's designee. Regarding §741.82(k), the rule is edited to clarify intent, improve draftsmanship, and clarify procedures for changes in supervision of the intern. Regarding §741.83, the section is edited to improve draftsmanship and clarify intent. Regarding §741.84(g), the rule is edited to clarify supervisor qualifications and to provide for an exception to the requirements to be granted by the board's designee.

The following changes are proposed relating to the repeal and readoption of Subchapter G (Requirements For Dual Licensure as a Speech-Language Pathologist and an Audiologist.) Regarding §741.91(a)(2)(B), the rule is edited to reflect current educational standards for supervised clinical observation and experience for dual license applicants.

The following changes are proposed relating to the repeal and readoption of Subchapter H (Fitting and Dispensing of Hearing Instruments.) Regarding §741.101, the rule is edited to eliminate the requirement for an audiologist to obtain a separate registration certificate in order to fit and dispense hearing instruments under the Act; instead, the rule clarifies that the audiology license constitutes such registration. Regarding §741.102, the section

is edited to reflect current professional standards regarding calibration and amplification. Regarding §741.103, the section is edited to reflect current professional standards regarding audiometric testing.

The following changes are proposed relating to the repeal and readoption of Subchapter I (Application Procedures.) Regarding §741.111, the board's address is proposed for deletion as unnecessary. Regarding §741.112(b)(4), the rule is edited to provide for verification of the anticipated award of a degree.

The following changes are proposed relating to the repeal and readoption of Subchapter J (Licensure Examinations.) Editorial changes are proposed for the section to improve draftsmanship.

The following changes are proposed relating to the repeal and readoption of Subchapter K (Issuance of License.) Editorial changes are proposed for the section to improve draftsmanship and to eliminate obsolete and unnecessary language.

The following changes are proposed relating to the repeal and readoption of Subchapter L (License Renewal and Continuing Education.) References to the renewal of the registration to fit and dispense hearing instruments are deleted, as the separate registration is no longer required. Regarding §741.162(d), the method of calculating required continuing education hours for an initial license was simplified. Regarding §741.162(k), the rule is edited to eliminate specific procedures relating to the continuing education log form.

The following changes are proposed relating to the repeal and readoption of Subchapter M (Fees and Processing Procedures.) The provision exempting a license holder who has attained the age of 65 years from payment of the annual or biennial renewal fee is proposed for deletion. The board believes that no group of active license holders should be exempted from payment of the renewal fee. Additionally, the $18 renewal fee for the registration to fit and dispense hearing instruments is deleted, as the registration is no longer required by the board.

Regarding §741.181(a)(4)(A), the renewal fee for a license issued for a one-year term is proposed to increase from $44 to $50. Regarding §741.181(a)(4)(B), the renewal fee for a license issued for a two-year term is proposed to increase from $88 to $100. Regarding §741.181(a)(4)(B), the renewal fee is proposed to increase based on the provisions for contingent appropriation of additional fee revenue authorized by the General Appropriations Act, 79th Legislative Regular Session (2005). The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislative Regular Session (2005). Article II of the General Appropriations Act, Rider 85, Contingent Appropriation of Additional Fee Revenues, authorized the collection of additional revenue in the form of fees, which would then be appropriated to pay for expenses of Health Care Professional programs, including speech-language pathologists and audiologists.

The following changes are proposed relating to the repeal and readoption of Subchapter N (Complaints, Violations, and Disciplinary Actions.) The subchapter was restructured and rewritten in its entirety in order to improve, clarify, and establish provisions and procedures relating to complaints; disciplinary action and notices; revocation, suspension, emergency suspension, and denial; informal disposition; formal hearings and surrender of license; default orders; monitoring of licensees; administrative penalties; schedule of sanctions; licensing of persons with criminal convictions; and suspension of license relating to child support and child custody.

Joyce Parsons, Executive Director, has determined that for each year of the first five years the repeal and new sections are in effect, there will be fiscal implications to state government as a result of enforcing or administering the sections as proposed. The proposal to eliminate the audiology registration to fit and dispense hearing instruments is estimated to result in a decrease of $13,392 for the first five calendar years the sections as proposed are in effect. The proposal to increase renewal fees for license holders will result in an increase of $58,884 for the first five calendar years the section as proposed is in effect. Overall, both proposals result in an increase in $45,492 for the first five calendar years the sections are proposed is in effect. It cannot be determined whether, if adopted, there would be fiscal implications for state or local governments as it is unknown if these entities pay any of the required licensure fees for their employees.

Ms. Parsons has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing or administering the sections will be to ensure that the regulation of speech-language pathologists and audiologists continues to identify competent providers, resulting in the protection and promotion of the public health, safety, and welfare. There is no cost to micro-businesses or small businesses except for those that pay the licensing fees of their employees who are speech-language pathologists and audiologists. There are no additional economic costs to other persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Joyce Parsons, Executive Director, State Board of Examiners for Speech-Language Pathology and Audiology, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6627, fax (512) 834-6677. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

22 TAC §741.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeal affects Texas Occupations Code, Chapter 401.

§741.1. Definitions.

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 August 22, 2005.

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Sherry Sancibrian
Chair
State Board of Examiners for Speech-Language Pathology and Audiology
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22 TAC §741.1

The new section is proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new section affects Texas Occupations Code, Chapter 401.

§741.1. Definitions.

Unless the context clearly indicates otherwise, the words and terms below shall have the following meanings. Refer to Texas Occupations Code, §401.001, for definitions of additional words and terms.

(1) Act--Texas Occupations Code, Chapter 401, relating to speech-language pathologists and audiologists.

(2) Assistant in Speech-Language Pathology--An individual who provides speech language pathology support services to clinical programs under supervision of a licensed speech-language pathologist.

(3) Assistant in Audiology--An individual who provides audiological support to clinical programs under supervision of a licensed audiologist.

(4) Delegation--The supervisor of an assistant may delegate certain services to the assistant; however, the supervisor is ultimately responsible for all services provided.

(5) Dispense--To directly or indirectly provide or deliver a product by U.S. Postal Service or any commercial delivery service to a consumer.

(6) Ear specialist--A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the patient, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, neurotologists, otorhinolaryngologists, and ear, nose, and throat specialists.

(7) Extended absence--More than two consecutive working days for any single continuing education experience.

(8) Extended recheck--Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).

(9) Fit--Initial selection, adjustment, programming, or modification of a personal amplification device or system.

(10) Health care professional--An individual required to be licensed under Texas Occupations Code, Chapter 401, or any person licensed, certified, or registered by the state in a health-related profession.

(11) Hearing instrument--A device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.

(12) Hearing screening--A test administered with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(13) Sale or purchase--Includes the sale, lease or rental of a hearing instrument to a member of the consuming public who is a user or prospective user of a hearing instrument.

(14) Under the direction of--The licensed speech-language pathologist or audiologist directly oversees the services provided and accepts professional responsibility for the actions of the personnel he or she agrees to direct.

(15) Used hearing instrument--A hearing instrument that has been worn for any period of time by a user. However, a hearing instrument shall not be considered "used" merely because it has been worn by a prospective user as a part of a bona fide hearing instrument evaluation conducted to determine whether to select that particular hearing instrument for that prospective user, if such evaluation has been conducted in the presence of the dispenser or a hearing instrument health professional selected by the dispenser to assist the buyer in making such a determination.

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

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SUBCHAPTER B. THE BOARD

22 TAC §§741.11 - 741.15

(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 State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeals affect Texas Occupations Code, Chapter 401.

§741.11. Officers.

§741.12. Committees.

§741.13. Transaction of Official Business.

§741.14. Petition for Adoption of a Rule.

§741.15. Impartiality and Nondiscrimination.

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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22 TAC §§741.11 - 741.15

The new sections are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new sections affect Texas Occupations Code, Chapter 401.

§741.11. Officers.

(a) The presiding officer shall preside at all meetings at which he or she is in attendance, perform all duties prescribed by law or this chapter, and is authorized by the board to make day-to-day minor decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board.

(b) The assistant presiding officer shall perform the duties of the presiding officer should the presiding officer be absent, become disabled, or vacate the office. In the event the office is vacated, the assistant presiding officer shall serve until a successor is named.

(c) The secretary-treasurer will sign the approved minutes of the board and other approved documents of the board in the absence of the presiding officer and assistant presiding officer.

§741.12. Committees.

(a) The presiding officer may appoint board members to committees to assist the board in its work. All committees shall consist of no more than four members and shall make regular reports to the board by interim written reports or at regular meetings. Standing committees may include:

(1) complaints;

(2) rules;

(3) speech-language pathology scope of practice;

(4) audiology scope of practice

(5) complaints; and

(6) legislative review.

(b) Board members may also be appointed to individually assist the board office with specific issues. The board member shall report any decisions made to the full board at the next scheduled meeting for ratification. Items that may be discussed include:

(1) fees/budget;

(2) applications/renewals;

(3) continuing education;

(4) exemptions to the Act;

(5) supervision of interns and assistants;

(6) public relations;

(7) health professions council; and

(8) fitting and dispensing of hearing instruments.

(c) Members appointed to the complaints committee shall consist of one audiologist, one speech-language pathologist, and one public member. The committee chair may call a meeting whenever necessary.

§741.13. Transaction of Official Business.

(a) The board shall annually review the costs and revenue associated with the licensing program.

(b) The board shall elect, by a simple majority vote of those members present, a presiding officer, an assistant presiding officer, and a secretary-treasurer at the meeting held nearest to January 1st. If a vacancy occurs in any of the offices at any other time, it shall be filled by a simple majority vote of those members present at any board meeting.

(c) The executive director shall prepare and submit an agenda to the board prior to each meeting. The agenda shall include:

(1) items required by law;

(2) items requested by members; and

(3) other items of board business approved for discussion by the presiding officer.

(d) The board shall make all official decisions according to parliamentary procedure as set forth in Robert's Rules of Order Revised. If a question arises concerning interpretation of Robert's Rules of Order Revised, the presiding officer or assistant presiding officer shall make the decision.

(e) The board shall not be bound in any way by any statement or action on the part of any board member, committee, or staff member except when a statement or action is in pursuance of the specific instruction of the board.

§741.14. Petition for Adoption of a Rule.

(a) A person may submit a written petition to the board requesting adoption of a rule. The petition shall contain the following:

(1) the petitioner's name, address, and telephone number;

(2) a brief explanation of and justification for the proposed rule;

(3) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(4) a statement of the statutory or other authority under which the rule is to be adopted;

(5) a statement of the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule;

(b) The petition shall be submitted to the executive director.

(c) The executive director shall submit the completed petition to the board for its consideration.

(d) Within 60 days after receipt of the completed petition by the executive director, the board shall either:

(1) deny the petition;

(2) initiate rule-making procedures in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001; or

(3) deny parts of the petition and/or institute rule-making procedures on parts of the petition.

(e) If the board denies the petition, the executive director shall give the petitioner written notice of the board's denial, including the reason for the denial.

(f) If the board initiates rule-making procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(g) All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of this section. The board may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

§741.15. Impartiality and Nondiscrimination.

The board shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, gender, national origin, age, disability, sexual orientation, genetic information, or family health history.

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

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SUBCHAPTER C. SCREENING PROCEDURES

22 TAC §§741.31 - 741.33

(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 State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeals affect Texas Occupations Code, Chapter 401.

§741.31. Communication Screening.

§741.32. Hearing Screening.

§741.33. Newborn Hearing Screening.

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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22 TAC §§741.31 - 741.33

The new sections are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new sections affect Texas Occupations Code, Chapter 401.

§741.31. Communication Screening.

(a) Individuals licensed under the Act may participate in communication screening.

(b) Communication screening should include cursory assessments of language and speech to determine if a delay or a disorder exists. Formal instruments and informal observations may be used for the assessment. If the screening is not passed, a detailed evaluation is indicated.

(1) The aspects of language to be screened may include phonology, morphology, syntax, semantics, and pragmatics.

(2) The aspects of speech to be screened may include articulation or speech sound production, voice (including phonation and resonation), and fluency.

(c) Language and speech screening should be conducted in the client's dominant language and primary mode of communication.

§741.32. Hearing Screening.

(a) Individuals licensed under the Act may participate in hearing screening.

(b) Hearing screening shall be performed and interpreted as follows.

(1) Use a screening level of 25 dB HL (ANSI, 1996) for pre-kindergarten and kindergarten, and 20 dB HL (ANSI, 1996) for grades 1 through 12, at the frequencies of 1,000, 2,000, and 4,000 hertz (Hz) in both ears.

(2) The criterion for failure is no response at the screening level at any one frequency in either ear.

(3) Screening failures will be followed with a second pure-tone air conduction screening utilizing the same protocol within four weeks.

(c) If the second pure-tone air conduction screening is failed, a recommendation shall be made for a professional evaluation by a licensed physician or a licensed audiologist. If the person screened was a minor, the recommendation shall be made to a parent or guardian.

§741.33. Newborn Hearing Screening.

Individuals licensed under the Act may participate in universal newborn hearing screening as defined by the Texas Health and Safety Code, Chapter 47.

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. THE STANDARDS OF PROFESSIONAL AND ETHICAL CONDUCT

22 TAC §741.41

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeal affects Texas Occupations Code, Chapter 401.

§741.41. Code of Ethics.

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. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF LICENSE HOLDERS

22 TAC §§741.41 - 741.45

The new sections are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new sections affect Texas Occupations Code, Chapter 401.

§741.41. Professional Responsibilities of License Holders.

(a) A licensee shall:

(1) engage in only those aspects of the profession that are within the scope of the licensee's competence considering level of education, training, and experience;

(2) insure a safe therapy environment;

(3) provide services as specified in the treatment plan, Individual Education Plan (IEP), or Individualized Family Service Plans (IFSP);

(4) seek appropriate medical consultation whenever indicated;

(5) seek to identify competent, dependable referral sources for clients;

(6) maintain objectivity in all matters concerning the welfare of the client;

(7) ensure that all equipment used is in proper working order and is properly calibrated;

(8) terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services being provided; and

(9) provide accurate information to clients and the public about the nature and management of communicative disorders and about the profession and the services rendered.

(b) A licensee shall not:

(1) engage in the medical treatment of speech-language and hearing disorders;

(2) jeopardize a client's safety by any inattentive behavior;

(3) guarantee, directly or by implication, the results of any therapeutic procedures except as follows:

(A) a reasonable statement of prognosis may be made; and

(B) caution must be exercised not to mislead clients to expect results that cannot be predicted from reliable evidence;

(4) delegate any service requiring professional competence of a licensee or registrant to anyone not licensed or registered for the performance of that service;

(5) provide services if the services cannot be provided with reasonable skill or safety to the client;

(6) provide any services which create an unreasonable risk that the client may be mentally or physically harmed;

(7) engage in sexual contact, including intercourse, kissing, or fondling, with a client or an assistant, intern, or student supervised by the licensee;

(8) use alcohol or drugs when the use adversely affects or could adversely affect the licensee's provision of professional services;

(9) evaluate or treat speech, language, or hearing disorders solely by written, telephone, or electronic/video correspondence or communication;

(10) reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community;

(11) participate in activities that constitute a conflict of professional interest which may include the following:

(A) exclusive recommendation of a product that the licensee owns or has produced;

(B) lack of accuracy in the performance description of a product a licensee or registrant has developed; or

(C) restriction of freedom of choice for sources of services or products;

(12) use his or her professional relationship with a client, intern, assistant, or student to promote for personal gain or profit any item, procedure, or service unless the licensee or registrant has disclosed to the client, intern, assistant, or student the nature of the licensee's or registrant's personal gain or profit;

(13) misrepresent his or her training or competence; or

(14) falsify records.

(c) A licensee shall fully inform clients of the:

(1) results, in writing, of an evaluation within 60 days;

(2) nature and possible effects of the services rendered; and

(3) nature, possible effects, and consequences of activities if the client is participating in research or teaching activities.

(d) A licensee shall inform the board of violations of this code of ethics or of any other provision of the chapter.

(e) A licensee shall comply with any order relating to the licensee which is issued by the board.

(f) A licensee shall not aid or abet the practice of an unlicensed person when that person is required to have a license under the Act.

(g) A licensee shall report in accordance with the Family Code, §261.101(b), if there is cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person.

(h) A licensee shall not interfere with a board investigation or disciplinary proceeding by willful misrepresentation or omission of facts to the board or the board's designee or by the use of threats or harassment against any person.

(i) A licensee shall cooperate with the board by promptly furnishing required documents and by promptly responding to a request for information from or a subpoena issued by the board or the board's designee.

(j) A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage for or from any health care professional. The provisions of the Health and Safety Code, §161.091, concerning the prohibition of illegal remuneration apply to licensees.

(k) A licensee who provides direct patient care shall comply with the Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of HIV or Hepatitis B virus by infected health care workers.

(l) A licensee shall be subject to disciplinary action by the board if the licensee or registrant is issued a written reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Texas Code of Criminal Procedure, Article 56.31, relating to the Crime Victims Compensation Act.

§741.42. Advertising.

A licensee shall not present false, misleading, deceptive, or not readily verifiable information relating to the services of the licensee or any person supervised or employed by the licensee which includes, but is not limited to:

(1) advertising audiological services when an audiologist is not readily available to assist clients;

(2) using professional or commercial affiliations in any way that would mislead clients or the public;

(3) presenting false, misleading, or deceptive information in connection with an application by the licensee for a license issued under the Act, or for employment to provide speech-language pathology or audiology services;

(4) presenting false, misleading, or deceptive information relating to the following:

(A) any advertisement, announcement, or presentation;

(B) any announcement of services;

(C) letterhead or business cards;

(D) commercial products;

(E) billing statements or charges for services;

(F) facsimile broadcast; or

(G) website;

(5) presenting false, misleading, or deceptive advertising that is not readily subject to verification including any manner of communication referenced in paragraph (4) of this subsection and advertising that:

(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(B) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(C) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(D) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(E) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(F) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required;

(G) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; and

(H) advertises or uses a professional name, a title, or professional identification that is expressly or commonly reserved for or used by another profession or professional.

§741.43. Recordkeeping and Billing.

(a) A licensee shall maintain accurate records of professional services rendered.

(b) Records must be maintained for a minimum of five consecutive years or longer as warranted.

(c) Records are the responsibility and property of the entity or individual who owns the practice or the practice setting.

(d) Records created as a result of treatment in a school setting shall be maintained as part of the student's permanent school record.

(e) A licensee shall bill a client or a third party only for the services actually rendered in the manner agreed to by the licensee and the client or the client's authorized representative.

(f) A licensee shall provide, in plain language, a written explanation of the charges for speech-language pathology and/or audiology services previously made on a bill or statement for the client upon the written request of a client, a client's guardian, or a client's parent, if the client is a minor.

(g) A licensee shall comply with the Health and Safety Code, §311.0025, which prohibits improper, unreasonable, or medically unnecessary billing by hospitals or health care professionals.

(h) A licensee shall use current and appropriate diagnostic and procedure codes.

§741.44. Requirements, Duties, and Responsibilities of Supervisors.

(a) A licensee must have three years of professional experience in providing direct patient services in the area of licensure in order to supervise an intern or assistant. The licensee's practice when completing the 36-week full time internship may be counted toward the three years of experience. If the supervisor does not have the required experience, he or she may submit a written request outlining his or her qualifications and the reason for the request. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(b) A supervisor of an intern or assistant shall:

(1) ensure that all services provided are in compliance with this chapter and the Act, such as verifying:

(A) the intern or assistant holds a license;

(B) the supervisor has been approved by the board office;

(C) the scope of practice is appropriate; and

(D) the intern or assistant is qualified to perform the procedure;

(2) be responsible for all client services performed by the intern or assistant;

(3) provide appropriate supervision after the board office approves the supervisory arrangement; and

(4) supervise no more than a total of four interns and/or assistants. An exception may be made allowing supervision of more than four individuals if the supervisor submits documentation demonstrating their ability to manage the entire caseload. The board's designee will determine if an exception is granted.

(c) In addition to the provisions listed in subsection (b) of this section, a supervisor of an assistant shall:

(1) be responsible for evaluations, interpretation, and case management; and

(2) not designate anyone other than a licensed speech-language pathologist or intern in speech-language pathology to represent speech-language pathology to an Admission, Review, and Dismissal (ARD) meetings, except as provided by §741.65 of this title (relating to Requirements, Duties, Responsibilities of Supervisors).

(d) A licensed intern or assistant shall abide by the decisions made by the supervisor relating to the intern's or assistant's scope of practice. In the event the supervisor requests that the intern or assistant violate this chapter, the Act, or any other law, the intern or assistant shall refuse to do so and immediately notify the board office and any other appropriate authority.

§741.45. Consumer Information and Display of License.

(a) A licensee shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board by providing notification on a sign prominently displayed in the primary place of business of each licensee; and on a written document such as a written contract, a bill for service, or office information brochure provided by a licensee to a client or third party.

(b) A licensee shall display the certificate with a current license card as issued by the board in the primary location of practice.

(c) A holder of a provisional license or a temporary certificate of registration shall display the certificate as issued by the board in the primary location of practice.

(d) A licensee shall not display a license card or certificate issued by the board which has been photographically or otherwise reproduced.

(e) A licensee shall not make any alteration on official documents issued 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 August 22, 2005.

TRD-200503557
Sherry Sancibrian
Chair
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 458-7236

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE AND REGISTRATION OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §§741.61 - 741.66

(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 State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeals affect Texas Occupations Code, Chapter 401.

§741.61. Requirements for a Speech-Language Pathology License.

§741.62. Requirements for an Intern in Speech-Language Pathology License.

§741.63. Waiver of Licensure for Speech-Language Pathologists.

§741.64. Requirements for a Provisional Speech-Language Pathology License.

§741.65. Requirements for an Assistant in Speech-Language Pathology License.

§741.66. Requirements for a Temporary Certificate of Registration in Speech-Language Pathology.

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 August 22, 2005.

TRD-200503558

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: October 2, 2005

For further information, please call: (512) 458-7236

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §§741.61 - 741.65

The new sections are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new sections affect Texas Occupations Code, Chapter 401.

§741.61. Requirements for a Speech-Language Pathology License.

(a) An applicant for the speech-language pathology license shall meet the requirements set out in the Act and this section.

(b) The graduate degree shall be completed at a college or university which has a program accredited by the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copies of transcripts shall verify the applicant completed the following:

(A) at least 36 semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least 24 semester credit hours acceptable toward a graduate degree shall be earned in the area of speech-language pathology including normal development and use of speech, language, and hearing; prevention evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and related fields that augment the work of clinical practitioners of speech-language pathology; and

(C) six semester credit hours shall be earned in the area of hearing disorders, hearing evaluation, and habilitative or rehabilitative procedures with individuals who have hearing impairment.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraphs (1)(B) and (1)(C) of this subsection.

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in audiology and is pursuing a license in speech-language pathology may apply if the board has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in speech-language pathology and would meet the academic and clinical experience requirements for a license as a speech-language pathologist.

(5) An applicant who graduated from a college or university not accredited by the American Speech-Language Hearing Association Council on Academic Accreditation shall have the American Speech-Language-Hearing Association Clinical Certification Board evaluate the course work and clinical experience earned to determine if acceptable. The applicant shall bear all expenses incurred during the procedure.

(c) An applicant shall complete at least 25 clock hours of supervised observation before completing the minimum of the following hours of supervised clinical experience, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's degree was earned between November 10, 1993 and December 31, 2004; or

(3) 400 clock hours if the master's degree was earned on or after January 1, 2005.

(d) An applicant shall have completed a minimum of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which clinical work has been accomplished in speech-language pathology as set out in §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License).

(1) An individual shall be licensed under §741.62 of this title prior to the beginning of the supervised professional experience.

(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §741.62 of this title shall:

(A) be licensed in that other state, rather than Texas; or

(B) hold the American Speech-Language-Hearing Association certificate of clinical competence in speech-language pathology if the other state did not require licensing.

(e) An applicant shall pass the examination as referenced by §741.121 of this title (relating to Examination Administration) within:

(1) the past 10 years; and

(2) two years of the completion date of the internship referenced in subsection (d) of this section.

(f) In the event the applicant passed the examination referenced in subsection (e) of this section more than two years after the

completion date of the internship, the applicant shall repeat the 36 weeks supervised internship before applying for the speech-language pathology license. The applicant shall obtain the intern license as required by §741.62 of this title prior to repeating the internship. The applicant may appeal to the board's designee for waiver of the requirement to repeat the internship.

(g) An applicant who previously held the American Speech-Language-Hearing Association Certificate of Clinical Competence may have the certificate reinstated and apply for licensure under §741.63 of this title (relating to Waiver of Clinical and Examination Requirements for Speech-Language Pathologists).

§741.62. Requirements for an Intern in Speech-Language Pathology License.

(a) An applicant for the intern in speech-language pathology license shall meet the requirements set out in the Act and §741.61(a) - (c) of this title (relating to Requirements for a Speech-Language Pathology License) within 10 years of the date of application for the intern license.

(b) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology. Within 15 working days of receipt of the request, the board's designee shall evaluate the documentation and shall approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(c) An original or certified copy of the transcript is required and shall be evaluated under §741.61(b) of this title.

(d) Masters students. An applicant who successfully completed all academic and clinical requirements of §741.61(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit verification from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(e) Doctoral students. An applicant who has successfully completed all academic and clinical requirements of §741.61(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience. The applicant shall submit an original or certified copy of a letter from the program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctoral program as approved by the board and has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, but has not had the degree officially conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(f) An applicant whose master's degree is received at a college or university accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements as outlined in §741.61(a) - (c) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology with six hours in audiology.

(g) An intern plan and agreement of supervision form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the intern. The supervisor shall hold a valid Texas license in speech-language pathology and possess at least a master's degree with a major in one of the areas of communicative sciences and disorders. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying that the supervisor has met this requirement. The licensee's practice when completing the 36-week full time internship may be counted toward the three years of experience. If the supervisor does not have the required experience the supervisor shall submit a written request outlining the supervisor's qualifications and justifications for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(1) Approval from the board office shall be required prior to practice by the intern. The intern plan and agreement of supervision form shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) the addition of other supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the intern, the primary and secondary supervisors shall be identified and the supervisory form must be signed by each supervisor.

(3) In the event the supervisor ceases supervision of the intern, the intern shall stop practicing immediately. The board shall hold the supervisor responsible for the practice of the intern until the supervisor notifies the board, in writing, of the change in supervision.

(4) Should the intern practice without approval from the board office, disciplinary action may be initiated against the intern. If the supervisor had knowledge of this violation, disciplinary action against the supervisor may also be initiated.

(h) The internship shall:

(1) begin within four years after the academic and clinical experience requirements as required by subsection (a) of this section have been met;

(2) be completed within a maximum period of 36 months once initiated;

(3) be successfully completed no more than twice;

(4) consist of a minimum of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which clinical work has been accomplished in speech-language pathology. Full-time employment is defined as a minimum of 30 hours per week in direct patient/client clinical work. Part-time equivalent is defined as follows:

(A) 0 - 15 hours per week--no credit will be given;

(B) 15 - 19 hours per week for over 72 weeks;

(C) 20 - 24 hours per week for over 60 weeks; or

(D) 25 - 29 hours per week for over 48 weeks;

(5) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(6) be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(A) six hours of face-to-face observations per segment by the board approved supervisor(s) of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six hours of other monitoring activities per segment with the board approved supervisor(s) which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; or

(C) an alternative plan as approved by the Board's designee.

(i) An applicant who does not meet the time frames defined in subsection (h)(1) and (2) of this section shall request an extension, in writing, explaining the reason for the request. The request must be signed by both the intern and the supervisor. Evaluation of the intern's progress of performance from all supervisors must accompany the request. Intern plans and supervisory evaluations for any completed segments must be submitted. Within 15 working days of receipt of the request, the board's designee shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours, or passing the examination referenced in §741.121 of this title (relating to Examination Administration) is required.

(j) An intern who is employed full-time as defined by subsection (h)(3) of this section and wishes to practice at an additional site, shall submit the intern plan and agreement of supervision form for that site. At the additional site, the intern shall receive the minimum of one hour of face-to-face supervision and one hour of indirect supervision per month.

(k) During each segment of the internship, the primary supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the speech-language pathology license is granted. A copy of this documentation shall be submitted with the completed intern plan.

(l) Prior to implementing changes in the internship, approval from the board office is required.

(1) If the intern changes his or her supervisor or adds additional supervisors, a current intern plan and agreement of supervision form shall be submitted by the new supervisor and approved by the board before the intern may resume practice. A report of completed internship form shall be completed by the past supervisor and intern and submitted to the board office upon completion of that portion of the internship. It is the decision of the supervisor to determine whether the internship is acceptable. The board office shall evaluate the form and inform the intern of the results.

(2) A primary supervisor who ceases supervising an intern shall submit a report of completed internship form for the portion of the internship completed under the supervisor's supervision. This must be submitted within 30 days of the date the supervision ended.

(3) Secondary supervisor(s) who cease supervising an intern shall submit written documentation of the intern's performance under his or her supervision. This must be submitted within 30 days of the date the supervision ended.

(4) If the intern changes his or her employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement giving the name, address and phone number of the new location. This must be submitted within 30 days of the date the change occurred.

(5) If the number of hours worked per week changes but the supervisor and the location remain the same, the supervisor shall submit a signed statement giving the date the change occurred and the number of hours per week the intern is now working. A report of completed internship form shall be submitted for the past experience, clearly indicating the number of hours worked per week. This must be submitted within 30 days of the date the change occurred.

(m) In any professional context the licensee must indicate the licensee's status as a speech-language pathology intern.

(n) If the intern wishes to continue to practice, within 30 days of completion of the 36 weeks of full-time, or its part-time equivalent, of supervised professional experience as defined in subsection (h) of this section, the intern shall apply for either:

(1) a speech-language pathology license under §741.61 of this title if the intern passed the examination referenced in §741.121 of this title; or

(2) a temporary certificate of registration under §741.66 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) if the intern has not passed the examination referenced in §741.121 of this title.

(o) The intern may continue to practice under supervision if he or she holds a valid intern license while awaiting the processing of the speech-language pathology license or the temporary certificate of registration in speech-language pathology as follows:

(1) The current supervisor shall agree to supervise the intern from the "Ending Date of Internship" as shown on the report of completed internship form until the intern receives either the speech-language pathology license or the temporary certificate of registration.

(2) If the intern changes supervisors, the new supervisor shall first submit the intern plan and agreement of supervision form and receive board approval before the intern may resume practice.

(3) Supervision required while awaiting approval of either the speech-language pathology license or the temporary certificate of registration shall be consistent with supervision requirements established in subsection (h) of this section.

§741.63. Waiver of Clinical and Examination Requirements for Speech-Language Pathologists.

An applicant who currently holds the ASHA Certificate of Clinical Competence (CCC) may submit official documentation from ASHA of the CCC as evidence that the applicant meets the clinical experience and examination requirements as set out in the Act, and §741.61 of this title (relating to Requirements for a Speech-Language Pathology License.)

§741.64. Requirements for an Assistant in Speech-Language Pathology License.

(a) An applicant for an assistant in speech-language pathology license shall meet the requirements set out in the Act, and this section within 10 years of the date of application for the assistant license. The applicant for the assistant license must:

(1) possess a baccalaureate degree with an emphasis in communicative sciences and disorders;

(2) have acquired no fewer than 24 semester hours in speech-language pathology and/or audiology, at least 18 of which must be in speech-language pathology core curriculum as follows:

(A) at least three semester hours in language disorders;

(B) at least three semester hours in speech disorders; and

(C) excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) have earned no fewer than 25 hours of clinical observation in the area of speech-language pathology and 25 hours of clinical assisting experience in the area of speech-language pathology obtained within an educational institution or in one of its cooperating programs or under the direct supervision at their place of employment.

(b) The baccalaureate degree shall be completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of transcripts shall be submitted and reviewed as follows:

(A) only course work completed within the past 10 years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the board's designee. Within 15 working days of receipt, the board's designee shall evaluate the documentation and shall either approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(c) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences and disorders may qualify for the assistant license. The board's designee shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation and shall determine if the applicant satisfactorily completed 24 semester credit hours in communicative sciences or disorders which may include some leveling hours. Within 15 working days of receipt, the board's designee shall approve the application, request additional documentation, or require that additional coursework or continuing professional education be earned. If necessary, the applicant may reapply for the license when the requirements of this section are met.

(d) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a) of this section. The applicant must bear all expenses incurred during the procedure. The board's designee shall evaluate the documentation within 15 working days of receipt of all documentation, which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the board.

(e) An applicant who has not acquired the hours referenced in subsection (b)(3) of this section shall not meet the minimum qualifications for the assistant license. Other than acquiring the 25 hours of clinical observation and the 25 hours of clinical assisting experience through an accredited college or university, there are no other exemptions in the Act, for an applicant to acquire the hours. The applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(e) of this title (relating to Required Application Materials) and include a clinical deficiency plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed speech-language pathologist who will provide the assistant with the training to acquire these hours shall submit:

(A) the supervisory responsibility statement form; and

(B) a clinical deficiency plan that shall include the following:

(i) name and signature of the assistant;

(ii) name, qualifications, and signature of the licensed speech-language pathologist trainer;

(iii) number of hours of observation and/or assisting experience lacking;

(iv) statement that the training shall be conducted under 100% direct, face-to-face supervision of the assistant; and

(v) list of training, consistent with subsection (h) of this section, that shall be completed.

(2) The board office shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The clinical deficiency plan shall be completed within 60 days of the issue date of the license or the assistant shall be considered to have voluntarily surrendered the license.

(4) Immediately upon completion of the clinical deficiency plan, the trainer identified in the plan shall submit:

(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;

(B) a rating scale of the assistant's performance; and

(C) a signed statement that the assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, face-to-face supervision of the assistant. This statement shall specify the number of hours completed and verify completion of the training identified in the clinical deficiency plan.

(5) Board staff shall evaluate the documentation required in paragraph (4) of this subsection and inform the assistant and trainer if acceptable.

(6) An assistant may continue to practice under supervision of the trainer while the board office evaluates the documentation identified in paragraphs (4) of this subsection.

(7) In the event, another licensed speech-language pathologist shall supervise the assistant after completion of the clinical deficiency plan, a supervisory responsibility statement form shall be submitted to the board office seeking approval for the change in supervision. If the documentation required by paragraphs (4) of this subsection has not been received and approved by the board office, approval for the change in supervision shall not be granted.

(f) A supervisory responsibility statement form shall be completed and signed by both the applicant and the licensed speech-language pathologist who agrees to assume responsibility for all services provided by the assistant. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience, the supervisor shall submit a written request outlining the supervisor's qualifications and a justification for the request for an exception. The board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(1) Approval from the board office shall be required prior to practice by the assistant. The supervisor responsibility statement shall be submitted upon:

(A) application for a license;

(B) license renewal when there is a change in supervisor;

(C) other changes in supervision; and

(D) the addition of other supervisors.

(2) In the event more than one licensed speech-language pathologist agrees to supervise the assistant, the primary and secondary supervisor shall be identified on the supervisor responsibility statement.

(3) An assistant may renew the license if there is a change in supervision, but may not practice until a new supervisory responsibility statement form is approved.

(4) In the event the supervisor ceases supervision of the assistant, the supervisor shall notify the board, in writing, and shall inform the assistant to stop practicing immediately. The board shall hold the supervisor responsible for the practice of the assistant until written notification has been received in the board office.

(5) Should the assistant practice without approval from the board office, disciplinary action may be initiated against the assistant. If the supervisor had knowledge of this violation, disciplinary action against the supervisor may also be initiated.

(g) A licensed speech-language pathologist shall assign duties and provide appropriate supervision to the assistant.

(1) Initial diagnostic contacts shall be conducted by the supervising speech-language pathologist.

(2) Following the initial diagnostic contact, the supervising speech-language pathologist shall determine whether the assistant has the competence to perform specific duties before delegating tasks.

(3) Indirect methods of supervision may include audio and/or video tape recording, report review, telephone or electronic communication, or other means of reporting.

(4) The supervising speech-language pathologist shall provide a minimum of two hours per week of supervision, at least one hour of which is face-to-face supervision, at the location where the assistant is employed. This applies whether the assistant's practice is full or part-time.

(5) An exception to paragraph (3) of this subsection may be requested. The supervising speech-language pathologist shall submit a proposed plan of supervision for review by the board's designee. Within 15 working days of receipt of the request, the board's designee shall accept or reject the plan. The plan shall be for not more than one year's duration and shall include:

(A) the name of the assistant;

(B) the name and signature of the supervisor;

(C) the proposed plan of supervision;

(D) the exact time frame for the proposed plan;

(E) the length of time the assistant has been practicing under the requestor's supervision; and

(F) the reason the request is necessary.

(6) If the exception referenced in paragraph (5) of this subsection is approved and the reason continues to exist, the licensed supervising speech-language pathologist shall annually resubmit a request to be evaluated by the board's designee. Within 15 working days of receipt of the request, the board's designee shall approve or reject the plan.

(7) Supervisory records shall be maintained by the licensed speech-language pathologist that verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the board.

(A) An assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the assistant has been appropriately trained and the assessments are conducted under the direction of the supervisor. An assistant may not conduct a test if the test developer has specified that a graduate degreed examiner should conduct the test.

(B) An assistant may not conduct an evaluation which includes diagnostic testing and observation, test interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(h) Although the licensed supervising speech-language pathologist may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The licensed speech-language pathologist shall ensure that all services provided are in compliance with this chapter.

(1) The licensed supervising speech-language pathologist need not be present when the assistant is completing the assigned tasks; however, the licensed speech-language pathologist shall document all services provided and the supervision of the assistant.

(2) The licensed supervising speech-language pathologist shall keep job descriptions and performance records. Records shall be current and made available to the board within 30 days of the date of the board's request for such records.

(3) The assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed speech-language pathologist determines that the assistant has received the training and has the skill to accomplish that task, and the licensed speech-language pathologist provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant.

(4) Examples of duties which an assistant may be assigned by the speech-language pathologist who agreed to accept responsibility for the services provided by the assistant, provided appropriate training has been received, are to:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) implement the treatment program or the individual education plan (IEP) designed by the licensed speech-language pathologist;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests as defined by the board if the test developer does not specify a graduate degreed examiner and the supervisor has determined the assistant is competent to perform the test;

(F) maintain clinical records;

(G) prepare clinical materials; and

(H) participate with the licensed speech-language pathologist in research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed speech-language pathologist.

(i) A licensed speech-language pathology assistant may represent special education and speech pathology at Admission, Review and Dismissal (ARD) meetings with the following Stipulations.

(1) The speech-language pathology assistant shall have written documentation of approval from the licensed, board approved SLP supervisor.

(2) The speech-language pathology assistant shall have three years experience as a speech pathology assistant in the school setting.

(3) The speech-language pathology assistant shall attend only annual review ARD meetings for students with a sole diagnosis of articulation disorder that are conducted by the school administrator.

(4) The speech-language pathology assistant shall present Individual Educational Plan (IEP) goals and objectives that have been developed by the supervising SLP and reviewed with the parent by the SLP.

(5) The speech-language pathology assistant shall discontinue participation in the ARD meeting, and contact the supervising SLP, when questions or changes arise regarding the IEP Document.

(j) The licensed, board approved supervisor of the assistant, prior to the ARD, shall:

(1) notify the parents of students with speech impairments that services will be provided by an SLP assistant and that the SLP assistant will represent Speech Pathology at the ARD;

(2) develop the student's new IEP goals and objective and review them with the SLP assistant.

(3) the licensed, board approved SLP supervisor of the assistant maintains undiminished responsibility for the services provided and the actions of the assistant.

(k) The assistant shall not:

(1) conduct evaluations even under supervision since this is a diagnostic and decision making activity;

(2) interpret results of routine tests;

(3) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(4) represent speech-language pathology at staff meetings or at an admission, review and dismissal (ARD), except as specified in this section;

(5) attend staffing meeting or ARD without the supervisor being present except as specified in this section;

(6) design or alter a treatment program or individual education plan (IEP);

(7) determine case selection;

(8) present written or oral reports of client information, except as provided by this section;

(9) refer a client to other professionals or other agencies;

(10) use any title which connotes the competency of a licensed speech-language pathologist;

(11) practice as an assistant in speech-language pathology without a valid supervisory responsibility statement on file in the board office;

(12) perform invasive procedures;

(13) screen or diagnose patient or clients for feeding and swallowing disorders;

(14) use a checklist or tabulated results of feeding or swallowing evaluations;

(15) demonstrate swallowing strategies or precautions to patients, family, or staff;

(16) provide patient or family counseling; or

(17) write or sign any formal document relating to the provision of speech-language pathology services (e.g., treatment plans, diagnostic reports, reimbursement forms).

(l) In any professional context the licensee must indicate the licensee status as a speech-language pathology assistant.

(m) The board shall audit 10% of licensed assistants each month for compliance with this section and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors).

(1) The board shall notify an assistant and supervisor by mail that he or she has been selected for an audit.

(2) Upon receipt of an audit notification, the assistant and the licensed speech-language pathologist who agreed to accept responsibility for the services provided by the assistant shall mail the requested proof of compliance to the board.

(3) A licensee and supervisor shall comply with the board's request for documentation and information concerning compliance with the audit.

§741.65. Requirements for a Temporary Certificate of Registration in Speech-Language Pathology.

(a) An applicant for a temporary certificate of registration in speech-language pathology shall meet the requirements of the Act and §741.61(a) - (d) of this title (relating to Requirements for a Speech-Language Pathology License).

(b) If issued, this certificate entitles an applicant approved for examination as required by §741.121 of this title (relating to Examination Administration) to practice speech-language pathology under supervision of an approved speech-language pathologist for a period of time ending eight weeks after the next scheduled examination.

(c) A temporary certificate of registration is not renewable.

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 August 22, 2005.

TRD-200503559

Sherry Sancibrian
Chair
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 458-7236

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SUBCHAPTER F. REQUIREMENTS FOR LICENSURE AND REGISTRATION OF AUDIOLOGISTS

22 TAC §§741.81 - 741.86

(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 State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeals affect Texas Occupations Code, Chapter 401.

§741.81. Requirements for an Audiology License.

§741.82. Requirements for an Intern in Audiology License.

§741.83. Waiver of Licensure for Audiologists.

§741.84. Requirements for a Provisional Audiology License.

§741.85. Requirements for an Assistant in Audiology License.

§741.86. Requirements for a Temporary Certificate of Registration in Audiology.

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 August 22, 2005.

TRD-200503560
Sherry Sancibrian
Chair
State Board of Examiners for Speech-Language Pathology and Audiology
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 458-7236

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SUBCHAPTER F. REQUIREMENTS FOR LICENSURE OF AUDIOLOGISTS

22 TAC §§741.81 - 741.85

The new sections are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new sections affect Texas Occupations Code, Chapter 401.

§741.81. Requirements for an Audiology License.

(a) An applicant for the audiology license shall meet the requirements set out in the Act and this section.

(b) The graduate degree shall be completed at a college or university that has a program accredited by the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copies of transcripts shall verify the applicant completed the following with a grade of "C" or above:

(A) at least 36 semester credit hours shall be in professional course work acceptable toward a graduate degree;

(B) at least 24 semester credit hours acceptable toward a graduate degree shall be earned in the area of audiology, including hearing disorders, hearing evaluations, habilitative/rehabilitative procedures, and preventive methods, including the study of auditory disorders and habilitative/rehabilitative procedures across the life span; and

(C) six semester credit hours shall be earned in the area of normal development of speech and language speech disorders.

(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraph (1)(B) and (C) of this subsection.

(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.

(4) An applicant who possesses a master's degree with a major in speech-language pathology and is pursuing a license in audiology may apply if the board has an original transcript showing completion of a master's degree with a major in speech-language pathology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in audiology and would meet the academic and clinical experience requirements for a license as an audiologist.

(5) An applicant who graduated from a college or university not accredited by the American Speech-Language Hearing Association Council on Academic Accreditation shall have the American Speech-Language-Hearing Association Clinical Certification Board evaluate the course work and clinical experience earned to determine if acceptable. The applicant shall bear all expenses incurred during the procedure.

(c) An applicant shall complete at least 25 clock hours of supervised observation before completing the minimum of the following hours of supervised clinical experience, which may be referred to as clinical practicum, with individuals who present a variety of communication disorders within an educational institution or in one of its cooperating programs:

(1) 275 clock hours if the master's or higher degree was earned prior to November 10, 1993; or

(2) 350 clock hours if the master's or higher degree was earned between November 10, 1993 and December 31, 2006; or

(3) 1400 clock hours if the master's or higher degree was earned on or after January 1, 2007.

(d) An applicant shall obtain a minimum of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience

in which clinical work has been accomplished in audiology as set out in §741.82 of this title (relating to Requirements for an Intern in Audiology License).

(1) An individual shall be licensed under §741.82 of this title prior to the beginning of the supervised professional experience.

(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §741.82 of this title shall:

(A) be licensed in that other state, rather than Texas; or

(B) hold the American Speech-Language-Hearing Association certificate of clinical competence in audiology if the other state did not require licensing.

(e) An applicant shall pass the examination as referenced by §741.121 of this title (relating to Examination Administration) within:

(1) the past 10 years; and

(2) two years of the completion date of the internship referenced in subsection (d) of this section.

(f) In the event the applicant passed the examination referenced in subsection (e) of this section more than two years after the completion date of the internship, the applicant shall repeat the 36 weeks supervised internship before applying for the audiology license. The applicant shall obtain the intern license as required by §741.82 of this title prior to repeating the internship. The applicant may appeal to the board's designee for waiver of the requirement to repeat the internship.

(g) An applicant who previously held the American Speech-Language-Hearing Association Certificate of Clinical Competence may have the certificate reinstated and apply for licensure under §741.83 of this title (relating to Waiver of Clinical and Examination Requirements for Audiologists).

§741.82. Requirements for an Intern in Audiology License.

(a) An applicant for the intern in audiology license shall meet the requirements set out in the Act and §741.81(a) - (c) of this title (relating to Requirements for an Audiology License) within 10 years of the date of application for the intern license.

(b) In the event the course work and clinical experience set out in subsection (a) of this section were earned more than 10 years before the date of application for the intern license, the applicant shall submit proof of current knowledge of the practice of audiology to be evaluated by the board's designee. The applicant may reapply for the license when the requirements of this section are met.

(c) An original or certified copy of the transcript is required and shall be evaluated under §741.81(b) of this title.

(d) An applicant who has successfully completed all academic and clinical requirements of §741.81(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience but shall submit an original or certified copy of a letter from the program director or designee verifying the applicant has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(e) An applicant who has successfully completed all academic and clinical requirements of §741.81(a) - (c) of this title but who has not had the degree officially conferred may be licensed as an intern in order to begin the supervised professional experience. The applicant shall submit an original or certified copy of a letter from the program director or designee verifying the applicant is enrolled in a professionally recognized accredited doctor of audiology (Au.D.) program as approved by the board and has met all academic course work, clinical experience requirements, and completed a thesis or passed a comprehensive examination, if required, but has not had the degree officially conferred. This letter is in addition to transcripts required in subsection (c) of this section.

(f) An applicant whose master's degree is received at a college or university accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation will receive automatic approval of the course work and clinical experience if the program director or designee verifies that all requirements as outlined in §741.81(a) - (c) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of audiology with six hours in speech-language pathology.

(g) An intern plan and agreement of supervision form shall be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the intern. The supervisor shall hold a valid Texas license in audiology and possess a master's degree or higher with a major in one of the areas of communicative sciences and disorders. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience he or she shall submit a written request outlining his or her qualifications and justification for the request for an exception. The Board's designee shall evaluate the request and approve or disapprove it within 15 working days of receipt by the Board.

(1) Approval from the board office shall be required prior to practice by the intern. The intern plan and agreement of supervision shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) addition of other supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the intern, the primary supervisor shall be identified and separate forms submitted by each supervisor.

(3) In the event the supervisor ceases supervision of the intern, the intern shall stop practicing immediately.

(4) Should the intern practice without approval from the board office, disciplinary action shall be initiated against the intern. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(h) The internship shall:

(1) begin within four years after the academic and clinical experience requirements as required by subsection (a) of this section have been met;

(2) be completed within a maximum period of 36 months once initiated;

(3) be successfully completed in no more than two attempts;

(4) consist of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in audiology. Full-time employment

is defined as a minimum of 30 hours per week in direct patient/client clinical work. Part-time equivalent is defined as follows:

(A) 0-15 hours per week--no credit will be given;

(B) 15-19 hours per week for over 72 weeks;

(C) 20-24 hours per week for over 60 weeks; or

(D) 25-29 hours per week for over 48 weeks;

(5) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(6) be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(A) six hours of face-to-face observations per segment by the board approved supervisor(s) of the intern's direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six hours of other monitoring activities per segment with the board approved supervisor(s) which may include correspondence, review of videotapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; or

(C) an alternative plan as approved by the board's designee.

(i) An applicant who does not meet the time frames defined in subsection (h)(1) - (2) of this section shall request an extension, in writing, explaining the reason for the request. Evaluation of the intern's progress or performance from all supervisors must accompany the request. Intern plans and supervisory evaluations for completed segments must be submitted. The board's designee shall determine if the internship:

(1) should be revised or extended; and

(2) whether additional course work, continuing professional education hours or passing the examination referenced in §741.121 of this title (relating to Examination Administration) is required.

(j) During each segment of the internship, the primary supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the audiology license is granted. A copy of this documentation must be submitted with the completed intern plan.

(k) Prior to implementing changes in the internship, approval from the board office is required.

(1) If the intern changes his or her supervisor or adds additional supervisors, a current intern plan and agreement of supervision form shall be submitted by the new supervisor and approved by the board before the intern may resume practice. A report of completed internship form shall be completed by the previous supervisor and the intern and submitted to the board office upon completion of that portion of the internship. It is the decision of the supervisor to determine whether the internship is acceptable. The board office shall evaluate the form and inform the intern of the results.

(2) A primary supervisor who ceases supervising an intern shall submit a report of completed internship form for the portion of the internship completed under his or her supervision. This must be submitted within 30 days of the date the supervision ended.

(3) A secondary supervisor who ceases supervising an intern shall submit written documentation of the intern's performance under their supervision. This must be submitted within 30 days of the date the supervision ended.

(4) If the intern changes his or her employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall submit a signed statement giving the name, address and phone number of the new location. This must be submitted within 30 days of the date the change occurred.

(5) If the number of hours worked per week changes but the supervisor and the location remain the same, the supervisor shall submit a signed statement giving the date the change occurred and the number of hours per week the intern is now working. A report of completed internship form shall be submitted for the past experience, clearly indicating the number of hours worked per week. This must be submitted within 30 days of the date the change occurred.

(6) In any professional context the licensee must indicate the licensee's status as an audiology intern.

(l) If the intern wishes to continue to practice, within 30 days of completion of the 36 weeks of full-time, or its part-time equivalent, supervised professional experience as defined in subsection (h) of this section, the intern shall apply for either:

(1) an audiology license under §741.81 of this title if the intern passed the examination referenced in §741.121 of this title; or

(2) a temporary certificate of registration under §741.85 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) if the intern has not passed the examination referenced in §741.121 of this title.

(m) The intern may continue to practice under supervision if he or she holds a valid intern license while awaiting the processing of the audiology license or the temporary certificate of registration in audiology as follows:

(1) The current supervisor(s) shall agree to supervise the intern from the "Ending Date of Internship" as shown on the report of completed internship form until the intern receives either the audiology license or the temporary certificate of registration.

(2) If the intern changes supervisors, the new supervisor shall first submit the intern plan and agreement of supervision form and receive board approval before the intern may resume practice.

§741.83. Waiver of Clinical and Examination Requirements for Audiologists.

An applicant who currently holds the ASHA Certificate of Clinical Competence (CCC) may submit official documentation from ASHA of the CCC as evidence that the applicant meets the clinical experience and examination requirements as referenced in the Act and §741.81 of this title (relating to Requirements for an Audiology License.

§741.84. Requirements for an Assistant in Audiology License.

(a) An applicant for an assistant in audiology license shall meet the requirements set out in the Act and this section within 10 years of the date of application for the assistant license.

(b) An assistant is an individual who provides audiology support services to clinical programs under supervision of a licensed audiologist and meets the following requirements:

(1) possesses a baccalaureate degree with an emphasis in communicative sciences and disorders;

(2) acquired no fewer than 24 semester hours in speech-language pathology and/or audiology, at least 18 of which must be in

audiology core curriculum and excludes clinical experience and course work such as special education, deaf education, or sign language; and

(3) earned no fewer than 25 hours of clinical observation in the area of audiology and 25 hours of clinical assisting experience in the area of audiology obtained within an educational institution or in one of its cooperating programs.

(c) The baccalaureate degree shall be completed at a college or university that has a program accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of transcripts shall be submitted and reviewed as follows:

(A) only course work completed within the past 10 years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and

(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (b) of this section were earned more than 10 years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of audiology to be evaluated by the board's designee. If an applicant is required to earn additional course work or continuing professional education hours, §741.193 of this title (relating to Revocation, Suspension, Emergency Suspension, or Denial) shall not apply. The applicant may reapply for the license when the requirements of this section are met.

(d) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences and disorders may qualify for the assistant license. The board's designee shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation and shall determine if the applicant satisfactorily completed 24 graduate hours in communicative sciences or disorders which may include some leveling hours.

(e) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a) of this section. The applicant must bear all expenses incurred during the procedure. The board's designee shall evaluate the documentation within 15 working days of receipt of all documentation which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the board.

(f) An applicant who has not acquired the hours referenced in subsection (b)(3) of this section shall not meet the minimum qualifications for the assistant license. Other than acquiring the 25 hours of clinical observation and the 25 hours of clinical assisting experience through an accredited college or university, there are no other exemptions in the Act for an applicant to acquire the hours. The applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §741.112(e) of this title (relating to Required Application Materials) and include a clinical deficiency plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed audiologist who will provide the assistant with the training to acquire these hours shall submit:

(A) the supervisory responsibility statement form; and

(B) a clinical deficiency plan that shall include the following:

(i) name and signature of the assistant;

(ii) name, qualifications, and signature of the licensed audiologist trainer;

(iii) number of hours of observation and/or assisting experience lacking;

(iv) statement that the training shall be conducted under 100% direct, face-to-face supervision of the assistant; and

(v) list of training, consistent with subsection (h) of this section, that shall be completed.

(2) The board office shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The clinical deficiency plan shall be completed within 60 days of the issue date of the license or the assistant shall be considered to have voluntarily surrendered the license.

(4) Immediately upon completion of the clinical deficiency plan, the trainer identified in the plan shall submit:

(A) a supervision log that verifies the specific times and dates in which the hours were acquired with a brief description of the training conducted during each session;

(B) a rating scale of the assistant's performance; and

(C) a signed statement that the assistant successfully completed the clinical observation and clinical assisting experience under his or her 100% direct, face-to-face supervision of the assistant. This statement shall specify the number of hours completed and verify completions of the training identified in the clinical deficiency plan.

(5) In addition to paragraph (4) of this subsection, the assistant shall submit an original signed statement listing the duties that an assistant may and may not perform and acknowledge understanding that the supervisory responsibility statement form shall be received and approved by board staff in order for the assistant to practice.

(6) Board staff shall evaluate the documentation in paragraphs (4) and (5) of this subsection and inform the assistant and trainer if acceptable.

(7) An assistant may continue to practice under supervision of the trainer while the board office evaluates the documentation identified in paragraphs (4) and (5) of this subsection.

(8) In the event, another licensed audiologist shall supervise the assistant after completion of the clinical deficiency plan, a supervisory responsibility statement form shall be submitted to the board office seeking approval for the change in supervision. If the documentation required by paragraphs (4) and (5) of this subsection has not been received and approved by the board office, approval for the change shall not be granted.

(g) A supervisory responsibility statement shall be completed and signed by both the applicant and the licensed audiologist who agrees to assume responsibility for all services provided by the assistant. The supervisor shall have practiced for at least three years and shall submit a signed statement verifying he or she has met this requirement. If the supervisor does not have the required experience he or she shall submit a written request outlining his or her qualifications and justification for the request for an exception. The board's designee

shall evaluate the request and approve or disapprove it within 15 working days of receipt by the board.

(1) Approval from the board office shall be required prior to practice by the assistant. The supervisory responsibility statement shall be submitted upon:

(A) application for a license;

(B) license renewal;

(C) changes in supervision; and

(D) addition of other supervisors.

(2) In the event more than one licensed audiologist agrees to supervise the assistant, the primary supervisor shall be identified and separate supervisor responsibility statements submitted by each supervisor.

(3) An assistant may renew the license but may not practice until a new supervisor responsibility statement is approved.

(4) In the event the supervisor ceases supervision of the assistant, the assistant shall stop practicing immediately.

(5) Should the assistant practice without approval from the board office, disciplinary action shall be initiated against the assistant. If the supervisor had knowledge of this violation, disciplinary action against the supervisor shall also be initiated.

(h) A licensed audiologist shall assign duties and provide appropriate supervision to the assistant.

(1) Initial diagnostic contacts shall be conducted by the supervising licensed audiologist.

(2) Following the initial diagnostic contact, the supervising audiologist shall determine whether the assistant has the competence to perform specific duties before delegating tasks.

(3) The supervising audiologist(s) shall provide the minimum of two hours per week, at least one hour of which is face-to-face supervision, at the location where the assistant is employed. This applies whether the assistant's practice is full or part-time.

(4) Indirect methods of supervision may include audio and/or video tape recording, telephone communication, numerical data, or other means of reporting.

(5) An exception to paragraph (3) of this subsection may be requested. The supervising audiologist shall submit a proposed plan of supervision for review by the board's designee. The plan shall be for not more than one year's duration and shall include:

(A) the name of the assistant;

(B) the name and signature of the supervisor;

(C) the proposed plan of supervision;

(D) the exact time frame for the proposed plan;

(E) the length of time the assistant has been practicing under the requestor's supervision; and

(F) the reason the request is necessary.

(6) If the exception referenced in paragraph (5) of this subsection is approved and the reason continues to exist, the licensed supervising audiologist shall annually resubmit a request to be evaluated by the board's designee.

(7) Supervisory records shall be maintained by the licensed audiologist which verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the board.

(A) An assistant may conduct assessments which includes data collection, clinical observation and routine test administration if the assistant has been appropriately trained and the assessments are conducted under the direction of the supervisor.

(B) An assistant may not conduct an evaluation which includes diagnostic testing, test and observation interpretation, diagnosis, decision making, statement of severity or implication, case selection or case load decisions.

(i) Although the licensed supervising audiologist may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The licensed audiologist shall ensure that all services provided are in compliance with this chapter.

(1) The licensed audiologist need not be present when the assistant is completing the assigned tasks; however, the licensed audiologist shall document all services provided and the supervision of the assistant.

(2) The licensed audiologist shall keep job descriptions and performance records. Records shall be current and be made available to the board within 30 days of the date of the board's request for such records.

(3) The assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed audiologist determines that the assistant has received the training and has the skill to accomplish that task, and the licensed audiologist provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant.

(4) Examples of duties which an assistant may be assigned by the audiologist who agreed to accept responsibility for the services provided by the assistant, provided appropriate training has been received, are to:

(A) conduct or participate in speech, language, and/or hearing screening;

(B) conduct aural habilitation or rehabilitation;

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D) collect data;

(E) administer routine tests as defined by the board;

(F) maintain clinical records;

(G) prepare clinical materials; and

(H) participate with the licensed audiologist in research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed audiologist.

(5) The assistant shall not:

(A) conduct evaluations even under supervision since this is a diagnostic and decision making activity;

(B) interpret results of routine tests;

(C) interpret observations or data into diagnostic statements, clinical management strategies, or procedures;

(D) represent audiology at staff meetings or on an admission, review and dismissal (ARD);

(E) attend staffing meeting or ARD without the supervisor being present;

(F) design a treatment program;

(G) determine case selection;

(H) present written or oral reports of client information;

(I) refer a client to other professionals or other agencies;

(J) use any title which connotes the competency of a licensed audiologist; or

(K) practice as an assistant in audiology without a valid supervisory responsibility statement on file in the board office.

(j) In any professional context the licensee must indicate the licensee's status as an audiology assistant.

(k) An assistant may not engage in the fitting, dispensing or sale of a hearing instrument; however, an assistant who is licensed under the Texas Occupations Code, Chapter 402 may engage in activities as allowed by that law and is not considered to be functioning under his or her assistant license when performing those activities.

(l) The board will audit 10% of licensed assistants each month for compliance with this section and §741.44 of this title (relating to Requirements, Duties, and Responsibilities of Supervisors).

(1) The board shall notify an assistant by mail that he or she has been selected for an audit.

(2) Upon receipt of an audit notification, the assistant and the licensed audiologist who agreed to accept responsibility for the services provided by the assistant shall mail the requested proof of compliance to the board.

(3) A licensee and supervisor shall comply with the board's request for documentation and information concerning compliance with the audit.

§741.85. Requirements for a Temporary Certificate of Registration in Audiology.

(a) An applicant for a temporary certificate of registration in audiology must meet the requirements of the Act and §741.81(a) - (d) of this title (relating to Requirements for an Audiology License).

(b) If issued, this certificate entitles an applicant approved for examination as required by §741.121 of this title (relating to Examination Administration) to practice audiology under an approved supervisor for a period of time ending eight weeks after the next scheduled examination.

(c) The temporary certificate of registration does not include a provision to allow the holder to fit and dispense hearing instruments.

(d) A temporary certificate of registration is not renewable.

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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Sherry Sancibrian

Chair

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SUBCHAPTER G. REQUIREMENTS FOR DUAL LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST AND AN AUDIOLOGIST

22 TAC §741.91

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeal affects Texas Occupations Code, Chapter 401.

§741.91. Requirements for Dual Licenses in Speech-Language Pathology and Audiology.

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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22 TAC §741.91

The new section is proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new section affects Texas Occupations Code, Chapter 401.

§741.91. Requirements for Dual Licenses in Speech-Language Pathology and Audiology.

(a) An applicant for dual licenses in speech-language pathology and in audiology as referenced in the Act shall meet the requirements set out in:

(1) Section 741.63 of this title (relating to a Waiver of Clinical and Examination Requirements for Speech-Language Pathologists) and §741.83 of this title (relating to a Waiver of Clinical and Examination Requirements for Audiologists); or

(2) Section 741.61 of this title (relating to Requirements for a Speech-Language Pathology License) and §741.81 of this title (relating to Requirements for an Audiology License) with the following exceptions.

(A) Instead of the number of semester credit hours of course work referenced in §741.61(b) of this title and §741.81(b) of this title, the applicant shall have completed:

(i) at least 42 semester credit hours in professional course work acceptable toward a graduate degree with at least 21 semester credit hours awarded graduate credit in speech-language pathology and at least 21 semester credit hours awarded graduate credit in audiology;

(ii) at least 30 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology as follows:

(I) at least six graduate semester credit hours in speech disorders; and

(II) at least six graduate semester credit hours in language disorders;

(iii) at least 30 semester credit hours acceptable toward a graduate degree in the area of audiology as follows:

(I) at least six graduate semester credit hours in hearing disorders and hearing evaluations; and

(II) at least six graduate semester credit hours in habilitative/rehabilitative procedures with individuals who have hearing impairment.

(B) Instead of the number of hours of supervised clinical observation and experience referenced in §741.61(c) of this title and §741.81(c) of this title, the applicant shall have completed at least:

(i) 25 hours of supervised observation in evaluation and treatment of children and adults with disorders of speech, language, or hearing prior to beginning 600 graduate credit hours of direct clinical experience; and

(ii) 600 minimum graduate credit hours of clinical experience with at least 300 hours in speech-language pathology under direction of a master's degreed licensed speech-language pathologist and at least 300 hours in audiology under direction of a master's degreed licensed audiologist.

(b) Academic credit for clinical experience cannot be used to satisfy the minimum requirements of at least 21 graduate semester credit hours in speech-language pathology and at least 21 graduate semester credit hours in audiology.

(c) Transcripts shall be evaluated as set out in either §741.61(b) of this title or §741.81(b) of this title.

(d) A speech-language pathology license and an audiology license shall be issued individually.

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 H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §§741.101 - 741.103

(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 State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeals affect Texas Occupations Code, Chapter 401.

§741.101. Requirements for Registration of Audiologists and Interns in Audiology Who Fit and Dispense Hearing Instruments.

§741.102. General Practice Requirements of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments.

§741.103. Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments.

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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22 TAC §§741.101 - 741.103

The new sections are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new sections affect Texas Occupations Code, Chapter 401.

§741.101. Registration of Audiologists and Interns in Audiology to Fit and Dispense Hearing Instruments.

(a) The audiology license and provisional audiology license constitute registration to fit and dispense hearing instruments.

(b) The audiology intern license and the temporary audiology certificate constitute registration to fit and dispense hearing instruments under supervision of the licensed audiologist approved by the board office to supervise the internship.

§741.102. General Practice Requirements of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments.

In accordance with the Act, a licensed audiologist or licensed intern in audiology registered to fit and dispense hearing instruments shall:

(1) adhere to the federal Food and Drug Administration regulations in accordance with 21 Code of Federal Regulations, §801.420 and §801.421;

(2) insure that all equipment used by the licensee within his or her scope of practice shall be calibrated to insure compliance with the American National Standards Institute (ANSI), S3.6, 1989, Specification for Audiometers, or S3.6, 1996, Specification for Audiometers.

(3) receive a written statement before selling a hearing instrument that is signed by a licensed physician preferably one who specializes in diseases of the ear and states that the client's hearing loss has been medically evaluated during the preceding six-month period and that the client may be a candidate for a hearing instrument. If the client is age 18 or over, the registered audiologist or intern in audiology may inform the client that the medical evaluation requirement may be waived as long as the registered audiologist or intern in audiology:

(A) informs the client that the exercise of the waiver is not in the client's best health interest;

(B) does not encourage the client to waive the medical evaluation; and

(C) gives the client an opportunity to sign this statement: "I have been advised by (the name of the individual dispensing the hearing instrument) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing instrument. I do not wish medical evaluation before purchasing a hearing instrument."; and

(4) inform the consumer of a hearing instrument by written contract of a trial period of 30 consecutive days. The contract shall include a specific date by which the client must return the instrument to qualify for a refund. If the date falls on a holiday, weekend, or a day the business is not open, the effective date shall be the first day the business reopens.

(A) All charges and fees associated with such trial period shall be stated in this agreement which shall also include the name, address, and telephone number of the State Board of Examiners for Speech-Language Pathology and Audiology. The purchaser shall receive a copy of this agreement.

(B) Any purchaser of a hearing instrument shall be entitled to a refund of the purchase price advanced by purchaser for the hearing instrument, less the agreed-upon amount associated with the trial period, upon return of the instrument to the licensee in good working order within the trial period. Should the order be canceled by purchaser prior to the delivery of the instrument, the licensee may retain the agreed-upon charges and fees as specified in the written contract. The purchaser shall receive the refund due no later than the 30th day after the date on which the purchaser cancels the order or returns the hearing instrument to the licensee.

(5) When amplification is fit, the audiologist shall verify appropriate fit of the amplification including but not limited to real ear measures, functional gain measures, or other measures completed in a stationary acoustical enclosure.

§741.103. Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments.

In accordance with the Act, a licensed audiologist or licensed intern in audiology who fits and dispenses hearing instruments, shall comply with this section when testing hearing for the purpose of determining the need for amplification.

(1) Licensees must adhere to the American National Standards Institute (ANSI, S3.1, 1999) octave band criteria for permissible ambient noise levels during audiometric testing as shown on the chart. Figure: 22 TAC §741.103(1)

(2) This requirement is best met when a stationary acoustical enclosure is utilized.

(3) A stationary acoustical enclosure is any fixed enclosed space in which an individual is located for the purpose of testing hearing to threshold. A stationary acoustical enclosure may also be known as an audiometric or hearing test booth, room, suite, area, or space.

(4) Procedures referenced in the Act, §401.401, should be followed when testing outside of a stationary acoustical enclosure.

(A) Hearing testing that occurs in an area that does not meet the standard of a stationary acoustical enclosure for the purpose of determining the need for amplification is not considered a diagnostic or threshold measurement.

(B) In the event amplification is fit and verification measures cannot be completed in a stationary acoustical enclosure, instrumentation that is minimally affected by ambient noise including but not limited to, real ear measures, shall be utilized to assure the appropriate fit of the amplification.

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 I. APPLICATION PROCEDURES

22 TAC §741.111, §741.112

(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 State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeals affect Texas Occupations Code, Chapter 401.

§741.111. Application Submission.
§741.112. Required Application Materials.

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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22 TAC §741.111, §741.112

The new sections are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new sections affect Texas Occupations Code, Chapter 401.

§741.111. Application Submission.

(a) An applicant shall submit required information and documentation of credentials on official board forms.

(b) The application shall not be considered as officially submitted without receipt of all forms and documentation required by §741.112 of this title (relating to Required Application Materials) and the application and license fee as referenced in the Act and defined in §741.181(a)(1) of this title (relating to Schedule of Fees).

(c) The board office shall notify the applicant within the time periods established in §741.182 of this title (relating to Time Periods For Processing Applications and Renewals) whether or not:

(1) the request for the license is approved; or

(2) additional documentation is required.

(d) If additional documentation is required, the request for the license shall remain open no longer than 90 days following the date the board office received the request for the license.

(e) If the documentation requested is not received before the 90 days referenced in subsection (d) of this section, the request for the license shall be deleted and the fee forfeited.

§741.112. Required Application Materials.

(a) An applicant applying for a speech-language pathology or audiology license under §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days;

(2) the application and initial license fee;

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) if not previously submitted when applying for intern, an original board course work and clinical experience form completed by the director or designee of the college or university attended which verifies the applicant has met the requirements established in §741.61(b)-(c) of this title or §741.81(b)-(c) of this title;

(5) an original board report of completed internship form completed by the applicant's supervisor and signed by both the applicant and the supervisor; however, if the internship was completed out-of-state, the supervisor shall also submit a copy of his or her diploma or transcript showing the master's degree in one of the areas of communicative sciences and disorders had been conferred and a copy of a valid license to practice in that state. If that state did not require licensure, the supervisor shall submit an original letter from the American Speech-Language-Hearing Association stating the certificate of clinical competence was held when the applicant completed the internship in addition to proof of a master's degree in communicative sciences and disorders; and

(6) an original or certified statement from the Educational Testing Service showing the applicant passed the examination described in §741.121 of this title (relating to Examination Administration) within the time period established in §741.61(e) or §741.81(e) of this title.

(b) An applicant applying for an intern in speech-language pathology license under §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License) or an intern in audiology license under §741.82 of this title (relating to Requirements for an Intern in Audiology License) shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days;

(2) the application and initial license fee;

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) if the master's degree has not been officially conferred, an original or certified copy of transcript(s) and verification from the university attended verifying the applicant successfully completed all requirements for the master's degree, and is only awaiting the date of next graduation for the degree to be conferred;

(5) an original board course work and clinical experience form completed by the director or designee of the college or university attended which verifies the applicant has met the requirements established in §741.61(b)-(c) of this title or §741.81(b)-(c) of this title; and

(6) a current, original board intern plan and agreement of supervision form completed by the supervisor and signed by both the applicant and the supervisor.

(c) An applicant who holds the American Speech-Language-Hearing Association certificate of clinical competence applying for licensure under §741.63 of this title (relating to Waiver of Clinical and Examination Requirements for Speech-Language Pathologists) or §741.83 of this title (relating to Waiver of Clinical and Examination Requirements for Audiologists) shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days;

(2) the application and initial license fee;

(3) an original or certified copy of a signed letter from the American Speech-Language-Hearing Association which verifies the applicant currently holds the certificate of clinical competence in the area in which the applicant has applied for license; and

(4) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant whose transcript is in a language other than English shall submit an original evaluation form from an approved credentialing agency.

(d) An applicant applying for an assistant in speech-language pathology license under §741.64 of this title (relating to Requirements for an Assistant in Speech-Language Pathology License) or an assistant in audiology license under §741.84 of this title (relating to Requirements for an Assistant in Audiology License) shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days;

(2) the application and initial license fee;

(3) a current, original board supervisory responsibility statement form completed by the licensed supervisor who agrees to accept responsibility for the services provided by the assistant and signed by both the applicant and the supervisor;

(4) an original or certified copy of transcript(s) of relevant course work which also verifies that the applicant possesses a baccalaureate degree with an emphasis in speech-language pathology and/or audiology;

(5) if not previously submitted, an original board clinical observation and experience form completed by the director or designee of the college or university training program verifying the applicant completed the requirements set out in §741.64(a)(3) of this title or §741.84(b)(3) of this title; and

(6) for an applicant who did not obtain the hours referenced in paragraph (5) of this subsection, a clinical deficiency plan to obtain the hours.

(e) An applicant applying for a speech-language pathology temporary certificate of registration under §741.65 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) or an audiology temporary certificate of registration under §741.85 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days;

(2) the temporary certificate of registration fee;

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders; however, an applicant who graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association Council on Academic Accreditation, shall submit an original signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work and clinical experience;

(4) an original board course work and clinical experience form completed by the director or designee of the college or university attended which verifies the applicant has met the requirements established in §741.61(b)-(c) of this title or §741.81(b)-(c) of this title;

(5) an original board report of completed internship form completed by the applicant's supervisor and signed by both the applicant and the supervisor; however, if the internship was completed out-of-state, the supervisor shall also submit a copy of his or her diploma or transcript showing the master's degree in one of the areas of communicative sciences and disorders had been conferred and a copy of a valid license to practice in that state. If that state did not require licensure, the supervisor shall submit an original letter from the American Speech-Language-Hearing Association stating the certificate of clinical competence was held when the applicant completed the internship in addition to proof of a master's degree in communicative sciences and disorders; and

(6) an applicant who completed the internship in another state and graduated from a college or university with a program not accredited by the American Speech-Language-Hearing Association, shall submit an original, signed letter from the American Speech-Language-Hearing Association stating the Clinical Certification Board accepted the course work, clinical practicum and the clinical fellowship year.

(f) An applicant for dual licenses in speech-language pathology and audiology under §741.91 of this title (relating to Requirements for Dual Licenses in Speech-Language Pathology and Audiology) shall submit separate documentation and fees as follows:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days requesting both licenses;

(2) two separate application and initial license fees; and

(3) documentation listed in subsection (a)(3)-(6) of this section or subsection (c)(3)-(4) of this section.

(g) An applicant who currently holds one license and wishes to obtain dual licenses shall submit the following:

(1) an original board application form including disclosure of the applicant's social security number completed, signed and dated within the past 60 days requesting the other license;

(2) the application and initial license fee; and

(3) documentation listed in subsection (a)(3)-(6) of this section or subsection (c)(3)-(4) of this section.

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

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SUBCHAPTER J. LICENSURE EXAMINATIONS

22 TAC §741.121

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The repeal is proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeal affects Texas Occupations Code, Chapter 401.

§741.121. Examination Administration

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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22 TAC §741.121

The new section is proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new section affects Texas Occupations Code, Chapter 401.

§741.121. Examination Administration.

(a) The examination required by the Act shall be the examination administered by the Educational Testing Service. To request a registration form, contact the Educational Testing Service, Praxis Series, P.O. Box 6050, Princeton, New Jersey 08541-6050.

(b) Separate tests shall be administered in speech-language pathology and in audiology.

(c) An applicant shall pay the required fee directly to the testing service.

(d) An applicant shall indicate on the registration form the Code R8327 assigned to the board so that the applicant's test score will be sent to the board.

(e) An applicant shall have passed the examination if the score is 600 or above.

(f) An applicant will be notified of the results of the examination by the testing service.

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

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SUBCHAPTER K. ISSUANCE AND DISPLAY OF LICENSE AND REGISTRATION

22 TAC §741.141, §741.142

(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 State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeals affect Texas Occupations Code, Chapter 401.

§741.141. Issuance of License and Registration.

§741.142. Display of License, Certificate, and Registration.

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

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SUBCHAPTER K. ISSUANCE OF LICENSE

22 TAC §741.141

The new section is proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new section affects Texas Occupations Code, Chapter 401.

§741.141. Issuance of License.

(a) Except as provided by subsections (b) and (c) of this section, the board shall issue an initial license to an applicant for a license after the fee, forms, and other documentation have been received and approved by the board or board staff. A license will be issued for a two-year pro-rated term, as determined by the board, expiring in the licensee's birth month. The effective date shall be the date of receipt

by the board office or board's designee of the last item required for approval. The expiration date shall be determined as follows.

(1) An applicant approved for license within three months of the applicant's birth month shall be issued a license to expire on the last day of the birth month that is two years past the applicant's next birth month.

(2) An applicant approved for less than 12 months from the applicant's next birthday, but more than three months from the applicant's next birthday, shall be issued a license to expire upon the last day of the applicant's next birth month of the following year.

(b) The board shall issue an initial license to an applicant for an intern in speech-language pathology or an intern in audiology license after the fee, forms, and other documentation have been received and approved by the board or board staff. The effective date shall be the date of receipt by the board office approval designee] of the last item required for approval. The license shall expire one year past the effective date.

(c) The board shall issue a temporary certificate of registration in speech-language pathology or a temporary certificate of registration in audiology to an applicant after the fee, forms, and other documentation have been received and approved by the board or board staff. The effective date shall be the date of receipt by the board office approval designee of the last item required for approval. The registration shall expire eight weeks after the next scheduled examination as required by §741.121 of this title (relating to Examination Administration). This certificate is non-renewable and there is no allowed grace period after expiration of the certificate.

(d) Licenses issued under subsections (a)-(b) of this section may be renewed as required by §741.161 of this title (relating to Renewal Procedures).

(e) A license or certificate issued by the board remains the property of the board.

(f) The board shall issue a duplicate license or certificate, upon written request and payment of the duplicate fee.

(g) The board is not responsible for lost, misdirected, or undelivered correspondence, including forms and fees, if sent to the address last reported to the board.

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

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Sherry Sancibrian
Chair
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For further information, please call: (512) 458-7236

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SUBCHAPTER L. LICENSE AND REGISTRATION RENEWAL

22 TAC §§741.161 - 741.165

(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 State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeals affect Texas Occupations Code, Chapter 401.

§741.161. Renewal Procedures.

§741.162. Requirements for Continuing Professional Education.

§741.163. Inactive Status.

§741.164. Late Renewal of a License.

§741.165. Renewal of Licensee on Active Military Duty.

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

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SUBCHAPTER L. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §§741.161 - 741.165

The new rules are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new rules affect Texas Occupations Code, Chapter 401.

§741.161. Renewal Procedures.

(a) The Act provides for the renewal of a license. A license issued under §741.141(a)-(b) of this title (relating to Issuance of License) is subject to renewal upon expiration if a licensee wishes to practice under the Act and this chapter.

(1) A licensee may renew by mailing to the board office the renewal form, fee, and all required documents.

(2) A licensee may choose to renew online. The license is not considered renewed until all required documents have been received in the board office.

(b) A license or registration issued under §741.141(c) of this title cannot be renewed.

(c) The board office shall mail notice of expiration to each licensee approximately 45 days prior to the expiration date of the license.

The board is not responsible for lost, misdirected, or undelivered notices of expiration if sent to the address last reported to the board.

(d) A licensee shall have acquired approved continuing education hours as defined in §741.162 of this title (relating to Requirements for Continuing Professional Education) in order to renew a license. Any continuing education hours earned before the original effective date of the license being renewed are not acceptable.

(e) A licensee or registrant is responsible for submitting the required fee, forms, and other documentation prior to the expiration date of the license. The postmark date is the effective date of the renewal. If all required documentation is submitted online, the effective date of submission is the date of the online transaction.

(f) A licensee is required to provide current address, telephone number, and employment information. Corrections may be made on the renewal form or by submitting the current information in writing. A request to change the name currently on record must be submitted in writing with a copy of a divorce decree, marriage certificate, legal name change document, or social security card showing the new name.

(g) The board office shall not consider a license to be renewed until the following has been received and found acceptable:

(1) completed, dated, and signed renewal form, including acknowledgment of having earned the required continuing professional education hours;

(2) license renewal fee; and

(3) if selected for audit as defined in subsection (o) of this section, the record of continuing education hours earned/used/available/dropped form, referred to as the CE log, which covers at least the past three renewal periods and verification of approved continuing education hours.

(4) If the licensee chooses to use the online renewal process, the renewal form and renewal fee, as detailed in (1) and (2) of this section, will be accepted automatically. The license will be considered renewed when the online renewal is processed in the board office and board staff determine that all documentation has been provided. If no additional information is required, the effective date of renewal shall be the date of the online transaction. If additional documentation is required, such as documentation for an audit as defined in subsection (o) of this section, that documentation must be mailed to the board office. Although the license may complete the renewal process online, the board office shall not consider the license renewed until the additional documentation has been received and accepted by the board office.

(h) An intern shall submit the following for license renewal:

(1) the items listed in subsection (g) of this section;

(2) evaluation of the intern's progress or performance from all supervisors must accompany the request. Intern plans and supervisory evaluations for completed segments must be submitted; and

(3) the intern plan and agreement of supervision form for the intern's upcoming experience unless the intern is currently not practicing. In that event, the intern shall submit a signed statement explaining the reason for not practicing.

(i) An assistant shall submit the following for license renewal:

(1) the items listed in subsection (g) of this section; and

(2) the supervisory responsibility statement form unless the assistant is currently not practicing or the supervisor has not changed.

(j) An individual who meets the requirements set out in the Act and wishes to renew the expired license shall submit his or her request, in writing, with the following:

(1) an original letter from the licensing board where he or she currently holds a valid license verifying:

(A) the professional area in which the license was issued;

(B) the date of issue;

(C) the expiration date of the license; and

(D) whether disciplinary action has been taken;

(2) a reinstatement fee as determined by the board.

(k) A licensee may renew the license under the provisions of the Act after expiration of the 60-day grace period without a late renewal penalty fee being assessed due to a medical hardship whether or not the licensee met the requirements of §741.162 of this title. If the following is submitted and found acceptable by the board office, the license shall be renewed:

(1) a signed statement requesting renewal due to medical hardship;

(2) an original letter signed by the licensee's physician stating the licensee was unable to practice for at least six months during the renewal period because of a physical or mental disability;

(3) the completed, dated, and signed renewal form;

(4) any approved continuing education hours earned during the renewal period; and

(5) the license renewal fee.

(l) A licensee may petition the board if the licensee does not meet the requirements of subsection (m) of this section but believes he or she has a valid medical reason for the late renewal. The petition shall be reviewed by the board's designee within 15 working days of receipt of the request.

(m) The board shall monitor a licensee's compliance with the continuing education requirements by the use of a random audit. In the event the licensee has been selected for an audit to verify compliance with the continuing education requirement as described in §741.162 of this title, the license shall not be renewed until the licensee submits acceptable proof of having earned the required continuing education hours. If this documentation is not received or found unacceptable, the licensee shall be notified by the board office of the deficiency.

(n) Failure to timely furnish required documentation or providing false information during the audit or renewal process is grounds for disciplinary action against the licensee.

(o) The board shall deny renewals pursuant to the Texas Education Code, §57.491, concerning defaults on guaranteed student loans.

(p) The board shall deny renewals when a license holder is subject to the suspension of license provisions relating to child support and child custody in the Family Code, Chapter 232.

(q) If all conditions required for renewal are met prior to expiration of the 60-day grace period, the board shall issue a renewed license.

(r) If the licensee has not completed the renewal process upon expiration of the 60-day grace period, he or she shall cease practicing. The licensee shall then renew his or her license in accordance with §741.164 of this title (relating to Late Renewal of a License) if he or she wishes to practice.

(s) A suspended license is subject to expiration and may be renewed as provided in this subchapter; however, the renewal does not entitle the licensee to engage in the licensed activity or in any other activity or conduct in violation of the order or judgment by which the license was suspended, until such time as the license if fully reinstated.

(t) A license revoked on disciplinary grounds shall not be renewed; however, the license may be reinstated under the Act, §401.457. The former licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect, plus the late renewal penalty fee, if any, accrued since the time of the license revocation.

§741.162. Requirements for Continuing Professional Education.

(a) Continuing professional education in speech-language pathology and audiology as required by the Act consists of a series of planned individual learning experiences beyond the basic educational program which has led to a degree or qualifies one for licensure.

(b) A continuing education unit (CEU) is the basic unit of measurement used to credit individuals with continuing education activities for licensure. One CEU is defined as 10 contact hours of participation in an approved continuing education experience.

(c) Ten clock hours (one CEU) shall be required to renew a license issued for a one-year term. Twenty clock hours (two CEUs) shall be required to renew a license issued for a two-year term. The holder of dual licenses, meaning both a speech-language pathology license and an audiology license, shall be required to earn 15 clock hours (1.5 CEUs) to renew a license issued for a one-year term and 30 hours to renew a license issued for a two-year term.

(d) When renewing an initial license, the licensee shall submit 10 continuing education hours if the initial license was issued for less than 12 months and 20 continuing education hours if the initial license was issued for more than 12 months. Continuing education hours earned before the original effective date of a license are not acceptable.

(e) Continuing professional education shall be earned in one of the following areas:

(1) basic communication processes;

(2) speech-language pathology;

(3) audiology; or

(4) an area of study related to the areas listed in paragraphs (1)-(3) of this subsection.

(f) Any continuing education activity shall be provided by an approved sponsor with the exception of activities referenced in subsections (g)-(i) of this section. A list of approved sponsors designated by the board shall be made available to all licensees and updated as necessary.

(g) University or college course work completed with a grade of at least a "C" or for credit from an accredited college or university in the areas listed in subsection (e)(1)-(3) of this section shall be approved for 10 continuing education clock hours per semester hour.

(h) University or college course work in a related area or events approved by the American Medical Association (Category I) in a related area as referenced in subsection (e)(4) of this section may be approved if the activity furthers the licensee's knowledge of speech-language pathology or audiology or enhances the licensee's service delivery. A licensee shall complete the board's approved form for prior approval of such events. Partial credit may be awarded.

(i) Earned continuing education hours exceeding the minimum requirement in a previous renewal period shall first be applied to the continuing education requirement for the current renewal period.

(1) A maximum of 10 additional clock hours may be accrued during a license period to be applied to the next consecutive renewal period.

(2) A maximum of 15 additional clock hours may be accrued by dual speech-language pathology and audiology licensees during a license period to be applied to the next consecutive renewal period.

(j) The licensee shall be responsible for maintaining a record of his or her continuing education experiences for a period of at least three years.

(k) Proof of completion of a valid continuing education experience shall include the name of the licensee, the sponsor of the event, the title and date of the event, and the number of continuing education hours earned. Acceptable verification shall be:

(1) a letter or form bearing a valid signature or verification as designated by the approved sponsor;

(2) in the event verification referenced in paragraph (1) of this subsection cannot be obtained, the board may accept verification from the presenter of an approved event if the presenter can also provide proof that the event was acceptable to an approved sponsor;

(3) an original or certified copy of the transcript if earned under subsections (g)-(h) of this section;

(4) a letter or form from the American Medical Association if earned under subsection (h) of this section stating the event was approved for Category I;

(5) an original or certified copy of the score if earned under subsection (i) of this section; and

(6) if the continuing education event was earned under subsection (h) of this section, a letter or form from the board office granting prior board approval of the event in addition to documentation listed in paragraphs (3) and (4) of this subsection. If this approval was not obtained, the licensee shall not include the event on the documentation. The licensee shall comply with the requirements set out in subsection (h) of this section and, if approval is granted, add the event to the documentation .

(l) The documentation, certificates, diplomas, or other documentation verifying earning of continuing education hours shall not be forwarded to the board at the time of renewal unless the board selected the licensee for audit.

(m) The audit process shall be as follows.

(1) The board shall select for audit a random sample of licensees for each renewal month. The renewal form shall indicate whether the licensee has been selected for audit.

(2) A licensee selected for audit shall submit documentation defined in subsections (l) and (m) of this section at the time the renewal form and fee are submitted to the board.

(3) Failure to timely furnish this information or providing false information during the audit or renewal process are grounds for disciplinary action against the licensee.

(4) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the board office.

§741.163. Inactive Status.

(a) A licensee who does not wish to practice may request inactive status as provided by the Act.

(b) Prior to the expiration date of the license, the licensee shall submit the following in order to place the license on inactive status. The postmark date is the date of mailing:

(1) the inactive status request form which has been completed, signed, and dated; and

(2) the inactive status fee.

(c) The inactive status period shall begin following the expiration date of the license.

(d) The license may remain on inactive status for no more than three years past the expiration date of the license. During the time the license is placed on inactive status, the inactive licensee may not practice or represent himself or herself as a speech-language pathologist, audiologist, intern, or assistant.

(e) A licensed audiologist or intern in audiology may not fit and dispense hearing instruments if the audiology or the intern in audiology license has been placed on inactive status.

(f) The inactive licensee shall be notified annually that, in order for the license to remain on inactive status, the board inactive status notice which has been completed, signed and dated, and the inactive status fee shall be submitted to the board office as follows:

(1) if the licensee wishes the license to remain inactive for a second year, the form and fee shall be received on or before a date that is one year past expiration of the license; and

(2) if the licensee wishes the license to remain inactive for the third and final year, the form and fee shall be submitted on or before a date that is two years past expiration of the license.

(g) A late renewal penalty fee shall be assessed if the inactive licensee fails to submit the board form and fee within the required time frames stated in subsection (f) of this section. If the inactive licensee wishes to practice, the license must first be renewed under §741.164 of this title (relating to Late Renewal of a License). If the licensee maintained inactive status at a date that was one year after the expiration date of the license, he or she shall be notified 45 days before a date that is two years after the expiration date of the license, to return the form and fee to maintain inactive status. If the inactive licensee fails to do so, the licensee's record shall be deleted as defined in the Act.

(h) The license on inactive status may be reactivated at any time by submission of a written signed request and verification of continuing education hours earned as required by §741.162(m) of this title.

(i) The inactive licensee shall earn 10 continuing education hours or 15 hours for holders of dual speech-language pathology and audiology licenses during the 12-month period preceding the request to reactivate the license unless hours were accrued under §741.162(j) or (k) of this title and are available for use when the request for reactivation is received by the board.

(j) The random audit for compliance with the continuing education requirements referenced in §741.161(m) of this title (relating to Renewal Procedures) does not apply to reactivation of a license on inactive status.

(k) If the board office approves the reactivation of the license, active status shall begin on the date of approval. The licensee's next continuing education cycle shall begin on the same date.

(l) A license that is not reactivated within the three-year period cannot be renewed, restored, reissued, or reinstated. If the individual wishes to practice, he or she shall reapply for the license if requirements of the Act are met.

(m) If a licensee places his or her license on inactive status, the inactive licensee shall be subject to investigation and action under Subchapter N of this chapter (relating to Complaints, Violations, and Disciplinary Actions).

(n) Failure to furnish information in a timely manner or providing false information during this process is grounds for disciplinary action against the licensee.

§741.164. Late Renewal of a License.

(a) A licensee who fails to renew his or her license before the end of the 60-day grace period shall be assessed a late renewal penalty as required by the Act, unless the license had been placed on inactive status. The postmark date is the date of mailing.

(b) The Act prohibits an individual from practicing after expiration of the 60-day grace period. Penalties for doing so are defined in the Act.

(c) The following shall be submitted to renew a license after expiration of the grace period:

(1) the board late renewal of a license form which requires a written, signed statement from the licensee and his or her employer(s) documenting the licensee's practice activities since expiration of the 60-day grace period under the Act and this chapter;

(2) the late renewal penalty fee as set out in §741.181 of this title (relating to Schedule of Fees);

(3) CE documentation as required by §741.162(1) of this title (relating to Requirements for Continuing Professional Education); and

(4) verification of continuing education hours earned as required by §741.162(m) of this title.

(d) The following number of continuing education hours shall be required:

(1) if renewing an initial license before the end of the first year of the penalty status, the number of continuing education hours that shall be earned are listed under §741.162(d) of this title;

(2) if renewing before the end of the first year of penalty status, ten continuing education hours or 15 hours for holders of dual speech-language pathology and audiology licenses;

(3) if renewing at the end of the first year of penalty status but before the end of the second year, 20 continuing education hours or 30 hours for holders of dual speech-language pathology and audiology licenses; or

(4) if renewing at the end of the second and final year of penalty status, 30 continuing education hours or 45 hours for holders of dual speech-language pathology and audiology licenses.

(e) Continuing education hours accrued under §741.162(j) or (k) of this title may be used if the hours are available for use when the request for renewal is received by the board.

(f) The random audit for compliance with the continuing education requirements referenced in §741.161(m) of this title (relating to Renewal Procedures) does not apply to late renewal of a license.

(g) If additional documentation is required, the request to renew the license shall remain open no longer than 90 days following the date the board office received the initial request to renew the license. If the documentation requested is not received before the 90 days referenced, the request for late renewal of a license shall be denied and the fee forfeited.

(h) Failure to timely furnish information or providing false information during the late renewal process are grounds for disciplinary action.

(i) If the board office approves the request for late renewal of a license, active status shall begin on the date of approval. The licensee shall earn continuing education hours as required by §741.162 of this title in order to renew the license upon expiration.

§741.165. Renewal of Licensee on Active Military Duty.

If a licensee fails to timely renew his or her license because the licensee is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee may renew the license as follows.

(1) Renewal of the license may be requested by the licensee, the licensee's spouse, or an individual having power of attorney from the licensee. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) A copy of the official orders or other official military documentation showing that the licensee is or was on active duty serving outside the State of Texas, shall be filed with the board along with the renewal form.

(3) A licensee renewing under this section shall pay the applicable renewal fee, but not a late renewal penalty fee.

(4) A licensee renewing under this section shall submit proof of any clock hours of continuing education earned prior to being called to active duty serving outside the State of Texas, and no further continuing education hours shall be required for that renewal.

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

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SUBCHAPTER M. FEES AND PROCESSING PROCEDURES

22 TAC §741.181, §741.182

(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 State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeals affect Texas Occupations Code, Chapter 401.

§741.181. Schedule of Fees.

§741.182. Time Periods For Processing Applications, Registrations, and Renewals.

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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22 TAC §741.181, §741.182

The new sections are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new sections affect Texas Occupations Code, Chapter 401.

§741.181. Schedule of Fees.

(a) All fees paid to the board are non-refundable. For all applications and renewal applications, the board is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online. For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection within the Health Professions Council, as required by Occupations Code, §101.307 (relating to Health Professions Council Funding of Office.) The schedule of fees is as follows:

(1) application and initial license fee:

(A) $150 for a two year license; or

(B) $75 for a one year license.

(2) provisional application and initial license fee--$75;

(3) temporary certificate of registration fee--$55;

(4) license renewal fee:

(A) $50 for one year license;

(B) $100 for a two year license;

(5) dual license fees as a speech-language pathologist and audiologist--each license must be renewed separately and fees will be determined separately:

(6) duplicate license, certificate, or registration fee--$10;

(7) inactive status fee--$45;

(8) license verification fee--$10;

(9) late renewal penalty fee--an amount equal to the renewal fee(s), with a maximum of three renewal fees, plus the examination fee;

(10) examination fee--the amount charged by the board's designee administering the examination; and

(b) Any remittance submitted to the board in payment of a required fee shall be in the form of a personal check, certified check, or money order unless this section requires otherwise. Checks from foreign financial institutions are not acceptable. Payment may also be made through the online renewal process using an electronic check or credit card.

(c) An applicant whose check for the application and initial license fee is returned marked insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to the board a money order or check for guaranteed funds within 30 days of the date of the receipt of the board's notice. Otherwise, the application and the approval shall be invalid. A penalty fee of $50.00, in addition to the amount of the check, must be included with the payment remitted to the board office.

(d) A licensee whose check for the renewal fee is returned marked insufficient funds, account closed, or payment stopped shall remit to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. Otherwise, the license shall not be renewed. If a renewal card has already been issued, it shall be invalid. If the guaranteed funds are received after expiration of the 60-day grace period, a late renewal penalty fee shall be assessed. A penalty fee of $50.00, in addition to the amount of the check, must be included with the payment remitted to the board office.

§741.182. Time Periods for Processing Applications and Renewals.

(a) Within 15 working days of the board's receipt of a new application, the board office shall:

(1) approve the application and send written notification to the applicant that he or she may begin practicing; or

(2) mail a letter of deficiency listing the documentation that must be submitted before the application shall be approved.

(b) The applicant shall be notified within 15 working days of the date the documentation referred to in subsection (a)(2) of this section is received and the application approved.

(c) Within 15 working days of the board's receipt of a request to renew a license, the board office shall:

(1) approve the request to renew the license; or

(2) mail a letter of deficiency listing the documentation that must be submitted before the request for renewal shall be approved.

(d) The licensee shall be notified within 15 working days of the date the documentation referred to in subsection (c)(2) of this section is received and the request to renew the license is approved.

(e) The board shall comply with the following procedures in reimbursement of fees.

(1) In the event a request for a license or registration is not processed in the time periods stated in subsections (a) - (d) of this section, the applicant, licensee, or registrant has the right to request reimbursement of all fees paid in that particular application process. The request shall be submitted in writing to the executive director of the board. If the executive director does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request shall be denied.

(2) Good cause for exceeding the time period is considered to exist if:

(A) the number of requests for new licenses, registrations, and renewals exceeds by 15% or more the number of requests in the same calendar quarter of the preceding year;

(B) another public or private entity relied upon by the board in the licensing process caused the delay; or

(C) any other condition exists giving the board good cause for exceeding the time period.

(f) If a request for reimbursement under subsection (e) of this section is denied by the executive director, the applicant may appeal to the presiding officer of the board for a timely resolution of the dispute arising from a violation of the time period.

(1) The applicant, licensee, or registrant shall give written notice to the presiding officer that he or she requests full reimbursement of all fees paid because his or her request for a license or registration was not processed within the applicable time period.

(2) The executive director shall submit a written report of the facts related to the processing of the application or renewal request and of any good cause for exceeding the applicable time period.

(3) The presiding officer shall provide written notice of his or her decision to the applicant, licensee, or registrant and the executive director.

(4) An appeal shall be decided in the applicant's or licensee's favor if the applicable time period was exceeded and good cause was not established. In which case, full reimbursement of all fees paid in that particular process shall be made to the applicant or licensee.

(g) Contested cases related to the denial of license or renewal shall be handled in accordance with the provision of the Texas Government Code, Chapter 2001.

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 N. DENIAL, PROBATION, SUSPENSION, OR REVOCATION OF A LICENSE OR REGISTRATION

22 TAC §§741.191 - 741.195

(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 State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The repeals affect Texas Occupations Code, Chapter 401.

§741.191. Basis for Denial, Probation, Suspension, or Revocation of a License or Registration.

§741.192. Procedures for Filing a Complaint and Denying, Suspending, or Revoking a License or Registration.

§741.193. Formal Hearings; Surrender of License or Registration.

§741.194. Informal Disposition or Proceedings.

§741.195. Schedule of Sanctions.

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

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TRD-200503576

Sherry Sancibrian

Chair

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: October 2, 2005

For further information, please call: (512) 458-7236

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SUBCHAPTER N. COMPLAINTS, VIOLATIONS, PENALTIES, AND DISCIPLINARY ACTIONS

22 TAC §§741.191 - 741.201

The new sections are proposed under Texas Occupations Code, §401.202, which requires the board to adopt rules necessary to administer and enforce the chapter, including rules that establish standards of ethical practice; and under Texas Occupations Code, §401.204, which requires the board by rule to establish fees in amounts reasonable and necessary.

The new sections affect Texas Occupations Code, Chapter 401.

§741.191. Complaint Procedures.

(a) A person wishing to report an alleged violation of the Act or the rules by a licensee or other person shall notify the executive director. The initial notification may be in writing, by telephone, or by personal visit to the board office.

(b) Upon receipt of a complaint, the executive director shall send an acknowledgment letter to the complainant and an official form which the complainant must complete and return to the board before further action may be taken. The executive director may accept an anonymous complaint if there is sufficient information for the investigation.

(c) A complaints committee shall be appointed to work with the executive director to:

(1) review and determine whether the complaint fits within the category of a serious complaint affecting the health and safety of clients or other persons;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(4) resolve the issues of the complaint which arise under the Act or this chapter.

(d) Prior to or during an investigation, the executive director or his or her designee shall request a response from the licensee or person against whom an alleged violation has been filed to gather information required by the complaints committee of the board. The licensee or person against whom an alleged violation has been filed must respond within 15 working days of the executive director's request.

(e) If it is determined that the matters alleged in the complaint are non-jurisdictional, or if the matters alleged in the complaint would not constitute a violation of the Act or this chapter, the Executive Director may dismiss the complaint and give written notice of dismissal to the licensee or person against whom the complaint has been filed, the complainant, and the complaints committee.

(f) If it is determined that there are sufficient grounds to support the complaint, the matters in question shall be investigated. The executive director or the committee may initiate the investigation.

(g) If the committee determines that there are insufficient grounds to support the complaint, the committee shall dismiss the complaint and give written notice of the dismissal to the licensee or person against whom the complaint has been filed and the complainant.

(h) The board shall use a private investigator only if the department's investigators available to the board have a conflict of interest.

(i) If a written complaint is filed with the board that the board has the authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(j) If after due investigation a complaint or allegation is not resolved by the committee, the committee may recommend that the license be revoked, suspended, or denied or that other appropriate actions as authorized by law be taken.

§741.192. Disciplinary Action; Notices.

(a) The board may deny, revoke, temporarily suspend, or suspend a license, or may probate disciplinary action, or may issue a reprimand to a person who:

(1) violates a provision of the Act;

(2) violates a rule adopted by the board;

(3) offers to pay or agrees to accept any remuneration, directly or indirectly, to or from any person or entity for securing or soliciting a client or patronage; or

(4) is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Code of Criminal Procedure, Chapter 56.

(b) Prior to institution of formal proceedings to discipline a licensee, the board shall give written notice to the licensee by certified mail, return receipt requested, of the facts or conduct alleged to warrant the disciplinary action. The notice shall inform the licensee or applicant of the opportunity to retain legal representation. The licensee or applicant shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(c) If denial, revocation, or suspension of a license is proposed, the board shall give written notice by certified mail, return receipt requested; or regular mail of the basis for the proposal and that the licensee or applicant must request, in writing, a formal hearing within 15 working days of receipt of the notice, or the right to a hearing shall be waived and the license shall be denied, revoked, or suspended.

(d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth working day after the notice is mailed to the last address known to the board unless another date is reported by the United States Postal Service.

§741.193. Revocation, Suspension, Emergency Suspension, or Denial.

(a) If the board suspends a license, the suspension shall remain in effect for the period of time stated in the order or until the board determines that the reason for the suspension no longer exists.

(b) If a suspension overlaps a license renewal date, the person suspended shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to subsection (a) of this section.

(c) Upon the revocation, suspension or non-renewal of a license, a licensee shall return his or her license certificate and all existing renewal cards to the Executive Director.

(d) The board or the complaints committee of the board may suspend a license on an emergency basis.

(1) The license may be suspended without prior notice to the licensee and without a prior hearing.

(2) In order to suspend a license on an emergency basis, the board or complaints committee must determine whether continued practice by a license holder would constitute a continuing and imminent threat to the public welfare.

(3) This determination shall be made from the evidence or information presented to the board or complaints committee.

(4) The board or complaints committee shall issue an order suspending the license. The order shall be effective upon delivery to the licensee or at a later date specified in the order.

(5) Proceedings for a formal hearing must be initiated prior to, or simultaneously on, the effective date of the emergency suspension.

(A) The Administrative Procedure Act, Government Code, Chapter 2001, shall apply to a hearing under this subsection.

(B) If there is a conflict between the requirement of the Administrative Procedure Act and the requirements of the Act, the Act shall govern.

(6) A preliminary hearing shall be held not later than the 14th day after the effective date of the emergency suspension to determine if probable cause exists to find that a continuing and imminent threat to the public welfare still exists. The State Office of Administrative Hearings is hereby authorized to determine if probable cause exists.

(7) A final hearing shall be held not later than the 61st day after the effective date of the emergency suspension.

(A) The purpose of the hearing shall be to determine whether continued practice of the licensee would constitute a continuing and imminent threat to the public welfare.

(B) In determining whether there is a continuing and imminent threat to the public welfare, the board shall consider whether a violation of state law or this chapter exists.

(C) If such a threat exists, the board shall enter an order suspending the license of the licensee.

(D) A suspension shall remain in effect in accordance with subsection (a) of this section.

(8) The time periods for holding a preliminary hearing or a final hearing shall be tolled during the period of time in which the licensee makes discovery requests. The time periods may also be waived by mutual agreement of the licensee and the authorized representative of the board. If a preliminary hearing or final hearing is not held in accordance with the time periods stated in this subsection (unless tolled or waived), the emergency suspension shall become null and void upon the date on which the hearing was required to be held under the Act.

§741.194. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal conference held to determine whether the matters in controversy can be resolved without further proceedings.

(b) The decision to hold a conference shall be within the discretion of the executive director or a member of the complaints committee.

(c) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) The executive director shall establish the time, date and place of the informal conference, and provide written notice to the licensee or applicant. Notice shall be provided no less than 10 working days prior to the date of the informal conference by certified mail, return receipt requested to the last known address of the licensee or applicant. The licensee or applicant may waive the 10-day notice requirement.

(e) The notice shall inform the licensee or applicant of the nature of the alleged violation or the reason for application denial; that the licensee may be represented by legal counsel; that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate; that a complaints committee member shall be present; that the board's legal counsel shall be present; that the licensee's or applicant's attendance and participation is voluntary; that the complainant and any client involved in the alleged violations may be present; and that the informal conference shall be canceled if the licensee or applicant notifies the executive director that he or she or his or her legal counsel will not attend.

(f) The complainant may be informed that he or she may appear and testify or may submit a written statement for consideration at the informal conference.

(g) A member of the complaints committee shall be present at an informal conference.

(h) The conference shall be informal and shall not follow the procedures established in this chapter for formal hearings.

(i) The licensee, the licensee's attorney, the board's attorney, the executive director and the complaints committee member may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(j) The board's legal counsel may attend each informal conference. The complaints committee member or executive director may

call upon the attorney at any time for assistance in the informal conference.

(k) The licensee shall be afforded the opportunity to make statements that are material and relevant.

(l) The complaints committee member or the executive director may exclude from the informal conference all persons except witnesses during their testimony, the licensee, the licensee's attorney, and board staff.

(m) At the conclusion of the informal conference, the complaints committee member or the executive director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act or this chapter. The complaints committee member may also conclude that the board lacks jurisdiction; conclude that a violation of the Act or this chapter has not been established; order that the investigation be closed; or refer the matter for further investigation.

(n) The licensee or applicant may either accept or reject the recommendations at the informal conference. If the recommendations are accepted, an agreed order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order may contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within 10 working days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the recommendations.

(o) If the licensee or applicant signs and accepts the proposed recommendations, the agreed order shall be submitted to the complaints committee and the board for approval. Placement of the agreed order on the committee and board agendas shall constitute only a recommendation for approval by the board.

(p) The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(q) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(r) If the board does not approve a proposed agreed order, the licensee or applicant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(s) A proposed agreed order is not effective until the board has approved the agreed order and the order is signed by the board chair.

(t) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the Administrative Procedure Act, Texas Government Code, §2001.054(c).

(u) If a licensee who has requested an informal conference fails to appear at the conference and fails to provide notice of the licensee's inability to attend the conference at least 24 hours in advance of the time the conference is scheduled, such action may constitute a withdrawal of the request for a formal hearing.

§741.195. Formal Hearings; Surrender of License.

(a) The State Office of Administrative Hearings shall conduct all formal hearings and contested cases in accordance with the Texas Government Code, Chapter 2001 et seq.

(b) All formal hearings unless otherwise determined by the administrative law judge or upon agreement of the parties shall be held in Austin, Texas.

(c) If the applicant or licensee fails to appear or be represented at the scheduled hearing, the person is deemed to be in agreement with the charges and proposed action and to have waived the right to a hearing.

(d) A witness or deponent shall be paid in accordance with the Texas Government Code, §2001.103.

(e) Following the hearing an administrative law judge shall submit the proposal for decision to the board for its approval.

(1) The board is not required to adopt the proposal for decision and may take action as it deems appropriate and lawful.

(2) All final orders or decisions shall be made by the board.

(f) If a right to a hearing is waived under §741.192(c) of this title (relating to Disciplinary Action; Notices), the board shall consider an order denying, suspending, probating, or revoking the license or registration as described in written notice to the licensee or applicant.

(1) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(2) Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action.

(g) A licensee may offer to surrender the license to the board. The board shall:

(1) notify the licensee that the request was received; and

(2) consider accepting the voluntary surrender of the license at its next regularly scheduled meeting.

(h) When a licensee has offered the surrender of the license after a complaint has been filed alleging violations of the Act or this chapter, and the board has accepted such a surrender, that surrender is deemed to be the result of a formal disciplinary action.

(i) A license which has been surrendered and accepted may not be reinstated; however, that person may apply for a new license in accordance with the Act and this chapter.

§741.196. Default Orders.

(a) If a right to a hearing is waived under §741.192(c) of this title (relating to Disciplinary Action; Notices) or a licensee fails to appear at an informal conference as described in §741.194(u) of this title (relating to Informal Disposition), the board may enter an order taking disciplinary action or an order of application denial as described in the written notice to the licensee or applicant.

(b) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action or an order of application denial.

§741.197. Monitoring of Licensees.

(a) The department shall maintain a complaint tracking system.

(b) Each licensee that has had disciplinary action taken against his or her license shall be required to submit regularly scheduled reports to the executive director, if directed by the board. The reports shall be scheduled at intervals appropriate to each individual situation.

(c) The executive director shall review the reports and shall provide the reports to the complaints committee.

(d) The complaints committee may consider more severe disciplinary proceedings if the licensee fails to comply with the provisions of a disciplinary order.

§741.198. Administrative Penalties.

(a) The assessment of an administrative penalty is governed by the Act.

(b) The amount of an administrative penalty shall be based on the following criteria.

(1) The seriousness of a violation shall be categorized by one of the following levels:

(A) Level I--violations that have or had an adverse impact on the health or safety of a client (or former client, where applicable);

(B) Level II--violations that have or had the potential to cause an adverse impact on the health or safety of a client (or former client, where applicable) but did not actually have an adverse impact; or

(C) Level III--violations that have no or minor health or safety significance.

(2) The range of administrative penalties by levels is as follows:

(A) Level I--up to $5,000 per day;

(B) Level II--up to $2,500 per day; or

(C) Level III--up to $1,250 per day.

(3) Subsequent violations in the same level for which an administrative penalty has previously been imposed may be categorized at the next higher level.

(4) Adjustments to the range of an administrative penalty may be made for:

(A) prompt reporting;

(B) corrective action;

(C) compliance history; or

(D) multiple violations.

§741.199. Schedule of Sanctions.

(a) When the board determines that sanctions are appropriate, proposals for imposition of sanctions and disciplinary actions shall be made in accordance with the Act.

(b) This schedule of sanctions is intended to be utilized by the complaints committee as a guide in assessing sanctions for violations of the Act or this chapter. The schedule is also intended to serve as a guide to administrative law judges, and as a written statement of applicable rules or policies of the board pursuant to the Texas Government Code, §2001.058(c). The failure of an administrative law judge to follow the schedule may serve as a basis to vacate or modify an order pursuant to the Texas Government Code, §2001.058(e). This schedule is not intended as a substitute for thoughtful consideration of each individual disciplinary matter. Instead, it should be used as a tool in that effort.

(c) Sanctions shall be determined by the following:

(1) the seriousness of the violation(s);

(2) previous compliance history;

(3) the severity level necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other extenuating circumstances.

(d) Relevant Factors. When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction, which include: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the complaints committee or the administrative law judge. Specific factors are to be considered as set forth as follows.

(1) Seriousness of Violation. The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations, or a single violation, and the period of time over which the violations occurred.

(2) Nature of the violation. The following factors are identified:

(A) the relationship between the licensee and the person harmed, or exposed to harm, such as a dependent relationship of a client-counselor, or stranger to the licensee;

(B) the vulnerability of the person harmed, or exposed to harm;

(C) the moral culpability of the licensee, such as whether the violation was:

(i) intentional or premeditated;

(ii) due to blatant disregard or gross neglect; or

(iii) resulted from simple error or inadvertence; and

(D) the extent to which the violation evidences lack of character, such as lack integrity, trustworthiness, or honesty.

(3) Personal Accountability. The following factors are identified:

(A) admission or wrong or error, and acceptance of responsibility;

(B) appropriate degree of remorse or concern;

(C) efforts to ameliorate the harm or make restitution;

(D) efforts to ensure future violations do not occur; and

(E) cooperation with any investigation or request for information.

(4) Deterrence. The following factors are identified:

(A) the sanction required to deter future similar violations by the licensee;

(B) sanctions necessary to ensure compliance by the licensee of other provisions of the Act or this chapter; and

(C) sanctions necessary to deter other licensees from such violations.

(5) Miscellaneous Factors. The following factors are identified:

(A) age and experience at time of violation;

(B) presence or absence of prior or subsequent violations;

(C) conduct and work activity prior to and following the violation;

(D) character references; and

(E) any other factors justice may require.

(e) Severity levels may be categorized by one of the following severity levels:

(1) severity level I--violations that have, had, or may have an adverse impact on the health or safety of a client to include serious harm, permanent injury, or death to a client and may result in revocation of the license and/or assessment of administrative penalty;

(2) severity level II--violations that have, had, or may have an adverse impact on the health and safety of a client but less serious than level I and may result in suspension of the license and/or administrative penalty;

(3) severity level III--violations that have, had, or may have a minor health or safety significance or flagrant or repeated violations of the Act and/or board rules and may result in probated suspension of the license and/or assessment of administrative penalty;

(4) severity level IV--violations that have, had, or may have less than minor significance, but if left uncorrected, could lead to more serious circumstances and may result in a board issued reprimand and/or assessment of administrative penalty; and

(5) severity level V--violations that are minor infractions and may result in a warning or information letter.

(f) Other Actions. The complaints committee or executive director, as appropriate, may also resolve pending complaints by issuance of formal advisory letters informing licensees of their duties under the Act or this chapter, and whether the conduct or omission complained of appears to violate such duties. Such advisory letters may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the advisory letters. The complaints committee or executive director, as appropriate, may also issue informal reminders to licensees regarding compliance with minor licensing matters. The licensee is not entitled to a hearing on the matters set forth in formal advisory letters or informal reminders, but may submit a written response to be included with such letters in their licensing records.

§741.200. Licensing of Persons with Criminal Convictions.

(a) This section establishes guidelines and criteria for the eligibility of persons with criminal convictions to obtain and retain licenses issued by the board.

(b) The executive director shall consider the criminal convictions of a licensee or applicant as possible grounds for disciplinary action or application denial and forward the matter to the complaints committee for review.

(c) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee. In considering whether a criminal conviction directly relates to the professions of speech-language pathology and audiology, the board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice speech-language pathology and audiology;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a license holder. In making this determination, the board will apply the criteria outlined in Texas Occupations Code, §53.023 (relating to Additional Factors.)

(d) The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

(1) the misdemeanor of knowingly or intentionally practicing speech-language pathology or audiology without a license;

(2) an offense involving moral turpitude;

(3) the misdemeanor of failing to report child abuse or neglect;

(4) a misdemeanor involving deceptive business practices;

(5) the offense of assault or sexual assault;

(6) the felony offense of insurance claim fraud;

(7) a misdemeanor and/or a felony offense under various titles of the Texas Penal Code:

(A) concerning Title 5 offenses against the person;

(B) concerning Title 7 offenses against property;

(C) concerning Title 8 offenses against public administration;

(D) concerning Title 9 offenses against public order and decency;

(E) concerning Title 10 offenses against public health, safety, and morals; and

(F) concerning Title 4 offenses of attempting or conspiring to commit any of the offenses in subparagraphs (A) - (E) of this paragraph; or

(8) any other misdemeanor or felony directly relating to the duties and responsibilities of a licensee.

(e) Procedures for disciplinary action or application denial against persons with criminal convictions.

(1) The board's executive director will give written notice to the person that the board intends to take disciplinary action or deny the application after a hearing in accordance with the provisions of the Administrative Procedure Act and the board's hearing procedures.

(2) If the board takes disciplinary action or denies an application under this section, the executive director will give the person written notice of the reasons for the decisions.

§741.201. Suspension of License Relating to Child Support and Child Custody.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support or for failure to

comply with the terms of a court order providing for the possession of or access to a child, the executive director shall immediately determine if the board has issued a license to the obligator named in the order, and, if a license has been issued:

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The board shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to engage in the practice of counseling or continues to hold himself out to the public as a license holder after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive director shall promptly issue the suspended license to the individual if the individual is otherwise qualified for the license.

(h) The individual shall pay a reinstatement fee in an amount equal to the renewal fee set out in §741.181(a)(4) of this title (relating to Schedule of Fees) prior to issuance of the license under subsection (g) of this section.

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

Filed with the Office of the Secretary of State on August 22, 2005.

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Sherry Sancibrian

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State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: October 2, 2005

For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER J. RULES TO IMPLEMENT THE AMUSEMENT RIDE SAFETY INSPECTION AND INSURANCE ACT

28 TAC §§5.9002 - 5.9004, 5.9007, 5.9008, 5.9010, 5.9012

The Texas Department of Insurance proposes amendments to §§5.9002 - 5.9004, 5.9007, 5.9008, 5.9010, and 5.9012, concerning rules to implement the Amusement Ride Safety Inspection and Insurance Act (the Act). This proposal is necessary to implement legislation enacted by the 79th Legislature, Regular Session, in House Bill (HB) 1892, effective June 17, 2005, and HB 2879 and Senate Bill (SB) 1282, both effective September 1, 2005, and to update statutory references and two amusement ride forms. The legislation clarifies insurance requirements for amusement rides to allow policies to be written in either a combined single limit or a split limit amount in accord with the newly specified minimum limits set forth in §2151.101 of the Occupations Code, and further defines and specifies an exception from amusement ride regulation for certain challenge courses that meet particular insurance requirements. The purposes of the proposed amendments are to conform applicable sections of the amusement ride rules to the new legislation, update statutory references in those sections and update two amusement ride forms. Proposed §5.9002 adds to the definition of "amusement ride" the exception for a challenge course or any part of a challenge course as defined in §2151.107 of the Act that meets certain specified insurance requirements as set forth in that section and in §2151.002 of the Act. Proposed §5.9004 updates statutory references and clarifies the insurance requirements for operating an amusement ride to allow insurance policies to be written as a combined single limit or a split limit and to specify the minimum amounts in which such limits can be written. Proposed §5.9012 updates statutory references. Two amusement ride forms, TDI Form AR-100 and TDI Form AR-800 have been updated to add clarifying, corrective, and explanatory language and delete unnecessary language, and the sections which reference these forms that are adopted by reference, §§5.9003, 5.9004, 5.9007, 5.9008, and 5.9010, have been amended to note the revised effective date for these forms.

The department has filed a copy of the proposed forms with the Secretary of State's Texas Register section. Persons desiring copies of the proposed forms can obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies, please contact Sylvia Gutierrez at (512) 463-6327.

Alexis Dick, Deputy Commissioner for the Inspections Division, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amendments. Ms. Dick has also determined that there will be no measurable effect on local employment or the local economy.

Ms. Dick has determined that for each year of the first five years that the proposed amendments are in effect the anticipated public benefit from enforcing and administering the amended sections is improved and more efficient regulation of amusement rides. Clarifying amusement ride insurance requirements by allowing combined single limit policies should alleviate availability issues based on an insurer's reluctance to write split limit policies. Defining and specifying the scope of certain challenge

courses that meet particular insurance requirements will allow the department to focus its regulatory functions on those courses whose purpose is to give amusement, pleasure, or excitement. Updating two of the amusement ride forms which are obtained from the department will promote the efficient regulation of the Amusement Ride Safety Inspection and Insurance Act by providing clear instructions on the use of those forms. The department anticipates no additional regulatory costs as a result of the proposal and therefore no differential impact between small, large, and micro-businesses. Any costs to owners and operators of amusement rides or challenge courses to comply with the proposed amendments are the result of legislation and not the result of the adoption or implementation of these proposed amendments. The requirements of these amended sections are prescribed by statute and are further required as a safety measure. It is thus neither legal nor feasible to exempt small or micro-businesses or to waive compliance considering the purpose of the statute under which the amendments are to be adopted.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on October 3, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Alexis Dick, Deputy Commissioner, Inspections Division, Mail Code 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's office.

The amended sections are proposed pursuant to Title 13, Occupations Code, Chapter 2151, and the Insurance Code §36.001. The 79th Legislature, Regular Session, enacted HB 1892, HB 2879 and SB 1282. The legislation clarifies insurance requirements for amusement rides to allow policies to be written in either a combined single limit or a split limit amount in accord with the newly specified minimum limits set forth in §2151.101 of the Occupations Code and further defines and specifies an exception from amusement ride regulation for certain challenge courses that meet particular insurance requirements. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: Title 13, Occupations Code, Chapter 2151

§5.9002. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings.

(1) (No change.)

(2) Amusement ride--Any mechanical, gravity, or water device or devices that carry or convey passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement, but such term does not include:

(A) any coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator; [~~or~~]

(B) nonmechanized playground equipment, including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, playground slides, trampolines, and physical fitness devices; or[~~.~~]

(C) a challenge course or any part of a challenge course, as defined in §2151.107 of the Act to mean a challenge, ropes, team building, or obstacle course that is constructed and used for educational, team and confidence building, or physical fitness purposes, if the person who operates the challenge course has an insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the operator against liability for injury to persons arising out of the use of the challenge course, in an amount not less than:

(i) for facilities with a fixed location:

(I) $100,000 bodily injury and $50,000 property damage per occurrence, with a $300,000 annual aggregate; or

(II) $150,000 per occurrence combined single limit, with a $300,000 annual aggregate; and

(ii) for facilities other than those with a fixed location:

(I) $1,000,000 bodily injury and $500,000 property damage per occurrence; or

(II) $1,500,000 per occurrence combined single limit.

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

§5.9003. Administration and Enforcement.

The Texas Department of Insurance is required by the Act to administer and enforce the Act. Owners/operators operating amusement rides must pay a fee of $40 per year for each amusement ride subject to the Act. The fee payment shall accompany the insurance policy and amusement ride inspection certificate (TDI Form AR-100, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005 [~~May, 2000~~]) required by the Act and by §5.9004 of this title (relating to Amusement Ride Operation Requirements). The fees shall be paid by certified check or money order made payable to the Texas Department of Insurance. The applicant shall attach the certified check or money order to the inspection certificate (TDI Form AR-100, Revised Effective October, 2005 [~~May, 2000~~]). The certified check or money order may be one check or money order for the total amount of fees for all rides or a separate check for each ride.

§5.9004. Amusement Ride Operation Requirements.

An owner/operator may not operate an amusement ride unless the owner/operator has satisfied and is continuing to satisfy the following requirements.

(1) The owner/operator must file with Texas Department of Insurance (TDI) the insurance policy or a photocopy of the insurance policy certifying that the policy is a true copy of the insurance policy provided to the insured as required by the Act, §2151.101. The Act, §2151.101, requires that any person who operates an amusement ride must have currently in force a combined single limit or split limit [~~an~~] insurance policy written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by the Insurance Code, Chapter 981 [~~Article 1.14-2~~], or an independently procured policy subject to the Insurance Code, §101.001 et seq., in an amount of not less than $100,000 bodily injury and $50,000 property damage per occurrence with a $300,000 annual aggregate or $150,000 per occurrence combined single limit with a $300,000 annual aggregate

for Class A amusement rides and an amount of not less than $1,000,000 bodily injury and $500,000 property damage [~~$1 million~~] per occurrence or $1,500,000 per occurrence combined single limit for Class B amusement rides insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride. [~~The policy shall apply on a per occurrence basis to bodily injury. Combined single limit policies covering bodily injury and property damage or any other coverage combined with bodily injury will not be acceptable unless the policy specifically provides at least the minimum limits for injury to persons as required by the Act.~~] The following requirements must also be met.

(A) (No change.)

(B) The policy must contain a schedule listing by name and serial number if applicable of each amusement ride insured by the policy. In the event of additions or deletions of amusement rides during the policy term, such changes shall be shown on a change endorsement, a copy of which must be submitted to TDI. Additions will also require an inspection certificate (TDI Form AR-100, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005 [~~May, 2000~~]) and a $40 fee for each amusement ride to be submitted to TDI prior to any operation of the added amusement ride. Additions or deletions shall be filed no later than 10 days after the change.

(C) - (D) (No change.)

(E) If the owner/operator obtains an additional amusement ride device, the ride shall be added to the insurance policy and a copy of the endorsement submitted to TDI along with the required inspection certificate (TDI Form AR-100, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005 [~~May, 2000~~]) and the $40 fee prior to operation in Texas.

(2) The owner/operator must also file the original amusement ride inspection certificate (TDI Form AR-100, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005 [~~Rev. May, 2000~~]) certifying with respect to each amusement ride the matters required by the Act. A separate inspection certificate is required for each amusement ride showing the name, serial number, manufacturer of the ride, the inspector's name, the owner/operator, a picture of the ride in an operable state taken at the time of the inspection, and other information as requested. The serial number and name/description of the amusement ride shall coincide with the same information identified on the insurance policy. If major components of the ride, i.e., the crane used in a bungee operation, are interchangeable, the name, serial number, and manufacturer of the inspected component shall be included on the inspection certificate. The inspection certificate is valid for a period of one year, and for expedience in processing, should if possible coincide with the effective date of the insurance policy. The inspection shall be conducted by the insurer or a person with whom the insurer has contracted. The inspector shall provide both the insurer and owner/operator with a written certificate that the inspection has been made and that the amusement ride meets the standards for coverage.

(A) - (F) (No change.)

(G) It shall be the responsibility of the amusement ride owner/operator to complete the following prior to any operation of the ride:

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

(v) in addition to the requirements of this paragraph, a mobile amusement ride on which a death occurs may not be operated until the requirements of §2151.1526 [~~§2151.152~~] of the Act are met [~~as set forth therein~~].

(vi) in addition to the requirements of this paragraph, an amusement ride whose operation has been prohibited by a municipal, county, or state law enforcement official pursuant to §2151.152 or §2151.1525 of the Act may not be operated until the requirements of that section are met [~~as set forth therein~~]. Any on-site corrections that are made pursuant to the requirements of §2151.1525 [~~§2151.152~~] of the Act must be presented to the appropriate municipal, county, or state law enforcement official.

(H) TDI Form AR-100, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005 [~~May, 2000~~], is adopted [~~herein~~] by reference and shall be used for each filing of an amusement ride inspection certificate required by this section. This form (the Amusement Ride Certificate of Inspection/Re-Inspection) is published by the Texas Department of Insurance and copies of the form may be obtained from the Loss Control Regulation Division, Mail Code 103-9A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(I) - (J) (No change.)

(3) Renewal of the policy or inspection certificate shall be completed with sufficient lead time to provide these documents to TDI with a minimum of 10 working days to review and approve the documents prior to the expiration of either the policy or the inspection certificate.

(A) In the event of policy cancellation or expiration, the policy shall promptly be replaced or renewed without any lapse in coverage while the amusement ride is offered for use by the public. Any operation without a valid and current insurance policy and current inspection certificate constitutes an illegal operation and is subject to the enforcement provisions and penalties pursuant to §§2151.151, 2151.152, 2151.1525, 2151.1526, and 2151.153 of the Act. The sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public shall be notified by the owner/operator of the coverage discontinuance.

(B) A renewal certificate of insurance will be acceptable for the purpose of this paragraph, if the renewal certificate shows:

(i) insurance coverage against liability for injury to persons arising out of the use of the amusement ride/device;

(ii) an amount of insurance of not less than $100,000 [~~per~~] bodily injury and $50,000 property damage per occurrence with a $300,000 annual aggregate or $150,000 per occurrence combined single limit with a $300,000 annual aggregate for Class A amusement rides and an amount of insurance of not less than $1,000,000 bodily injury and $500,000 property damage per occurrence or $1,500,000 per occurrence combined single limit [~~$1 million per bodily injury occurrence~~] for Class B amusement rides; and

(iii) a policy term that includes the period of time during which the amusement ride will be offered for public use.

(4) - (5) (No change.)

§5.9007. Quarterly Reports.

(a) An owner/operator who operates an amusement ride (the operator) shall maintain accurate records of each injury caused by the ride in any state which injury results in death or requires medical treatment. An injury is caused by the ride if the injury occurs on the ride or is in any way associated with the ride.

(1) The Texas Department of Insurance (TDI) adopts and incorporates [~~herein~~] by reference TDI Form AR-800 (Quarterly Injury Report) Revised Effective October, 2005 [~~May, 2000~~]. This form is published by TDI and copies of the form may be obtained from the

Loss Control Regulation Division, Mail Code 103-9A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The operator shall file an injury report on TDI Form AR-800 with TDI on a quarterly basis and shall include in the report a description of each verifiable injury caused by a ride that results in death or injury that requires medical treatment.

(2) - (4) (No change.)

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

§5.9008. Filing Affidavit.

In addition to the requirements of the Act, §2151.101(b), the following requirements apply.

(1) (No change.)

(2) If the amusement ride is inspected more than once a year due to the requirements of this subchapter, a supplemental inspection certificate (TDI Form AR-100, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005 [~~Rev. May, 2000~~]) must be submitted to TDI not later than 15 days after each subsequent inspection. An additional annual $40 fee is not required for supplemental inspection certificates.

§5.9010. Confirmation of Required Insurance and Inspection Certificate; Rule Construction.

(a) After the required insurance policy and inspection certificate, including certified check or money order for the total amount of annual fee have been received by the Texas Department of Insurance (TDI) and found to be in compliance with the Act and this subchapter, the original amusement ride inspection certificate (TDI Form AR-100, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005 [~~Rev. May, 2000~~]) will be stamped "Texas Department of Insurance Amusement Ride Program," will include the date of approval and will be returned to the insured owner or operator as evidence of compliance with filing requirements. The returned inspection certificate must be kept on the premises at which the amusement ride is offered for public use and made available to any person granted authority under the Act to investigate compliance with the Act. A TDI Form AR-101, (Texas Amusement Ride Compliance Sticker), Effective May, 2000, will be returned with each inspection certificate. This weatherproof form shall be affixed to the appropriate ride or device in a place easily visible to all ride participants.

(b) If the required insurance policy, inspection certificate, and/or annual fee is found not to be in compliance with the Act, this subchapter, or other applicable law, notice will be provided to the insured owner or operator or their insurer by TDI indicating the necessary action(s) for compliance. If noncompliance is due to mechanical problems or failure to meet insurance standards, another TDI Form AR-100, Amusement Ride Certificate of Inspection/Re-Inspection, Revised Effective October, 2005 [~~Rev. May, 2000~~] shall be submitted to TDI for approval after the necessary corrective action(s) or repair(s) have been completed by the owner or operator. After the necessary actions have been completed by the owner/operator to the satisfaction of TDI, TDI Form AR-100, Revised Effective October, 2005 [~~Rev. May, 2000~~] will be stamped and mailed to the insured owner or operator as described in subsection (a) of this section.

(c) (No change.)

§5.9012. Denial of Entry to Amusement Rides; Prohibiting Operation of Amusement Rides.

(a) - (e) (No change.)

(f) A municipal, county, or state law enforcement official may immediately prohibit operation of an amusement ride as set forth in §2151.152, §2151.1525 or §2151.1526 of the Act, and a person may not operate the amusement ride until the requirements of §§2151.152, 2151.1525, and 2151.1526 of the Act are met [~~as set forth therein~~].

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 August 18, 2005.

TRD-200503463
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 463-6327

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CHAPTER 10. WORKERS' COMPENSATION HEALTH CARE NETWORKS

The Texas Department of Insurance proposes new §§10.1, 10.2, 10.20 - 10.27, 10.40 - 10.42, 10.60 - 10.63, 10.80 - 10.86, 10.100 - 10.104, and 10.120 - 10.122 (collectively referred to as Chapter 10) concerning workers' compensation health care networks. These new sections are necessary to implement Article 4 of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005. Article 4 of HB 7 is cited as the Workers' Compensation Health Care Network Act and codified at Texas Insurance Code Chapter 1305 (the Act).

Under HB 7, the 79th Legislature directed the commissioner of insurance to adopt rules as necessary to implement the Act not later than December 1, 2005. Further, the Legislature directed the department to accept applications from a network seeking certification under the Act beginning January 1, 2006. These proposed new sections will be applicable on January 1, 2006.

The Act authorizes insurance companies; certified self-insurers for workers' compensation insurance; certified self-insured groups under Labor Code Chapter 407A; and governmental entities that self-insure, either individually or collectively, (all the preceding collectively defined in these sections as "insurance carriers") to establish or contract with certified networks for the delivery of health care services to injured employees of employers who elect to receive workers' compensation coverage through networks.

Under the Act, if the employer elects workers' compensation network coverage, the employer's injured employees who receive workers' compensation coverage and who live within the network's service area must obtain medical treatment for a compensable injury within the network, except under certain specified circumstances. Injured employees who live within the service area of a network and who are being treated by a non-network provider for an injury that occurred before the employer's insurance carrier established or contracted with a network, must select a network treating doctor, or under specified circumstances, the employee's health maintenance organization (HMO) primary care physician or provider who agrees to serve as a network treating doctor, upon notification by the carrier that health care services are being provided through a network. Further, the Act outlines standards for the certification, administration, evaluation, and enforcement of the delivery of health care services to injured employees by networks contracting with or established by workers' compensation insurance carriers.

Proposed new Chapter 10 establishes standards and requirements applicable to networks, insurance carriers, other persons, and third parties operating under the Act. The proposed standards and requirements relate to network certification; contracting; notice; plain language; selection of a treating doctor; dispute resolution related to whether an employee lives within the network service area; network operations; utilization review; retrospective review; and complaints. The proposal should be read in conjunction with the Act; Insurance Code Chapter 5 Subchapter D and Labor Code Title 5 and related rules; and other statutes and rules, as applicable.

In this proposal, the department was guided by the 79th Legislature's expressed intent and direction that the workers' compensation health care network system resemble group health insurance plans as closely as possible. For this reason, many of the proposed sections mirror the provisions for HMOs and group health insurance plans.

This proposal reflects the department's efforts to address concerns necessary to implement the Act at this time. The department recognizes that additional rulemaking may be necessary in the future to address ongoing concerns that have been or will be raised regarding implementation of the Act as networks become certified and operational.

Proposed Subchapter A contains general provisions and definitions regarding this chapter. Proposed §10.1 explains the purpose and scope of this chapter. Proposed §10.2 defines certain terms used in this chapter.

Proposed Subchapter B describes the process for the certification of workers' compensation health care networks. Proposed §10.20 provides that certification under Insurance Code Chapter 1305 and the other provisions of proposed Chapter 10, except under certain circumstances, is a requirement for operating a workers' compensation health care network. Proposed §10.21 sets forth the requirement that a verified certificate application must be filed on prescribed forms accompanied by a non-refundable application fee and describes where to obtain the prescribed forms for the certificate application from the department. Proposed §10.22 lists the requirements for the contents of the certificate application. Proposed §10.23 states that the commissioner will approve or disapprove an application for certification of a network in accordance with Insurance Code §1305.054. Proposed §10.24 lists the financial information that certified networks must provide to the department and carriers with which the network contracts. Proposed §10.25 lists the filing requirements for networks after issuance of the network's certification and states that the network shall file with the department a written request for approval before making such changes. Proposed §10.26 sets forth the requirements for modification to a network's service area and identifies the associated information a network must provide to the department for prior approval when it modifies a service area. Proposed §10.27 provides the requirements for modification to a network's network configuration, including filing an application with the department for prior approval for network configuration modifications.

Proposed Subchapter C contains information regarding the contracting requirements for workers' compensation health care networks. Proposed §10.40 states the requirements for management contracts for networks. Proposed §10.41 states the requirements for contracts between networks and insurance carriers. Proposed §10.42 states the requirements for contracts between networks and providers.

Proposed Subchapter D details various network requirements. Proposed §10.60 specifies notice of network requirements and employee information, which include both the notice of network requirements and employee information and the employee acknowledgment form. This section also sets forth the notice and acknowledgment form requirements, such as standards for language and readability. Proposed §10.61 contains requirements for employees who live within the network's service area and specific information related to employee access and insurance carrier liability for health care. Proposed §10.62 outlines the dispute resolution process for an employee who asserts that he or she does not currently live in the network's service area. Proposed §10.63 states the plain language and other requirements for the notice of network requirements and employee information and acknowledgment form.

Proposed Subchapter E lists network responsibilities related to network operations. Proposed §10.80 outlines the accessibility and availability requirements for networks and network providers. Proposed §10.81 describes the quality improvement program for monitoring and evaluating the quality and appropriateness of health care and network services. Proposed §10.82 outlines the credentialing process for network doctors and health care practitioners. Proposed §10.83 contains information about the treatment guidelines, return-to-work guidelines, and individual treatment protocols for network care. Proposed §10.84 states compliance requirements for treating doctors. Proposed §10.85 provides for an employee's selection and change of a treating doctor. Proposed §10.86 specifies the criteria for a network's establishment and maintenance of telephone access logs.

Proposed Subchapter F sets forth the utilization review and retrospective review requirements for networks, including requirements that represent areas of conflict between the Act and Insurance Code Article 21.58A. Proposed §10.100 states that Insurance Code Article 21.58A applies to utilization review conducted in relation to claims in a workers' compensation network and, in the event of a conflict, the requirements of the Act apply. Proposed §10.101 requires that screening criteria used for utilization review and retrospective review related to network health care must be consistent with the network's treatment guidelines, return-to-work guidelines and individual treatment protocols and must include a process requiring a treating doctor or specialist to request approval from the network for deviation from the treatment guidelines, screening criteria and individual treatment protocols, as applicable. Proposed §10.102 establishes notice requirements for persons performing utilization review or retrospective review for an injured employee receiving health care services in the network. Proposed §10.103 sets forth standards for reconsideration of adverse determinations, including requirements for maintaining and making available a written description of the reconsideration procedures involved in making an adverse determination. This section also requires that the reconsideration procedures be reasonable and contain certain provisions. Proposed §10.104 specifies the various procedural requirements for an injured employee, person(s) acting on behalf of an injured employee, or an injured employee's requesting provider seeking independent review of adverse determinations. Among other requirements, the section provides that the department shall assign the review request to an independent review organization, and the insurance carrier shall pay for the independent review provided under this subchapter.

Proposed Subchapter G describes requirements relating to complaints. Proposed §10.120 requires each network to implement and maintain a complaint system that provides reasonable procedures for resolving oral or written complaints. Proposed §10.121 establishes requirements for complaints and deadlines for responses and resolutions. Proposed §10.122 states that persons who are dissatisfied with the resolution of complaints by the network may file a complaint with the department, and states how persons may obtain complaint forms.

Margaret Lazaretti, Deputy Commissioner, HMO Division, has determined that for each year of the first five years the proposed sections will be in effect, there will be an increase in revenue to state government due to the certification application fees collected by the department in the approximate amount of $175,000 the first year, $100,000 the second year, and $50,000 in each year from 2008 through 2010 as a result of the enforcement and administration of the proposed sections. These anticipated amounts are based on an estimated number of certification application filings with the department of 35 applications in 2006, 20 applications in 2007, and 10 applications in each year from 2008 through 2010, and on a proposed nonrefundable $5000 fee for each certification application filed with the department. There will be no fiscal impact to local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Lazaretti has determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of the proposed sections will be a workers' compensation health care network system that provides injured employees cost effective, prompt, and high quality medical care; facilitates injured employees' return to work as soon as it is considered safe and appropriate; and provides a fair and accessible complaint resolution process. The proposed sections reflect the 79th Legislature's expressed intent and direction that the workers' compensation health care network system resemble group health insurance plans as closely as possible. Many of the proposed sections implement this legislative direction and closely resemble the statutory and regulatory provisions for HMOs and group health insurance plans.

Proposed §10.42(b)(5) requires provider contracts and subcontracts to include a requirement that the network provide notice to the provider at least 90 days before the effective date of a termination of network provider status. Insurance Code §1305.152(c)(4) requires provider contracts and subcontracts to include a clause regarding appeal by the provider of termination of provider status and applicable written notification to employees regarding a termination. Since the statute already requires that a network have a system for notifying affected employees of provider termination, the only cost to a network as a result of proposed §10.42(b)(5) would be the actual cost of creating and transmitting the notice to employees. The department estimates the cost of creating the notice at between one and four cents per notice, and the cost of handling and transmission to be approximately seventy-five cents.

Proposed §10.60(h) requires that an employer establish a standardized process for delivering the notice of network requirements and acknowledgement form, so the only costs stemming from proposed §10.60(h) are those of establishing and implementing a standardized process and documenting the delivery. Insurance Code §1305.005(e) requires an employer to provide to the employee the notice of network requirements and acknowledgment form. The proposed section allows the employer the flexibility to design and implement a system of its choosing, so long as it is standardized and produces documentation. Consequently, as a result of this flexibility, costs will vary depending on the system the employer chooses. The department estimates the cost range of establishing the system at between $25 and $500 per employer. The cost of documenting notice of delivery and maintaining that documentation will vary depending on the number of employees to whom an employer must provide notice.

Proposed §10.62 requires the insurance carriers to resolve disputes, relating to where an employee lives, within seven days. This requirement could result in additional costs to insurance carriers. The amount of those additional costs will depend on how many disputes of this nature the insurance carrier receives and must resolve, as well as the type and number of personnel the insurance carrier employs or retains to resolve disputes. According to 2004 data from the U. S. Bureau of Labor Statistics Occupational Employee Statistical Survey, as reported by the Texas Workforce Commission, the mean hourly wage rate for claim adjusters, examiners, and investigators employed by insurance carriers and related activities is $24.21.

Proposed §10.24(b) requires a network to provide its financial statements to the department and to each insurance carrier with which the network contracts. Insurance Code §1305.201(a) - (b) requires each network to file the network's financial statements with the department but does not require each network to provide those financial statements to each insurance carrier with which the network contracts. The only additional cost as a result of proposed §10.24(b) would be the cost required to copy and transmit the financial statements. The department estimates the cost of copying to be between one and four cents per page. The total cost of copying, as well as that of transmission, will vary according to the size of the network's financial statement. To reduce costs, a network may transmit the financial statement to a carrier electronically by mutual agreement.

Any additional economic costs currently exist under existing rules or result from the enactment of Insurance Code Chapter 1305 and are not a result of the adoption, enforcement, or administration of the proposed sections. There will be no difference in the cost of compliance between a large and small business as a result of the proposed sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposed sections would have an adverse effect on small or micro businesses, it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro businesses because the Insurance Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on October 3, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Margaret Lazaretti, Deputy Commissioner, HMO Division, Mail Code 103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The department will consider the adoption of the proposed Chapter 10 in a public hearing under Docket No. 2622 scheduled for Thursday, October 6, 2005, at 9:30 a.m. in E1 Level, Room E1.004 of the State Capitol Building, Capitol Extension

Auditorium, 1400 N. Congress, Austin, Texas. The public hearing may be continued through October 7, 2005, if necessary. *FOR SECURITY PURPOSES VISITORS TO THE CAPITOL EXTENSION AUDITORIUM MUST ENTER THROUGH THE CAPITOL. VISITORS WITHOUT A STATE AGENCY OR DEPARTMENT OF PUBLIC SAFETY ISSUED IDENTIFICATION MAY REQUIRE ADDITIONAL TIME TO GO THROUGH THE SECURITY PROCESS.*

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

28 TAC §10.1, §10.2

The new sections are proposed under Insurance Code Chapter 1305, Articles 5.55C and 5.62, 21.58A and §§31.001 and 36.001, and Labor Code Chapter 405. Insurance Code §1305.007 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Insurance Code Chapter 1305. In addition, §1305.005(i) authorizes the Commissioner of Insurance to adopt rules as necessary to implement §1305.005. Section 1305.052 requires a certificate application to be accompanied by a nonrefundable fee set by commissioner rule. Section 1305.401 provides that the Commissioner of Insurance may adopt rules as necessary to implement §1305.401. Section 1305.403 requires the Commissioner of Insurance to adopt rules designating the classification of network complaints under §1305.403. Insurance Code Article 5.55C(d) requires that a deductible policy provide that the company or association will make all payments for benefits that are payable from the deductible amount and that reimbursement by the policyholder shall be made periodically, rather than at the time claim costs are incurred. Article 5.55C(e) provides that the company or association shall service all claims that arise during the policy period, including those claims payable, in whole or in part, from the deductible amount. Insurance Code Article 5.62 empowers the Commissioner of Insurance to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of Insurance Code Chapter 5 Subchapter D, relating to workers' compensation insurance, as are necessary to carry out its provisions. Insurance Code Article 21.58A, §13 authorizes the commissioner to adopt rules and regulations to implement the provisions of Article 21.58A. Insurance Code §31.001 clarifies that in the Insurance Code, a reference to "commissioner" means the Commissioner of Insurance. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. Labor Code §405.004(g) requires the Commissioner of Insurance to adopt rules as necessary to establish data reporting requirements to support the research duties under Chapter 405.

The following statutes are affected by this proposal: Insurance Code Chapter 1305 and Articles 5.55C, 5.65 and 2158A, and Labor Code Chapter 405.

§10.1. Purpose and Scope.

(a) This chapter implements provisions of the Workers' Compensation Health Care Network Act, Insurance Code Chapter 1305, and provides standards for the certification, administration, evaluation, and enforcement of the delivery of health care services to injured employees by networks contracting with or established by:

(1) workers' compensation insurance carriers;

(2) employers certified to self-insure under Labor Code Chapter 407;

(3) groups of employers certified to self-insure under Labor Code Chapter 407A; and

(4) governmental entities that self-insure, either individually or collectively, under Labor Code Chapters 501 - 505, except as described in subsection (c) of this section.

(b) This chapter applies to:

(1) each person who performs a function or service of a workers' compensation health care network as defined by §10.2 of this subchapter (relating to Definitions), including a person who performs a function or service delegated by or through a workers' compensation health care network; and

(2) an insurance carrier as defined by Labor Code §401.011 that establishes or contracts with a workers' compensation health care network.

(c) This chapter does not apply to health care services provided to injured employees of a self-insured political subdivision or injured employees of the members of a pool established under Government Code Chapter 791 if the political subdivision or pool elects to provide health care services to its injured employees in the manner authorized under Labor Code §504.053(b)(2), relating to self-insured subdivisions or pools directly contracting with health care providers, or by contracting through a health benefits pool established under Local Government Code Chapter 172.

(d) This chapter does not authorize a workers' compensation insurance policyholder who purchases a deductible plan under Insurance Code Article 5.55C to contract directly with a workers' compensation health care network for the provision of health care services to injured employees.

(e) This chapter becomes applicable January 1, 2006.

§10.2. Definitions.

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

(1) Adverse determination--A determination, made through utilization review or retrospective review, that the health care services furnished or proposed to be furnished to an employee are not medically necessary or appropriate.

(2) Affiliate--A person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(3) Capitation--A method of compensation for arranging for or providing health care services to employees for a specified period that is based on a predetermined payment for each employee for the specified period, without regard to the quantity of services provided for the compensable injury.

(4) Complainant--A person who files a complaint under this chapter. The term includes:

(A) an employee;

(B) an employer;

(C) a health care provider; and

(D) another person designated to act on behalf of an employee.

(5) Complaint--Any dissatisfaction expressed orally or in writing by a complainant to a network regarding any aspect of the network's operation. The term includes dissatisfaction relating to medical fee disputes and the network's administration and the manner in which a service is provided. The term does not include:

(A) a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding or supplying the appropriate information to the satisfaction of the complainant; or

(B) an oral or written expression of dissatisfaction or disagreement with an adverse determination.

(6) Credentialing--The review, under nationally recognized standards to the extent that those standards do not conflict with other laws of this state, of qualifications and other relevant information relating to a health care provider who seeks a contract with a network.

(7) Emergency--Either a medical or mental health emergency.

(8) Employee--Has the meaning assigned by Labor Code §401.012.

(9) Fee dispute--A dispute over the amount of payment due for health care services determined to be medically necessary and appropriate for treatment of a compensable injury.

(10) HMO--An health maintenance organization licensed and regulated under Insurance Code Chapter 843.

(11) Independent review--A system for final administrative review by an independent review organization of the medical necessity and appropriateness of health care services being provided, proposed to be provided, or that have been provided to an employee.

(12) Independent review organization--An entity that is certified by the commissioner to conduct independent review under Insurance Code Article 21.58C and rules adopted by the commissioner.

(13) Life-threatening--Has the meaning assigned by Insurance Code Article 21.58A §2.

(14) Live--Where an employee lives includes:

(A) the employee's principal residence for legal purposes;

(B) a temporary residence necessitated by employment; or

(C) a temporary residence taken by the employee primarily for the purpose of receiving necessary assistance with routine daily activities because of a compensable injury.

(15) Medical emergency--The sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health or bodily functions in serious jeopardy; or

(B) serious dysfunction of any body organ or part.

(16) Medical records--The history of diagnosis and treatment for an injury, including medical, dental, and other health care records from each health care practitioner who provides care to an injured employee.

(17) Mental health emergency--A condition that could reasonably be expected to present danger to the person experiencing the mental health condition or another person.

(18) Network or workers' compensation health care network--An organization that is:

(A) formed as a health care provider network to provide health care services to injured employees;

(B) required to be certified in accordance with Insurance Code Chapter 1305, this chapter, and other rules of the commissioner as applicable; and

(C) established by, or operating under contract with, an insurance carrier.

(19) Nurse--Has the meaning assigned by Insurance Code Article 21.58A §2.

(20) Occupational medicine specialist--A doctor who has received a board certification in occupational medicine from the American Board of Preventive Medicine or who has completed all the requirements of the American Board of Preventive Medicine in order to take the board examination.

(21) Person--Any natural or artificial person, including an individual, partnership, association, corporation, organization, trust, hospital district, community mental health center, mental retardation center, mental health and mental retardation center, limited liability company, or limited liability partnership.

(22) Preauthorization--The process required to request approval from the insurance carrier or the network to provide a specific treatment or service before the treatment or service is provided.

(23) Provider--A health care provider.

(24) Quality improvement program--A system designed to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

(25) Retrospective review--The process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.

(26) Routine daily activities--Activities a person normally does in daily living, including sleeping, eating, bathing, dressing, grooming, and homemaking.

(27) Rural area--

(A) a county with a population of 50,000 or less;

(B) an area that is not designated as an urbanized area by the United States Census Bureau; or

(C) any other area designated as rural under rules adopted by the commissioner.

(28) Screening criteria--The written policies, medical protocols, and treatment guidelines used by an insurance carrier or a network as part of utilization review or retrospective review.

(29) Service area--A geographic area within which health care services from network providers are available and accessible to employees who live within that geographic area.

(30) Texas Workers' Compensation Act--Labor Code Title 5 Subtitle A.

(31) Transfer of risk--For purposes of this chapter only, an insurance carrier's transfer of financial risk for the provision of health care services to a network through capitation or other means.

(32) Utilization review--Has the meaning assigned by Insurance Code Article 21.58A §2.

(33) Utilization review agent--Has the meaning assigned by Insurance Code Article 21.58A §2.

(b) In this chapter, the following terms have the meanings assigned by Labor Code §401.011:

(1) administrative violation;

(2) case management;

(3) compensable injury;

(4) doctor;

(5) employer;

(6) evidence-based medicine;

(7) health care;

(8) health care facility;

(9) health care practitioner;

(10) health care provider;

(11) injury;

(12) insurance carrier; and

(13) treating doctor.

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 August 22, 2005.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 463-6327

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SUBCHAPTER B. CERTIFICATION

28 TAC §§10.20 - 10.27

The new sections are proposed under Insurance Code Chapter 1305, Articles 5.55C and 5.62, 21.58A and §§31.001 and 36.001, and Labor Code Chapter 405. Insurance Code §1305.007 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Insurance Code Chapter 1305. In addition, §1305.005(i) authorizes the Commissioner of Insurance to adopt rules as necessary to implement §1305.005. Section 1305.052 requires a certificate application to be accompanied by a nonrefundable fee set by commissioner rule. Section 1305.401 provides that the Commissioner of Insurance may adopt rules as necessary to implement §1305.401. Section 1305.403 requires the Commissioner of Insurance to adopt rules designating the classification of network complaints under §1305.403. Insurance Code Article 5.55C(d) requires that a deductible policy provide that the company or association will make all payments for benefits that are payable from the deductible amount and that reimbursement by the policyholder shall be made periodically, rather than at the time claim costs are incurred. Article 5.55C(e) provides that the company or association shall service all claims that arise during the policy period, including those claims payable, in whole or in part, from the deductible amount. Insurance Code Article 5.62 empowers the Commissioner of Insurance to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of Insurance Code Chapter 5 Subchapter D, relating to workers' compensation insurance, as are necessary to carry out its provisions. Insurance Code Article 21.58A, §13 authorizes the commissioner to adopt rules and regulations to implement the provisions of Article 21.58A. Insurance Code §31.001 clarifies that in the Insurance Code, a reference to "commissioner" means the Commissioner of Insurance. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. Labor Code §405.004(g) requires the Commissioner of Insurance to adopt rules as necessary to establish data reporting requirements to support the research duties under Chapter 405.

The following statutes are affected by this proposal: Insurance Code Chapter 1305 and Articles 5.55C, 5.65 and 2158A, and Labor Code Chapter 405.

§10.20. Certification Required.

(a) Except as provided by Labor Code §504.053(b)(2):

(1) A person may not operate or perform any act of a workers' compensation health care network in this state:

(A) unless the person holds a certificate issued under Insurance Code Chapter 1305 and this chapter, or

(B) except in accordance with the specific authorization of Insurance Code Chapter 1305 or this chapter.

(2) A person, including an insurance carrier, who provides or arranges to provide health care services to injured employees within a service area by contracting with more than one person, must be certified as a workers' compensation health care network under Insurance Code Chapter 1305 and this chapter.

(3) An entity performing any act of a workers' compensation health care network may not use in a network's name or in any informational literature distributed about a network any combination or variation of the words "workers' compensation," "certified," "managed care," or "network" to describe a network that is not certified in accordance with this chapter.

(b) Notwithstanding subsection (a)(1) and (2) of this section, this section does not apply to persons who contract with more than one person to provide or arrange to provide prescription medication or services, as defined by Labor Code §401.011(19)(E), to injured employees in the workers' compensation system.

§10.21. Certificate Application.

(a) A person who seeks a certificate to operate as a workers' compensation health care network must file an application on the forms prescribed under this subchapter, accompanied by a non-refundable fee of $5000.

(b) The applicant, an officer, or other authorized representative of the applicant must verify the application by attesting to the truth and accuracy of the information in the application.

(c) Prescribed forms for a certificate application may be obtained from:

(1) the department's website at www.tdi.state.tx.us; or

(2) the HMO Division, Texas Department of Insurance, Mail Code 103-6A, P.O. Box 149104, Austin, TX 78714-9104.

§10.22. Contents of Application.

Each certificate application must include:

(1) a description or a copy of the applicant's basic organizational structure documents and other related documents, including organizational charts or lists that show:

(A) the relationships and contracts between the applicant and any affiliates of the applicant; and

(B) the internal organizational structure of the applicant's management and administrative staff;

(2) a completed biographical affidavit adopted by reference under §7.507(b) of this title (related to Forms Incorporated by Reference) from each person who governs or manages the affairs of the applicant, including the members of the governing board of the applicant, the chief executive officer, president, secretary, treasurer, chief financial officer and controller, and any other individuals with substantially similar responsibilities, provided that a biographical affidavit is not required if a biographical affidavit from the person is already on file with the department;

(3) a copy of the form of any contract between the applicant and any provider or group of providers as required under Insurance Code §§1305.151 - 1305.155 and §10.41 and §10.42 of this chapter (relating to Network-Carrier Contracts and Network Contracts with Providers);

(4) a copy of any agreement with any third party performing delegated functions on behalf of the applicant as required under Insurance Code §1305.154 and §10.41(a)(1) of this chapter.

(5) a copy of the form of each contract with an insurance carrier, as described by Insurance Code §1305.154 and §10.41 of this chapter;

(6) each management contract as described in §10.40 of this chapter (relating to Management Contracts), if applicable;

(7) a financial statement, current as of the date of the application that includes the most recent calendar quarter, prepared using generally accepted accounting principles, and including:

(A) a balance sheet that reflects a solvent financial position;

(B) an income statement;

(C) a cash flow statement;

(D) a statement of equity; and

(E) the sources and uses of all funds;

(8) a statement acknowledging that lawful process in a legal action or proceeding against the network on a cause of action arising in this state is valid if served in the manner provided by Insurance Code Chapter 804 for a domestic company;

(9) a description and a map of the applicant's service area or areas, with key and scale, that identifies each county, ZIP code, partial ZIP code, or part of a county to be served;

(10) a description of programs and procedures to be utilized, including:

(A) a complaint system, as required under Insurance Code §§1305.401 - 1305.405 and Subchapter G of this chapter (relating to Complaints);

(B) a quality improvement program, including return-to-work and medical case management programs, as required under Insurance Code §§1305.301 - 1305.304 and §10.81 of this chapter (relating to Quality Improvement Program);

(C) credentialing policies and procedures required under §10.82 of this chapter (relating to Credentialing);

(D) the utilization review and retrospective review programs described in Insurance Code §§1305.351 - 1305.355 and Subchapter F of this chapter (relating to Utilization Review and Retrospective Review), if applicable; and

(E) criteria and procedures for employees to select or change the employee's treating doctor, including procedures for employees to select as the employee's treating doctor a doctor who the employee selected, prior to injury, as the employee's HMO primary care physician or provider;

(11) a description of the network configuration that demonstrates the adequacy of the network to provide comprehensive health care services sufficient to serve the population of injured employees within the service area and maps that demonstrate compliance with the access and availability standards under Insurance Code §§1305.301 - 1305.304 and §10.80 of this chapter (relating to Accessibility and Availability Requirements). This description shall include, at a minimum, the following:

(A) names; addresses, including ZIP codes, specialty or specialties; board certifications, if any; professional license numbers; and hospital affiliations of network providers, including treating doctors, in sufficient number and specialty to provide all required health care services in a timely, effective, and convenient manner;

(B) names; addresses; federal employer identification number (FEIN); licenses; and types of health care facilities, including hospitals, rehabilitation facilities, diagnostic and testing facilities, ambulatory surgical centers, and interdisciplinary pain rehabilitation programs or interdisciplinary pain rehabilitation treatment facilities. The network must also demonstrate adequate access to emergency care;

(C) information indicating whether each network provider is accepting new patients from the workers' compensation health care network; and

(D) information indicating which network doctors are trained and certified to perform maximum medical improvement determinations and impairment rating services;

(12) the physical location of the applicant's books and records, including:

(A) financial and accounting records;

(B) investment records;

(C) organizational documents of the applicant; and

(D) minutes of all meetings of the applicant's governing board and executive or management committees;

(13) a business plan that describes the applicant's intended operations in this state, including both a narrative description and pro forma financial projections for the first two years of operation after certification;

(14) a completed financial authorization form sufficient to allow the department to confirm directly with appropriate financial institutions the reported assets of the applicant;

(15) the applicant's plan for provision of care to injured employees who live temporarily outside the service area, if applicable;

(16) the applicant's plan for provision of maximum medical improvement determinations and impairment rating services, including verification that the network doctors reported under paragraph

(11)(D) of this section have completed the training required under Labor Code §408.023;

(17) the applicant's plan for verifying the filing by doctors and health care practitioners of the required financial disclosure with the division of workers' compensation under Labor Code §408.023 and §413.041;

(18) the form of the notice of network requirements and employee information, and the acknowledgment form required under Insurance Code §1305.005 and §10.60 of this chapter (relating to Notice of Network Requirements; Employee Information);

(19) the applicant's plan for monitoring whether providers have been provided and are following treatment guidelines, return-to-work guidelines, and individual treatment protocols as required under Insurance Code §1305.304 and §10.83 of this chapter (relating to Guidelines and Protocols);

(20) a description of treatment guidelines and return-to-work guidelines, and the network medical director's certification that the guidelines are evidence-based, scientifically valid, and outcome-focused as required under Insurance Code §1305.304 and §10.83(a) of this chapter; and

(21) a certification that:

(A) the network's medical director is an occupational medicine specialist; or

(B) the network employs or contracts with an occupational medicine specialist.

§10.23. Action on Application.

The commissioner shall approve or disapprove an application for certification of a network in accordance with Insurance Code §1305.054.

§10.24. Network Financial Requirements.

(a) On at least a calendar year basis, each network shall prepare financial statements in accordance with generally accepted accounting principles which must include:

(1) a balance sheet;

(2) an income statement;

(3) a cash flow statement;

(4) a statement of equity; and

(5) a supplemental description of the network's basic organizational structure, general business relationships, and management.

(b) On or before April 1st of each year, each network shall provide the network's financial statement required by subsection (a) of this section to:

(1) each carrier with which the network contracts to facilitate carrier and network compliance under Insurance Code §§1305.154(c) and 1305.155 and §10.41 of this chapter (relating to Network-Carrier Contracts); and

(2) the department by sending the financial statement to the Texas Department of Insurance, Mail Code 103-6A, P.O. Box 149104, Austin, TX 78714-9104.

§10.25. Filing Requirements.

(a) After issuance of a network's certification, a network shall file with the department any information that amends, supplements, or replaces the items required under §10.22 of this chapter (relating to Contents of Application). The network shall file the information:

(1) as soon as practicable but not later than 30 days before implementation of any change requiring department approval, or

(2) no later than 30 days after the implementation of any other change.

(b) A network shall file with the department a written request for approval and must receive department approval before implementation of changes to the following:

(1) management contracts and information regarding fidelity bonds as described in Insurance Code §1305.102, including information regarding cancellation of fidelity bonds, new fidelity bonds, or amendments to fidelity bonds;

(2) the physical location of the network's books and records as described in §10.22(12) of this chapter;

(3) network configuration; and

(4) expansion, elimination, or reduction of an existing service area, or addition of a new service area.

§10.26. Modifications to Service Area.

(a) A network must file an application with and receive approval from the department before the network may expand, eliminate, or reduce an existing service area, or add a new service area. The application must be filed not later than 30 days before implementation of the modification. An officer, or other authorized representative of the network must verify the application by attesting to the truth and accuracy of the information in the application.

(b) An application for a service area modification must include:

(1) a description and a map with key and scale, showing both the currently approved service area and the proposed new service area, as required under §10.22(9) of this chapter (relating to Contents of Application);

(2) network configuration information, as required under §10.22(11) of this chapter; and

(3) separate and consolidated pro forma financial statements as described in §10.22(7) of this chapter for the existing network, the proposed new service area, and the proposed network.

(c) If an application for a service area modification changes any of the following items, the applicant must file the new item or any amendments to an existing item with the application filed under this section:

(1) a copy of the form of any new contracts or amendment of any existing contracts as described by and required under §10.22(3), (4) and (5) of this chapter;

(2) a brief narrative description of the administrative arrangements, organizational charts as required under §10.22(1) of this chapter, and other pertinent information;

(3) biographical data, on a form prescribed by the department, regarding each individual who governs or manages the affairs of the network as required under §10.22(2) of this chapter; and

(4) a copy of each management contract as described under §10.22(6) of this chapter.

(d) An application is not considered complete and reviewable until the department has received all information required under this section, including any additional information the department requests as needed to make that determination.

(e) Before the department considers a service area modification application, the applicant must be in good standing with the department and in compliance with all applicable requirements under this

chapter, Insurance Code Chapter 1305, and Labor Code Title 5 in the existing service areas and in each proposed service area.

(f) A corrected notice of network requirements and employee information and acknowledgment form must be provided to affected employees.

(g) Prescribed application forms may be obtained from:

(1) the department's website at www.tdi.state.tx.us; or

(2) the HMO Division, Texas Department of Insurance, Mail Code 103-6A, P.O. Box 149104, Austin, TX 78714-9104.

§10.27. Modifications to Network Configuration.

(a) A network must file an application with and receive approval from the department before the network makes a material modification to its network configuration. The application must be filed not later than 30 days prior to implementation of the material modification.

(b) An application for a modification to network configuration must include:

(1) a description and a map of the network's service area or areas, with key and scale, that identifies each county, ZIP code, partial ZIP code, or part of a county to be served as required by §10.22 of this chapter (relating to Contents of Application); and

(2) network configuration information, as required by §10.22(11) of this chapter.

(c) The applicant must file a copy of the form of any new contracts or amendment of any existing contracts as described by and required under §10.22(3), (4) and (5) of this chapter if the modification of network configuration causes changes.

(d) An application is not considered complete and reviewable until the department has received all information required under this section, including any additional information the department requests as needed to make the determination.

(e) Before the department considers an application to modify a network's configuration, the applicant must be in good standing with the department and in compliance with all applicable requirements under this chapter, Insurance Code Chapter 1305, and Labor Code Title 5.

(f) Prescribed network configuration modification application forms may be obtained from:

(1) the department's website at www.tdi.state.tx.us; or

(2) the HMO Division, Texas Department of Insurance, Mail Code 103-6A, P.O. Box 149104, Austin, TX 78714-9104.

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 C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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SUBCHAPTER C. CONTRACTING

28 TAC §§10.40 - 10.42

The new sections are proposed under Insurance Code Chapter 1305, Articles 5.55C and 5.62, 21.58A and §§31.001 and 36.001, and Labor Code Chapter 405. Insurance Code §1305.007 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Insurance Code Chapter 1305. In addition, §1305.005(i) authorizes the Commissioner of Insurance to adopt rules as necessary to implement §1305.005. Section 1305.052 requires a certificate application to be accompanied by a nonrefundable fee set by commissioner rule. Section 1305.401 provides that the Commissioner of Insurance may adopt rules as necessary to implement §1305.401. Section 1305.403 requires the Commissioner of Insurance to adopt rules designating the classification of network complaints under §1305.403. Insurance Code Article 5.55C(d) requires that a deductible policy provide that the company or association will make all payments for benefits that are payable from the deductible amount and that reimbursement by the policyholder shall be made periodically, rather than at the time claim costs are incurred. Article 5.55C(e) provides that the company or association shall service all claims that arise during the policy period, including those claims payable, in whole or in part, from the deductible amount. Insurance Code Article 5.62 empowers the Commissioner of Insurance to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of Insurance Code Chapter 5 Subchapter D, relating to workers' compensation insurance, as are necessary to carry out its provisions. Insurance Code Article 21.58A, §13 authorizes the commissioner to adopt rules and regulations to implement the provisions of Article 21.58A. Insurance Code §31.001 clarifies that in the Insurance Code, a reference to "commissioner" means the Commissioner of Insurance. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. Labor Code §405.004(g) requires the Commissioner of Insurance to adopt rules as necessary to establish data reporting requirements to support the research duties under Chapter 405.

The following statutes are affected by this proposal: Insurance Code Chapter 1305 and Articles 5.55C, 5.65 and 2158A, and Labor Code Chapter 405.

§10.40. Management Contracts.

(a) A network may not enter into a contract with another entity for management services, or modify a previously approved management contract, unless the proposed contract or modification is first filed with the department and approved in accordance with this chapter.

(b) For purposes of this chapter, management services include management control and decision-making, and contracting on behalf of the network under a delegation of management authority, power of attorney or other arrangement.

§10.41. Network-Carrier Contracts.

(a) A network's contract with a carrier shall include the following:

(1) a description of the functions to be performed by the network or its delegated entity, consistent with the requirements of Insurance Code §1305.154(b), and the reporting requirements for each function;

(2) a statement that the network will perform all delegated functions in full compliance with all requirements of the Workers' Compensation Health Care Network Act, Insurance Code Chapter 1305, the Texas Workers' Compensation Act, Labor Code Title 5

Subtitle A and rules of the commissioner or the commissioner of workers' compensation;

(3) a provision that the contract:

(A) may not be terminated without cause by either party without 90 days' prior written notice; and

(B) must be terminated immediately if cause exists;

(4) a hold-harmless provision stating that the network, a management contractor, a third party to which the network delegates a function, and the network's contracted providers are prohibited from billing or attempting to collect any amounts from an employee for health care services for compensable injuries under any circumstances, including the insolvency of the carrier or the network;

(5) a statement that the carrier retains ultimate responsibility for ensuring that all delegated functions and all management contractor functions are performed in accordance with applicable statutes and rules, and that the contract may not be construed to limit in any way the carrier's responsibility, including financial responsibility, to comply with all statutory and regulatory requirements;

(6) a statement that the network's role is to provide the services listed in Insurance Code §1305.154(b) as well as any other services or functions the carrier delegates, including functions delegated to a management contractor, subject to the carrier's oversight and monitoring of the network's performance;

(7) a requirement that the network provide the carrier, on at least a monthly basis and in a form that is usable for audit purposes, the data necessary for the carrier to comply with reporting requirements of the department and the division of workers' compensation of the department with respect to any services provided pursuant to the carrier-network contract, including the following data:

(A) last name, first name, date of injury, date of birth, sex, address, telephone number and social security number of each injured employee who is being served by the network, and name and license number of the injured employee's treating doctor;

(B) initial date of health care services delivered by the network for each employee; and

(C) any other data, as determined by the contract, necessary to assure proper monitoring of functions delegated to the network by the carrier;

(8) a requirement that the carrier, the network, any management contractor, and any third party to which the network delegates a function comply with a provision that requires the network to provide to the insurance carrier and department the license number of a management contractor or any delegated third party performing any function that requires a license under the Insurance Code or another insurance law of this state, including a license as a utilization review agent under Insurance Code Article 21.58A;

(9) a contingency plan under which the carrier would, in the event of termination of the contract or a failure to perform, reassume one or more functions of the network under the contract, including functions related to:

(A) payment to providers and notification to employees;

(B) quality of care;

(C) utilization review;

(D) retrospective review;

(E) continuity of care, including a plan for identifying and transitioning employees to new providers; and

(F) collecting and reporting of data necessary to comply with the reporting requirements described in paragraph (7) of this subsection;

(10) a provision that requires that any agreement by which the network delegates any function to a third party be in writing, and that such agreement require the delegated third party to be subject to all the requirements under Insurance Code Chapter 1305 and this subchapter;

(11) a provision that requires the network to provide to the department the license number of a management contractor or any delegated third party performing any function that requires a license under the Insurance Code or another insurance law of this state, including a license as a utilization review agent under Insurance Code Article 21.58A;

(12) an acknowledgement that:

(A) any management contractor or third party to whom the network delegates a function must comply with this chapter and other applicable statutes and rules, and that the management contractor or third party is subject to the carrier's and the network's oversight and monitoring of its performance; and

(B) if the management contractor or third party fails to meet monitoring standards established to ensure that functions delegated or assigned to the management contractor or third party under the delegation contract are in full compliance with all statutory and regulatory requirements, the carrier or network may cancel delegation of any or all delegated functions;

(13) a requirement that the network and any management contractor or third party to which the network delegates a function provide all necessary information to allow the carrier to provide the information required by §10.60 of this chapter (relating to Notice of Network Requirements; Employee Information) to employers or employees;

(14) a provision that requires the network to require any third party with which it contracts, whether directly or through another third party, to permit the commissioner to examine at any time any information the commissioner believes is relevant to the third party's financial condition or the ability of the network to meet the network's responsibilities in connection with any function the third party performs or has been delegated.

(15) a requirement that the network:

(A) implement and maintain a complaint system in accordance with requirements under Insurance Code §1305.401 and §10.120 of this chapter (relating to Complaint System Required); and

(B) make the complaint log and complaint files available to the carrier upon request;

(16) a statement that the contract and any network contract with a provider, management contractor or other third party shall not be interpreted to involve a transfer of risk as defined under Insurance Code §1305.004(a)(26);

(17) a statement that any network contract with a provider or third party must allow the carrier to effect a contingency plan in the event that the carrier is required to resume functions from the network as contemplated under Insurance Code §1305.155; and

(18) a statement that any network contract with a provider or third party must comply with all applicable statutory and regulatory requirements under federal and state law.

(b) Except for the functions described under Insurance Code §1305.154(b) and §10.121 of this chapter (relating to Complaints; Deadlines for Responses and Resolution), a network's authority to perform a function under a network-carrier contract is conditioned upon whether:

(1) the carrier has delegated the function to the network by contract; and

(2) the network is appropriately licensed to perform the function.

(c) A network shall not act as a network for any entity regarding an insurance plan which is being operated in violation of Insurance Code §101.102.

§10.42. Network Contracts with Providers.

(a) A network is not required to accept an application for participation in the network from a health care provider that otherwise meets the requirements specified in this chapter if the network determines that the network has contracted with a sufficient number of qualified health care providers, including health care providers of the same license type or specialty.

(b) Provider contracts and subcontracts shall include, at a minimum, the following provisions:

(1) a hold-harmless clause stating that the provider and the provider network will not bill or attempt to collect any amounts of payment from an employee for health care services for compensable injuries under any circumstances, including the insolvency of the insurance carrier or the network;

(2) a statement that the provider agrees to follow treatment guidelines, return-to-work guidelines and individual treatment protocols adopted by the network pursuant to §10.83 of this chapter (relating to Guidelines and Protocols), as applicable to an employee's injury;

(3) a provision that the network will not engage in retaliatory action, including termination of or refusal to renew a contract, against a provider because the provider has, on behalf of an employee, reasonably filed a complaint against, or appealed a decision of, the network, or requested reconsideration or independent review of an adverse determination;

(4) a continuity of treatment clause that states that:

(A) if a provider leaves the network, upon the provider's request, the insurance carrier or network is obligated to continue to reimburse the provider for a period not to exceed 90 days at the contracted rate for care of an employee with a life-threatening condition or an acute condition for which disruption of care would harm the employee; and

(B) a dispute concerning continuity of care shall be resolved through the dispute resolution process under Insurance Code §§1305.401 - 1305.405 and Subchapter G of this chapter (relating to Complaints);

(5) a clause regarding appeal by the provider of termination of network provider status and applicable written notification to employees regarding such a termination, including requirements that:

(A) the network must provide notice to the provider at least 90 days before the effective date of a termination;

(B) the network must provide an advisory review panel that consists of at least three network providers of the same or similar specialty as the provider;

(C) upon receipt of the written notification of termination, a provider may request a review by the network's advisory review panel not later than 30 days after receipt of the notification;

(D) the network must complete the advisory panel review before the effective date of the termination;

(E) a network may not notify patients of the termination until the earlier of the effective date of the termination or the date the advisory review panel makes a formal recommendation;

(F) in the case of imminent harm to patient health, suspension or loss of license to practice, or fraud, the network may terminate the provider immediately and must notify employees immediately of the termination; and

(G) if the provider terminates the contract, the network must provide notification of the termination to employees receiving care from the terminating provider. The network shall give such notice immediately upon receipt of the provider's termination request or as soon as reasonably possible before the effective date of termination;

(6) a provision that requires the provider to post, in the office of the provider, a notice to employees on the process for resolving workers' compensation health care network complaints in accordance with Insurance Code §1305.405. The notice must include the department's toll-free telephone number for filing a complaint and must list all workers' compensation health care networks with which the provider contracts;

(7) a statement that the network agrees to furnish to the provider, and the provider agrees to abide by, the list of any treatments and services that require the network's preauthorization and any procedures to obtain preauthorization;

(8) a statement that the contract and any subcontract within the provider network shall not be interpreted to involve a transfer of risk as defined under Insurance Code §1305.004(a)(26);

(9) a statement that the provider and any subcontracting provider within the provider network must comply with all applicable statutory and regulatory requirements under federal and state law;

(10) the schedule of fees that will be paid to the contracting provider;

(11) a statement specifying whether the provider whose specialty has been designated by the network as a treating doctor agrees to be a network treating doctor and, if so, any additional provisions applicable to the provider; and

(12) a statement that billing by and payment to the provider will be made in accordance with Labor Code §408.027 and other applicable statutes and rules.

(c) An insurance carrier and a network may not use any financial incentive or make a payment to a health care provider that acts directly or indirectly as an inducement to limit medically necessary services. The adoption of treatment guidelines, return-to-work guidelines, and individual treatment protocols by a network under Insurance Code §1305.304 and §10.83(a) of this chapter (relating to Guidelines and Protocols) is not a violation of this section.

(d) An insurance carrier or a network must provide written notice to a network provider or group of network providers before the

carrier or network conducts any economic profiling, including utilization management studies comparing the provider to other providers, or other profiling of the provider or group of providers.

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 C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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SUBCHAPTER D. NETWORK REQUIREMENTS

28 TAC §§10.60 - 10.63

The new sections are proposed under Insurance Code Chapter 1305, Articles 5.55C and 5.62, 21.58A and §§31.001 and 36.001, and Labor Code Chapter 405. Insurance Code §1305.007 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Insurance Code Chapter 1305. In addition, §1305.005(i) authorizes the Commissioner of Insurance to adopt rules as necessary to implement §1305.005. Section 1305.052 requires a certificate application to be accompanied by a nonrefundable fee set by commissioner rule. Section 1305.401 provides that the Commissioner of Insurance may adopt rules as necessary to implement §1305.401. Section 1305.403 requires the Commissioner of Insurance to adopt rules designating the classification of network complaints under §1305.403. Insurance Code Article 5.55C(d) requires that a deductible policy provide that the company or association will make all payments for benefits that are payable from the deductible amount and that reimbursement by the policyholder shall be made periodically, rather than at the time claim costs are incurred. Article 5.55C(e) provides that the company or association shall service all claims that arise during the policy period, including those claims payable, in whole or in part, from the deductible amount. Insurance Code Article 5.62 empowers the Commissioner of Insurance to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of Insurance Code Chapter 5 Subchapter D, relating to workers' compensation insurance, as are necessary to carry out its provisions. Insurance Code Article 21.58A, §13 authorizes the commissioner to adopt rules and regulations to implement the provisions of Article 21.58A. Insurance Code §31.001 clarifies that in the Insurance Code, a reference to "commissioner" means the Commissioner of Insurance. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. Labor Code §405.004(g) requires the Commissioner of Insurance to adopt rules as necessary to establish data reporting requirements to support the research duties under Chapter 405.

The following statutes are affected by this proposal: Insurance Code Chapter 1305 and Articles 5.55C, 5.65 and 2158A, and Labor Code Chapter 405.

§10.60. Notice of Network Requirements; Employee Information.

(a) An insurance carrier that establishes or contracts with a network shall deliver to the employer, and the employer shall deliver to the employer's employees in the manner and at the times prescribed by Insurance Code §1305.005(d), (e), and (g):

(1) the notice of network requirements and employee information required by Insurance Code §1305.005(d) and §1305.451 and this section; and

(2) the employee acknowledgment form described by Insurance Code §1305.005(d) and this section.

(b) An employee who lives within the service area of a network and who is being treated by a non-network provider for an injury that occurred before the employer's insurance carrier established or contracted with the network, shall select a network treating doctor or request a doctor who the employee selected, prior to the injury, as the employee's HMO primary care physician or provider, upon notification by the carrier that health care services are being provided through the network. The carrier shall provide to the employee all information required by Insurance Code §1305.451. The notice must include an employee acknowledgement form and all requirements under subsection (c)- (e) of this section.

(c) The notice of network requirements and employee acknowledgment form must be in:

(1) English, Spanish, and any other language common to 10 percent or more of the employer's employees; and

(2) a readable and understandable format that meets the plain language requirements under §10.63 of this chapter (relating to Plain Language Requirements).

(d) The insurance carrier and employer may use:

(1) an employee acknowledgment form that complies with this section; or

(2) a sample acknowledgment form that may be obtained from:

(A) the department's website at www.tdi.state.tx.us; or

(B) the HMO Division, Texas Department of Insurance, Mail Code 103-6A, P.O. Box 149104, Austin, TX 78714-9104.

(e) The employee acknowledgment form must include:

(1) a statement that the employee has received information that describes what the employee must do to receive health care under workers' compensation insurance;

(2) a statement that if the employee is injured on the job and lives in the service area described in the information, the employee understands that:

(A) the employee:

(i) must select a treating doctor from the list of doctors who contracted with the workers' compensation network, or

(ii) ask the employee's HMO primary care physician to agree to serve as the employee's treating doctor; and

(iii) obtain all health care and specialist referrals for a compensable injury through the treating doctor except for emergency services;

(B) the network provider will be paid by the insurance carrier and will not bill the employee for a compensable injury; and

(C) if the employee seeks health care from someone other than a network provider without network approval, the insurance carrier may not be liable, and the employee may be liable, for payment for that health care;

(3) separate lines for the employee to fill in the date and employee's signature, printed name and living address;

(4) a separate line that indicates the name of the employer; and

(5) a separate line that indicates the name of the network.

(f) The employer shall obtain a signed employee acknowledgment form from each employee.

(g) The notice of network requirements must comply with Insurance Code §1305.005 and §1305.451 and include:

(1) a statement that the entity providing health care to employees is a certified workers' compensation health care network;

(2) the network's toll-free number and address for obtaining additional information about the network, including information about network providers;

(3) a description and map of the network's service area, with key and scale, that clearly identifies each county or ZIP code area or any parts of a county or ZIP code area that are included in the service area;

(4) a statement that an employee who does not live within the network's service area may notify the carrier as described under §10.62 of this chapter (relating to Dispute Resolution for Employee Requirements Related to In-Network Care);

(5) a statement that an employee who asserts that he or she does not currently live in the network's service area may choose to receive all health care services from the network during the pendency of the insurance carrier's review under §10.62 of this chapter and the pendency of the department's review of a complaint;

(6) a statement that, except for emergency services, the employee shall obtain all health care and specialist referrals through the employee's treating doctor;

(7) an explanation that network providers have agreed to look only to the network or insurance carrier and not to employees for payment of providing health care for a compensable injury, except as provided by paragraph (8) of this subsection;

(8) a statement that if the employee obtains health care from non-network providers without network approval, except for emergency care, the insurance carrier may not be liable, and the employee may be liable, for payment for that health care;

(9) information about how to obtain emergency care services, including emergency care outside the service area, and after-hours care;

(10) a list of the health care services for which the insurance carrier or network requires preauthorization or concurrent review;

(11) an explanation regarding continuity of treatment in the event of the termination from the network of a treating doctor;

(12) a description of the network's complaint system, including:

(A) a statement that an employee must file complaints with the network regarding dissatisfaction with any aspect of the network's operations or with network providers;

(B) any deadline for the filing of complaints, provided that the deadline may not be less than 90 days after the date of the event or occurrence that is the basis for the complaint;

(C) a single point of contact within the network for receipt of complaints, including the address and e-mail address of the contact; and

(D) a statement that the network is prohibited from retaliating against:

(i) an employee if the employee files a complaint against the network or appeals a decision of the network; or

(ii) a provider if the provider, on behalf of an employee, reasonably files a complaint against the network or appeals a decision of the network; and

(E) a statement explaining how an employee may file a complaint with the department as described under §10.122 of this chapter (relating to Submitting Complaints to the Department);

(13) a summary of the insurance carrier's or network's procedures relating to adverse determinations and the availability of the independent review process;

(14) a list of network providers updated at least quarterly, including:

(A) the names and addresses of network providers grouped by specialty. Treating doctors shall be identified and listed separately from specialists. Providers who are authorized to assess maximum medical improvement and render impairment ratings shall be clearly identified;

(B) a statement of limitations of accessibility and referrals to specialists; and

(C) a disclosure listing which providers are accepting new patients; and

(15) a statement that except for emergencies, the network must arrange for services, including referrals to specialists, to be accessible to an employee on a timely basis on request, but not later than 21 days after the date of the request.

(h) An employer shall deliver the notice of network requirements and acknowledgment form to the employer's employees and document the method of delivery, to whom the notice was delivered, and the date or dates of delivery. The failure of an employer to establish a standardized process for delivering to an employee a notice of network requirements and acknowledgment form for a network that has a service area in which the employee lives, including documentation of delivery of the notice and the date or dates of delivery, creates a rebuttable presumption that the employee has not received the notice of network requirements and is not subject to network requirements.

§10.61. Employees Who Live Within the Network Service Area, Employee Access and Insurance Carrier Liability for Health Care.

(a) The employees of an employer who elects to contract with an insurance carrier for network health care services, and who live within the network's service area, are required to obtain medical treatment for a compensable injury within the network, except as provided in Insurance Code §1305.006(1) and (3) and subsection (f)(1), (3) and (4) of this section.

(b) An employee is presumed to live at the physical address he or she has represented to the employer as his or her address or, if the employee no longer works for the employer, the physical address of record on file with the insurance carrier.

(c) At any time after the receipt of the notice of network requirements, an employee who no longer lives at the physical address described in subsection (b) of this section, or who otherwise asserts that he or she does not live in the network's service area, may notify the insurance carrier and request a review under §10.62 of this subchapter (relating to Dispute Resolution for Employee Requirements Related to In-Network Care).

(d) An employee who does not live within the network's service area may choose to participate in a network established by the insurance carrier or with which the insurance carrier has a contract upon mutual agreement between the employee and insurance carrier.

(e) An employee who is found to have fraudulently claimed to live outside the network's service area or made a material misrepresentation regarding where he or she lives and receives health care outside the network's service area may be liable for payment for that health care.

(f) An insurance carrier that establishes or contracts with a network is liable for in network health care for a compensable injury that is provided to an injured employee in accordance with Insurance Code Chapter 1305, and out-of-network care as follows:

(1) emergency care;

(2) health care provided to an injured employee who does not live within the service area of any network established by the insurance carrier or with which the insurance carrier has a contract;

(3) health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network as follows:

(A) if an injured employee's treating doctor requests a referral to an out-of-network provider for medically necessary health care services that are not available from network providers, the network shall approve or deny a referral to an out-of network provider within the time appropriate under the circumstances but, under any circumstance, not later than seven days after the date the referral is requested;

(B) if the network denies the referral request under subsection (a) of this section because the requested service is available from network providers, the employee may file a complaint in accordance with the network's complaint process under Insurance Code §1305.402 and §10.121 of this chapter (relating to Complaints; Deadlines for Response and Resolution);

(C) if the network denies the referral request under subparagraph (A) of this paragraph because the specialist referral is not medically necessary, the employee may file a request for independent review as described in §10.104 of this chapter (relating to Independent Review of Adverse Determination); and

(4) health care services provided to an injured employee before the employee received the notice of network requirements and the employee information for the appropriate network under Insurance Code §1305.005(d), (e) or (g) and §10.60 of this chapter (relating to Notice of Network Requirements; Employee Information).

§10.62. Dispute Resolution for Employee Requirements Related to In-Network Care.

(a) If an employee asserts that he or she does not currently live in the network's service area, the employee may request a review by contacting the insurance carrier and providing evidence to support the employee's assertion.

(b) An insurance carrier shall review the employee's request for review, including any evidence provided by the injured employee and any evidence collected by the insurance carrier, and make a determination regarding whether the employee lives within the network's service area or lives within the service area of any other workers' compensation network contracted with or established by the insurance carrier (alternate network). If an insurance carrier makes a determination that the employee lives within the service area of an alternate network, the insurance carrier shall provide the employee with the notice of network requirements as described under §10.60 of this subchapter (relating to Notice of Network Requirements; Employee Information) for the alternate network. Upon receipt of the notice of network requirements, the employee must select a treating doctor from the list of the alternate network's treating doctors in the network's service area.

(c) Not later than seven calendar days after the date the insurance carrier receives notice of the injured employee's request for review, the insurance carrier shall notify the employee, in writing, of the carrier's determination. This notice shall include a brief description of the evidence the carrier considered when making the determination, a copy of the carrier's determination and a description of how an employee may file a complaint regarding this issue with the department. The insurance carrier shall also send a copy of the carrier's determination to the employee's employer.

(d) If an employee disagrees with the insurance carrier's determination, the employee may file a complaint with the department in accordance with §10.122 of this chapter (relating to Submitting Complaints to the Department). To be considered complete, the employee's complaint must include:

(1) the employee's contact information, including the employee's name, current physical address, and telephone number;

(2) a copy of the insurance carrier's determination; and

(3) any evidence the employee provided to the insurance carrier for consideration.

(e) An injured employee who disputes whether he or she lives within the network's service area may seek all medical care from the network during the pendency of the insurance carrier's review and the department's investigation of a complaint.

§10.63. Plain Language Requirements.

(a) The notice of network requirements and employee information form and acknowledgment form required by Insurance Code §1305.451 and §10.60 of this subchapter (relating to Notice of Network Requirements; Employee Information) shall be written in plain language and comply with the following requirements:

(1) the text shall achieve a minimum level of readability which may not be more difficult than the equivalent of a ninth grade reading level as measured by the Flesch reading ease test, a test referenced in the list of standardized tests contained in §3.3092(c)(1) of this title (relating to Format, Content, and Readability for Outline of Coverage), or other standardized test as approved by the department;

(2) the form shall be printed in not less than 12-point type;

(3) the form shall be appropriately divided and captioned in a meaningful sequence such that each section contains an underlined, boldfaced, or otherwise conspicuous title or caption at the beginning of the section that indicates the nature of the subject matter included in or covered by the section; and

(4) the form shall be written in a clear and coherent manner and wherever practical, words with common and everyday meanings shall be used to facilitate readability.

(b) The notice of network requirements and employee information form shall be accompanied by a certification signed by an officer or other authorized representative of the network stating the reading level of the form, the standardized test utilized to determine the reading level, and that the form meets or exceeds the minimum readability standards established by the commissioner. To confirm the accuracy of any certification, the commissioner may require the submission of additional information.

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

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Texas Department of Insurance
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SUBCHAPTER E. NETWORK OPERATIONS

28 TAC §§10.80 - 10.86

The new sections are proposed under Insurance Code Chapter 1305, Articles 5.55C and 5.62, 21.58A and §§31.001 and 36.001, and Labor Code Chapter 405. Insurance Code §1305.007 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Insurance Code Chapter 1305. In addition, §1305.005(i) authorizes the Commissioner of Insurance to adopt rules as necessary to implement §1305.005. Section 1305.052 requires a certificate application to be accompanied by a nonrefundable fee set by commissioner rule. Section 1305.401 provides that the Commissioner of Insurance may adopt rules as necessary to implement §1305.401. Section 1305.403 requires the Commissioner of Insurance to adopt rules designating the classification of network complaints under §1305.403. Insurance Code Article 5.55C(d) requires that a deductible policy provide that the company or association will make all payments for benefits that are payable from the deductible amount and that reimbursement by the policyholder shall be made periodically, rather than at the time claim costs are incurred. Article 5.55C(e) provides that the company or association shall service all claims that arise during the policy period, including those claims payable, in whole or in part, from the deductible amount. Insurance Code Article 5.62 empowers the Commissioner of Insurance to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of Insurance Code Chapter 5 Subchapter D, relating to workers' compensation insurance, as are necessary to carry out its provisions. Insurance Code Article 21.58A, §13 authorizes the commissioner to adopt rules and regulations to implement the provisions of Article 21.58A. Insurance Code §31.001 clarifies that in the Insurance Code, a reference to "commissioner" means the Commissioner of Insurance. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. Labor Code §405.004(g) requires the Commissioner of Insurance to adopt rules as necessary to establish data reporting requirements to support the research duties under Chapter 405.

The following statutes are affected by this proposal: Insurance Code Chapter 1305 and Articles 5.55C, 5.65 and 2158A, and Labor Code Chapter 405.

§10.80. Accessibility and Availability Requirements.

(a) All services specified by this section must be provided by a provider who holds a current appropriate license, unless the provider is exempt from license requirements.

(b) The network shall ensure that the network's provider panel includes:

(1) an adequate number of treating doctors and specialists, who must be available and accessible to employees 24 hours a day, seven days a week, within the network's service area;

(2) sufficient numbers and types of health care providers to ensure choice, access, and quality of care to injured employees;

(3) an adequate number of the treating doctors and specialists who have admitting privileges at one or more network hospitals located within the network's service area to make any necessary hospital admissions;

(4) hospital services that are available and accessible 24 hours a day, seven days a week, within the network's service area. The network shall provide for the necessary hospital services by contracting with general, special, and psychiatric hospitals, as applicable;

(5) physical and occupational therapy services and chiropractic services that are available and accessible within the network's service area;

(6) emergency care that is available and accessible 24 hours a day, seven days a week, without restrictions as to where the services are rendered; and

(7) an adequate number of treating doctors who are qualified to provide maximum medical improvement and impairment rating services as required under Labor Code §408.023.

(c) Except for emergencies, a network shall arrange for services, including referrals to specialists, to be accessible to injured employees within the time appropriate to the circumstances and condition of the injured employee, but not later than 21 calendar days after the date of the original request.

(d) Each network shall provide that network services are sufficiently accessible and available as necessary to ensure that the distance from any point in the network's service area to a point of service by a treating doctor or general hospital is not greater than:

(1) 30 miles in nonrural areas; and

(2) 60 miles in rural areas.

(e) Each network shall provide that network services are sufficiently accessible and available as necessary to ensure that the distance from any point in the network's service area to a point of service by a specialist or specialty hospital is not greater than:

(1) 75 miles in nonrural areas; and

(2) 75 miles in rural areas.

(f) For portions of the service area in which the network or department identifies noncompliance with this section, the network must file an access plan with the department for approval at least 30 days before implementation of the plan if any health care service or a network provider is not available to an employee because:

(1) providers are not located within the required distances;

(2) the network is unable to obtain provider contracts after good faith attempts; or

(3) providers meeting the network's minimum quality of care and credentialing requirements are not located within the required distances.

(g) The access plan required under subsection (f) of this section must include:

(1) a description of the geographic area in which services or providers are not available, identified by county, city, ZIP code, mileage, or other identifying data;

(2) a map, with key and scale, which identifies the areas in which such health care services or providers are not available;

(3) for each geographic area identified as not having adequate health care services or providers available, the reason or reasons that health care services or providers cannot be made available;

(4) the network's general plan for making health care services and providers available to injured employees in each geographic area identified, including:

(A) the names, addresses and specialties of the network providers and a listing of the services to be provided through the network that meet the health care needs of the employees;

(B) a listing of any health care services to be made available in the geographic area;

(C) a general description of the procedures to be followed by the network to assure that certain health care services are made available and accessible to employees in the geographic areas identified as being areas in which the health care services or providers are not available and accessible; and

(D) a network development plan through which health care services or providers will be made available and accessible to employees in these geographic areas in the future;

(5) any other information which is necessary to allow the department to assess the network's access plan.

(h) The network may make arrangements with providers outside the service area to enable employees to receive a skill or specialty not available within the network service area.

(i) The network is not required to expand services outside the network's service area to accommodate employees who live outside the service area.

§10.81. Quality Improvement Program.

(a) A network shall develop and maintain continuous and comprehensive quality improvement program designed to monitor and evaluate objectively and systematically the quality and appropriateness of health care and network services, and to pursue opportunities for improvement. The quality improvement program shall include return-to-work and medical case management programs. The network shall dedicate adequate resources, including personnel and information systems, to the quality improvement program.

(b) Required documentation of the quality improvement program, at a minimum, includes:

(1) Written description. The network shall develop a written description of the quality improvement program that outlines program organizational structure, functional responsibilities, and committee meeting frequency;

(2) Work plan. The network shall develop an annual quality improvement work plan designed to reflect the type of services and the population served by the network in terms of age groups, disease or injury categories, and special risk status, such as type of industry. The work plan shall include:

(A) objective and measurable goals, planned activities to accomplish the goals, time frames for implementation, individuals responsible, and evaluation methodology;

(B) evaluation of each program, including:

(i) network adequacy, which encompasses availability and accessibility of care and assessment of providers who are and are not accepting new patients;

(ii) continuity of health care and related services;

(iii) clinical studies;

(iv) the adoption and periodic updating of treatment guidelines, return-to-work guidelines, individual treatment protocols and the list of services requiring preauthorization;

(v) employee and provider satisfaction;

(vi) the complaint and appeal process, complaint data, and identification and removal of communication barriers which may impede employees and providers from effectively making complaints against the network;

(vii) provider billing processes, if applicable;

(viii) contract monitoring, including delegation oversight, if applicable, and compliance with filing requirements;

(ix) utilization review and retrospective review processes, if applicable;

(x) credentialing;

(xi) employee services, including after-hours telephone access logs;

(xii) return-to-work processes and outcomes; and

(xiii) medical case management outcomes;

(3) Annual evaluation. The network shall prepare an annual written report on the quality improvement program, which includes:

(A) completed activities;

(B) trending of clinical and service goals;

(C) analysis of program performance; and

(D) conclusions regarding the effectiveness of the program.

(c) The network is presumed to be in compliance with statutory and regulatory requirements regarding quality improvement requirements, including credentialing, if:

(1) the network has received nonconditional accreditation or certification by the National Committee for Quality Assurance (NCQA), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the American Accreditation HealthCare Commission (URAC), or the Accreditation Association for Ambulatory Health Care (AAAHC), or any other national accreditation entity recognized by rules adopted by the commissioner of insurance;

(2) the accreditation includes all quality improvement requirements set forth in this section;

(3) the certification for a function, including credentialing, includes all requirements set forth in this section; and

(4) the national accreditation organization's requirements are the same, substantially similar to, or more stringent than the department's quality improvement requirements.

(d) The network governing body is ultimately responsible for the quality improvement program and shall:

(1) appoint a quality improvement committee that includes network providers;

(2) approve the quality improvement program;

(3) approve an annual quality improvement work plan;

(4) meet no less than annually to receive and review reports of the quality improvement committee or group of committees, and take action when appropriate; and

(5) review the annual evaluation of the quality improvement program.

(e) The quality improvement committee shall evaluate the overall effectiveness of the quality improvement program. The committee may delegate and oversee quality improvement activities to subcommittees that may, if applicable, include practicing doctors and employees from the service area. All subcommittees shall:

(1) collaborate and coordinate efforts to improve the quality, availability, and accessibility of health care services; and

(2) meet regularly and routinely report findings, recommendations, and resolutions in writing to the quality improvement committee for the network.

(f) The network shall have a medical case management program with certified case managers whose certifying organization must be accredited by an established accrediting organization, including the National Commission for Certifying Agencies (NCCA), the American Board of Nursing Specialties, or another national accrediting agency with similar standards. In accordance with Labor Code §413.021(a), a claims adjuster may not serve as a case manager. The case manager shall work with providers, employees, doctors and employers to facilitate cost-effective health care and the employee's return to work, and must be certified in one or more of the following areas:

(1) case management;

(2) case management administration;

(3) rehabilitation case management;

(4) continuity of care;

(5) disability management; or

(6) occupational health.

§10.82. Credentialing.

(a) Process for selection and retention of network doctors and health care practitioners.

(1) A network shall implement a documented process for selection and retention of contracted doctors and health care practitioners including the following elements, as applicable:

(A) The network's policies and procedures shall clearly indicate the doctor or health care practitioner directly responsible for the credentialing program and shall include a description of his or her participation.

(B) Networks shall develop written criteria for credentialing of doctors and health care practitioners and written procedures for verifications, including verification that the doctor or health care practitioner filed financial disclosure information with the department's division of workers' compensation in accordance with Labor Code §§408.023 and 413.041.

(i) The network shall credential all doctors and health care practitioners, including advanced practice nurses and physician assistants, if they are listed in the provider directory. A network shall credential each doctor and health care practitioner who is a member of a contracting group, such as an independent doctor association or medical group.

(ii) The network's policies and procedures must include the following doctors' and health care practitioners' rights:

(I) the right to review information submitted to support the credentialing application;

(II) the right to correct erroneous information;

(III) the right, upon request, to be informed of the status of the credentialing or recredentialing application; and

(IV) the right to be notified of these rights.

(iii) A network is not required to credential:

(I) hospital-based doctors or health care practitioners, including advanced practice nurses and physician assistants unless listed in the provider directory;

(II) health care practitioners who furnish services only under the direct supervision of a doctor or another health care practitioner except as specified in subparagraph (B)(i) of this paragraph;

(III) students, residents, or fellows;

(IV) pharmacists; or

(V) opticians.

(iv) A network must complete the initial credentialing process, including application, verification of information, and a site visit (if applicable), before the effective date of the initial contract with the doctor or health care practitioner.

(v) The network's policies and procedures shall include a provision that applicants be notified of the credentialing decision no later than 60 calendar days after the credentialing committee's decision.

(vi) A network must have written policies and procedures for suspending or terminating affiliation with a contracting doctor or health care practitioner.

(vii) The network shall have a procedure for the ongoing monitoring of doctor and health care practitioner performance between periods of recredentialing and shall take appropriate action when it identifies occurrences of poor quality. Monitoring shall include:

(I) Medicare and Medicaid sanctions: the network must determine the publication schedule or release dates applicable to its doctor and health care practitioner community; the network is responsible for reviewing the information within 30 calendar days of its release;

(II) information from state licensing boards regarding sanctions or licensure limitations;

(III) complaints; and

(IV) information from the department's division of workers' compensation regarding sanctions or practice limitations.

(viii) The network's procedures shall ensure that selection and retention criteria do not discriminate against doctors or health care practitioners who serve high-risk populations or who specialize in the treatment of costly conditions. Procedures shall also include a provision that credentialing and recredentialing decisions are not based on an applicant's race, ethnic/national identity, gender, age, sexual orientation or the types of procedures performed or types of patients.

(I) The network shall have a procedure for notifying licensing or other appropriate authorities, including the department's division of workers' compensation, when a doctor's or health care practitioner's affiliation is suspended or terminated due to quality of care concerns.

(II) The network shall maintain evidence of notification as required under subclause (I) of this clause.

(C) The initial credentialing process for doctors and health care practitioners must include the following:

(i) Doctors and health care practitioners shall complete an application which includes a work history covering at least the immediately preceding five years, a statement by the applicant regarding any limitations in ability to perform the functions of the position, history of loss of license and/or felony convictions; and history of loss or limitation of privileges, sanctions or other disciplinary activity, current use of illegal drugs, current professional liability insurance coverage information, and information on whether the doctor or health care practitioner will accept new patients from the network. A network may use the standardized credentialing application form specified in §21.3201 of this title (relating to Texas Standardized Credentialing Application for Physicians, Advanced Practice Nurses and Physician Assistants) for credentialing of health care practitioners. The completion date on the application shall be within 180 calendar days prior to the date the credentialing committee deems a doctor or health care practitioner eligible for initial credentialing.

(ii) The network shall verify the following from primary sources and shall include evidence of verification in the credentialing files:

(I) A current license to practice in the State of Texas and information on sanctions or limitations on licensure. The primary source for verification shall be the state licensing agency or board for Texas, and the license and sanctions must be verified within 180 calendar days prior to the date the credentialing committee deems a doctor or health care practitioner eligible for initial credentialing. The license must be in effect at the time of the credentialing decision.

(II) Education and training, including evidence of graduation from an appropriate professional school and completion of a residency or specialty training, if applicable. Primary source verification shall be sought from the appropriate schools and training facilities or the American Medical Association MasterFile. If the state licensing board, agency, or specialty board verifies education and training with the doctor's or health care practitioner's schools and facilities, evidence of current state licensure or board certification shall also serve as primary source verification of education and training.

(III) Board certification, if the doctor or health care practitioner indicates that he/she is board certified on the application. The network may obtain primary source verification from the American Board of Medical Specialties Compendium, the American Osteopathic Association, the American Medical Association MasterFile, or from the specialty boards, and the network must use the most recent available source.

(IV) A valid DEA or DPS Controlled Substances Registration Certificate, if applicable in effect at the time of the credentialing decision. The network may verify the certificate(s) by any one of the following means:

(-a-) a copy of the DEA or DPS certificate;

(-b-) visual inspection of the original certificate;

(-c-) confirmation with DEA or DPS;

(-d-) confirmation of entry in the National Technical Information Service database; or

(-e-) confirmation of entry in the American Medical Association Physician MasterFile.

(iii) The network shall verify within 180 calendar days prior to the date of the credentialing decision and shall include in the doctor's or health care practitioner's credentialing file the following:

(I) past five-year history of professional liability claims that resulted in settlements or judgments paid by or on behalf of the doctor or health care practitioner, which the network may obtain from the professional liability carrier or the National Practitioner Data Bank; and

(II) information on previous sanction activity by Medicare and Medicaid which the network may obtain from one of the following:

(-a-) National Practitioner Data Bank;

(-b-) Cumulative Sanctions Report available over the internet;

(-c-) Medicare and Medicaid Sanctions and Reinstatement Report distributed to federally contracting networks;

(-d-) state Medicaid agency or intermediary and the Medicare intermediary;

(-e-) Federation of State Medical Boards;

(-f-) Federal Employees Health Benefits Program department record published by the Office of Personnel Management, Office of the Inspector General; or

(-g-) entry in the American Medical Association Physician MasterFile.

(iv) The network shall perform a site visit to the offices of each treating doctor as part of the initial credentialing process. If doctors or health care practitioners are part of a group practice that shares the same office, the network may perform one visit to the site for all doctors or health care practitioners in the group practice, as well as for new doctors or health care practitioners who subsequently join the group practice. The network shall make the site visit assessment available to the department for review. The network shall have a process to track the relocation of and the opening of additional office sites for treating doctors as they open.

(v) Site visits shall consist of an evaluation of the site's accessibility, appearance, appointment availability, and space, using standards approved by the network. If a treating doctor offers services that require certification or licensure, such as laboratory or radiology services, the treating doctor shall have the current certification or licensure available for review at the site visit. In addition, as a result of the site visits, the network shall determine whether the site conforms to the network's standards for record organization, documentation, and confidentiality practices. Should the site not conform to the network's standards, the network shall require a corrective action plan and perform a follow-up site visit every six months until the site complies with the standards.

(D) The network shall have written procedures for recredentialing doctors and health care practitioners at least every three

years through a process that updates information obtained in initial credentialing.

(i) Recredentialing will include a current and signed attestation that must be completed within 180 days prior to the date the credentialing committee deems a doctor or health care practitioner eligible for recredentialing with the following factors:

(I) reasons for any inability to perform the essential functions of the position, with or without accommodation;

(II) lack of current use of illegal drugs;

(III) history of loss or limitation of privileges or disciplinary activity;

(IV) current professional liability insurance coverage; and

(V) correctness and completeness of the application.

(ii) Recredentialing procedures must be completed within 180 days prior to the date the credentialing committee deems a doctor or health care practitioner eligible for recredentialing and shall include the following processes:

(I) reverification of the following from the primary sources:

(-a-) licensure and information on sanctions or limitations on licensure;

(-b-) board certification:

(-1-) if the doctor or health care practitioner was due to be recertified; or

(-2-) if the doctor or health care practitioner indicates that he or she has become board certified since the last time he or she was credentialed or recredentialed; and

(-c-) Drug Enforcement Agency (DEA) or Department of Public Safety (DPS) Controlled Substances Registration Certificate, if applicable. The network may reverify the certificate(s) by any one of the following means:

(-1-) a copy of the DEA or DPS certificate;

(-2-) visual inspection of the original certificate;

(-3-) confirmation with DEA or DPS;

(-4-) confirmation of entry in the National Technical Information Service database; or

(-5-) confirmation of entry in the American Medical Association Physician MasterFile;

(II) review of updated history of professional liability claims in accordance with the verification sources and time limits specified in subparagraph (C)(iii) of this paragraph.

(E) The credentialing process for institutional providers shall include the following:

(i) evidence of state licensure;

(ii) evidence of Medicare certification;

(iii) evidence of other applicable state or federal requirements, e.g., Bureau of Radiation Control certification for diagnostic imaging centers, certification for community mental health centers from the Texas Department of Mental Health and Mental Retardation or its successor agency, CLIA (Clinical Laboratory Improvement Amendments of 1988) certification for laboratories;

(iv) evidence of accreditation by a national accrediting body, as applicable; the network shall determine which national accrediting bodies are appropriate for different types of institutional providers. The network's written policies and procedures must state which national accrediting bodies it accepts; and

(v) evidence of on-site evaluation of the institutional provider against the network's written standards for participation if the provider is not accredited by the national accrediting body required by the network.

(F) The network procedures shall provide for recredentialing of institutional providers at least every three years through a process that updates information obtained for initial credentialing as set forth in subparagraph (E)(i) - (v) of this paragraph.

(2) The network or the network's delegated entity shall make all credentialing processes and files available to the department upon request.

(b) Site visits for cause.

(1) The network shall have procedures for detecting deficiencies subsequent to the initial site visit. When the network identifies new deficiencies, the network shall reevaluate the site and institute actions for improvement.

(2) A network may conduct a site visit to the office of any doctor or health care practitioner at any time for cause. The network shall conduct the site visit to evaluate the complaint or other precipitating event, which may include an evaluation of any facilities or services related to the complaint or event and an evaluation of medical records, equipment, space, accessibility, appointment availability, or confidentiality practices, as appropriate.

(c) Peer review. The quality improvement program shall provide for a peer review procedure for doctors, as required under the Medical Practice Act, Chapters 151-164, Occupations Code. The network shall designate a credentialing committee that uses a peer review process to make recommendations regarding credentialing decisions.

(d) Delegation of credentialing.

(1) If the network delegates credentialing functions to other entities, it shall have:

(A) a process for developing delegation criteria and for performing pre-delegation and annual audits;

(B) a delegation agreement;

(C) a monitoring plan; and

(D) a procedure for termination of the delegation agreement for non-performance.

(2) If the network delegates credentialing functions to an entity accredited by the NCQA, the annual audit of that entity is not required for the function(s) listed in the NCQA accreditation; however, evidence of this accreditation shall be made available to the department for review.

(3) The network shall maintain:

(A) documentation of pre-delegation and annual audits;

(B) executed delegation agreements;

(C) semi-annual reports received from the delegated entities;

(D) evidence of evaluation of the reports;

(E) current rosters or copies of signed contracts with doctors and health care practitioners who are affected by the delegation agreement; and

(F) documentation of ongoing monitoring and shall make it available to the department for review.

(4) Credentialing files maintained by the other entities to which the network has delegated credentialing functions shall be made available to the department for examination upon request.

(5) In all cases, the network shall maintain the right to approve credentialing, suspension, and termination of doctors and health care practitioners.

§10.83. Guidelines and Protocols.

(a) Each network shall adopt treatment guidelines, return-to-work guidelines, and individual treatment protocols, which must be evidence-based, scientifically valid, outcome-focused, and designed to reduce inappropriate or unnecessary health care while safeguarding access to necessary care.

(b) An insurance carrier or network may not deny treatment for a compensable injury solely because its treatment guidelines do not specifically address the treatment or injury.

(c) A network shall, through its quality improvement program under §10.81 of this subchapter (relating to Quality Improvement Program), assure that all treatment guidelines, return-to-work guidelines, and individual treatment protocols are made available to all network providers. The network shall contractually require providers to follow treatment guidelines, return-to-work guidelines and individual treatment protocols pursuant to §10.42(b)(2) of this chapter (relating to Network Contracts with Providers).

§10.84. Treating Doctor.

In addition to the duties and requirements placed upon treating doctors under Insurance Code Chapter 1305 and this chapter, a doctor designated as a treating doctor by a network shall comply with Labor Code §§408.0041(c) and (g), 408.025(c), and 408.023(l) - (p) and rules adopted by the commissioner of workers' compensation.

§10.85. Selection of Treating Doctor; Change of Treating Doctor.

(a) Selection of treating doctor. An injured employee who lives within the service area is entitled to the employee's initial choice of a treating doctor from the list provided by the network of all treating doctors under contract with the network who provide services within the service area in which the injured employee lives in accordance with Insurance Code §1305.104(a).

(b) Change of treating doctor. An injured employee who is dissatisfied with the employee's initial choice of treating doctor or with an alternate treating doctor may select an alternate or subsequent treating doctor in accordance with Insurance Code §1305.104(b) - (e).

(c) Use of specialist as treating doctor. An injured employee with a chronic, life-threatening injury or chronic pain related to a compensable injury may apply to the network's medical director to use a treating doctor specialist that is in the same network as the injured employee's treating doctor in accordance with Insurance Code §1305.104(f) - (i).

(d) Request for an HMO primary care physician or provider as the employee's treating doctor. An employee who is a member of an HMO at the time of the employee's work-related injury, may request that the employee's HMO primary care physician or provider who the employee selected prior to the injury serve as that employee's treating doctor in the workers' compensation health care network in accordance with Insurance Code §1305.105. The network shall grant a employee's request for an HMO primary care physician or provider to serve as the employee's treating doctor if the physician or provider agrees to abide by the terms of the network's contract and comply with Insurance Code Chapter 1305, Subchapters D through I and commissioner rules adopted under those subchapters.

§10.86. Telephone Access.

Each network shall establish and maintain telephone access logs for calls received other than during regular business hours that accurately record the following:

(1) the date the network received the telephone call;

(2) detailed information necessary for the network to respond to the telephone call;

(3) the date the network responded to the telephone call; and

(4) identifying information for the telephone call.

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 C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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SUBCHAPTER F. UTILIZATION REVIEW AND RETROSPECTIVE REVIEW

28 TAC §§10.100 - 10.104

The new sections are proposed under Insurance Code Chapter 1305, Articles 5.55C and 5.62, 21.58A and §§31.001 and 36.001, and Labor Code Chapter 405. Insurance Code §1305.007 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Insurance Code Chapter 1305. In addition, §1305.005(i) authorizes the Commissioner of Insurance to adopt rules as necessary to implement §1305.005. Section 1305.052 requires a certificate application to be accompanied by a nonrefundable fee set by commissioner rule. Section 1305.401 provides that the Commissioner of Insurance may adopt rules as necessary to implement §1305.401. Section 1305.403 requires the Commissioner of Insurance to adopt rules designating the classification of network complaints under §1305.403. Insurance Code Article 5.55C(d) requires that a deductible policy provide that the company or association will make all payments for benefits that are payable from the deductible amount and that reimbursement by the policyholder shall be made periodically, rather than at the time claim costs are incurred. Article 5.55C(e) provides that the company or association shall service all claims that arise during the policy period, including those claims payable, in whole or in part, from the deductible amount. Insurance Code Article 5.62 empowers the Commissioner of Insurance to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of Insurance Code Chapter 5 Subchapter D, relating to

workers' compensation insurance, as are necessary to carry out its provisions. Insurance Code Article 21.58A, §13 authorizes the commissioner to adopt rules and regulations to implement the provisions of Article 21.58A. Insurance Code §31.001 clarifies that in the Insurance Code, a reference to "commissioner" means the Commissioner of Insurance. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. Labor Code §405.004(g) requires the Commissioner of Insurance to adopt rules as necessary to establish data reporting requirements to support the research duties under Chapter 405.

The following statutes are affected by this proposal: Insurance Code Chapter 1305 and Articles 5.55C, 5.65 and 2158A, and Labor Code Chapter 405.

§10.100. Applicability.

In addition to the requirements under this subchapter, the requirements of Insurance Code Article 21.58A apply to utilization review conducted in relation to a workers' compensation health care network. In the event Article 21.58A conflicts with this chapter and Insurance Code Chapter 1305, this chapter and Insurance Code Chapter 1305 control.

§10.101. General Standards for Utilization Review and Retrospective Review.

(a) Screening criteria used for utilization review and retrospective review related to a workers' compensation health care network must be consistent with the network's treatment guidelines, return-to-work guidelines, and individual treatment protocols.

(b) The carrier's utilization review program must include a process requiring a treating doctor or specialist to request approval from the network for deviation from the treatment guidelines, screening criteria and individual treatment protocols where required by the particular circumstances of an employee's injury.

§10.102. Notice of Certain Utilization Review Determinations; Preauthorization and Retrospective Review Requirements.

(a) The preauthorization requirements of Labor Code §413.014 and rules adopted under that section do not apply to health care provided through a workers' compensation network. If a carrier or network uses a preauthorization process within a network, the requirements of Insurance Code §§1305.351 - 1305.355 and this chapter apply.

(b) Any person performing utilization review or retrospective review for an injured employee receiving health care services in a network shall notify the employee or the employee's representative, if any, and the requesting provider of a determination made in a utilization review or retrospective review.

(c) Notification of an adverse determination must include:

(1) the principal reasons for the adverse determination;

(2) the clinical basis for the adverse determination;

(3) a description of or the source of the screening criteria that were used as guidelines in making the determination;

(4) for any provider consulted, the professional specialty and a validation that the provider is licensed in Texas in accordance with Labor Code §408.0231(g);

(5) a description of the procedure for the reconsideration process; and

(6) notification of the availability of independent review in the form prescribed by the commissioner.

(d) On receipt of a preauthorization request from a provider for proposed services that require preauthorization, the person performing utilization review must issue and transmit a determination indicating whether the proposed health care services are preauthorized, and respond to requests for preauthorization within the periods prescribed by this section.

(e) If the proposed services are for concurrent hospitalization care, the person performing utilization review must, within 24 hours of receipt of the request, transmit a determination indicating whether the proposed services are preauthorized.

(f) If the proposed health care services involve post-stabilization treatment or a life-threatening condition, the person performing utilization review must transmit to the requesting provider a determination indicating whether the proposed services are preauthorized within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, not to exceed one hour from receipt of the request. If the person performing utilization review issues an adverse determination in response to a request for post-stabilization treatment or a request for treatment involving a life-threatening condition, the person performing utilization review must provide to the employee or the employee's representative, if any, and the employee's treating provider the notification required under subsection (b) of this section.

(g) For all other requests for preauthorization or retrospective review, the person performing utilization review or retrospective review must issue and transmit the determination under subsection (d) of this section not later than the third calendar day after the date the request is received.

(h) Prescribed forms related to the availability of independent review may be obtained from:

(1) the department's website at www.tdi.state.tx.us; or

(2) the HMO Division, Texas Department of Insurance, Mail Code 103-6A, P. O. Box 149104, Austin, Texas 78714-9104.

§10.103. Reconsideration of Adverse Determination.

(a) A person who performs utilization review or retrospective review shall maintain and make available a written description of the reconsideration procedures involving an adverse determination. The reconsideration procedures must be reasonable and include:

(1) a provision stating that a provider other than the provider who made the original adverse determination must perform the reconsideration;

(2) a provision that an employee, a person acting on behalf of the employee, or the employee's requesting provider may, not later than the 30th day after the date of issuance of written notification of an adverse determination, request reconsideration of the adverse determination either orally or in writing;

(3) a provision that, not later than the fifth calendar day after the date of receipt of the request for reconsideration, the person performing utilization review or retrospective review must send to the requesting party a letter acknowledging the date of the receipt of the request that includes a reasonable list of documents the requesting party is required to submit;

(4) a provision that, after completion of the review of the request for reconsideration of the adverse determination, the person performing utilization review or retrospective review must issue a response letter to the employee or person acting on behalf of the employee, and the employee's requesting provider, that:

(A) explains the resolution of the reconsideration; and

(B) includes:

(i) a statement of the specific medical or clinical reasons for the resolution;

(ii) the medical or clinical basis for the decision;

(iii) for any provider consulted, the professional specialty and state(s) in which the provider is licensed; and

(iv) notice of the requesting party's right to seek review of the denial by an independent review organization and the procedures for obtaining that review in the form of notice referenced in §10.102(h) of this subchapter (relating to Notice of Certain Utilization Review Determinations; Preauthorization and Retrospective Review Requirements); and

(5) written notification to the requesting party of the determination of the request for reconsideration as soon as practicable, but not later than the 30th day after the date the person performing utilization review or retrospective review received the request.

(b) In addition to the requirements in subsection (a) of this section, the reconsideration procedures must include:

(1) a method for expedited reconsideration procedures for:

(A) denials of proposed health care services involving post- stabilization treatment;

(B) life-threatening conditions; and

(C) denials of continued stays for hospitalized employees;

(2) a review by a provider who has not previously reviewed the case and who is of the same or a similar specialty as a provider who typically manages the condition, procedure, or treatment under review; and

(3) a provision that the period during which the reconsideration is to be completed must be based on the medical or clinical immediacy of the condition, procedure, or treatment, but may not exceed one calendar day from the date of receipt of all information necessary to complete the reconsideration.

(c) Notwithstanding subsection (a) or (b) of this section, an employee with a life-threatening condition is entitled to an immediate review by an independent review organization and is not required to comply with the procedures for a reconsideration of an adverse determination.

§10.104. Independent Review of Adverse Determination.

(a) The person who performs utilization review or retrospective review, denies a referral request because the referral is not medically necessary, or denies a request for deviation from treatment guidelines, individual treatment protocols or screening criteria, must:

(1) permit the employee, person acting on behalf of the employee, or the employee's requesting provider to seek review of the referral denial or reconsideration denial within the period prescribed by subsection (b) of this section by an independent review organization assigned in accordance with Insurance Code Article 21.58C and commissioner rules; and

(2) provide to the appropriate independent review organization, not later than the third business day after the date the person receives notification of the assignment of the request to an independent review organization:

(A) any medical records of the employee that are relevant to the review;

(B) any documents, including treatment guidelines, used by the person in making the determination;

(C) the response letter described by Insurance Code §1305.354(a)(4) and §10.103(a)(4) of this chapter (relating to Reconsideration of Adverse Determination);

(D) any documentation and written information submitted in support of the request for reconsideration; and

(E) a list of the providers who provided care to the employee and who may have medical records relevant to the review.

(b) A requestor must timely file a request for independent review under subsection (a) of this section as follows:

(1) for a request regarding preauthorization or concurrent review, not later than the 45th day after the date of denial of a reconsideration; or

(2) for a request regarding retrospective medical necessity review, not later than the 45th day after the denial of reconsideration.

(c) The insurance carrier must pay for the independent review provided under this subchapter.

(d) The department shall assign the review request to an independent review organization.

(e) At a minimum, the decision of the independent review organization must include the elements listed and the certification required under Labor Code §413.032.

(f) After an independent review organization's review and decision under this section, a party to a medical dispute that disputes the decision may seek judicial review of the decision. The division of workers' compensation and the department are not considered to be parties to the medical dispute.

(g) A decision of an independent review organization related to a request for preauthorization or concurrent review is binding. The carrier is liable for health care during the pendency of any appeal, and the carrier and network shall comply with the decision.

(h) If judicial review is not sought under this section, the carrier and network shall comply with the independent review organization's decision.

(i) Judicial review under this section shall be conducted in the manner provided for judicial review of contested cases under Subchapter G, Chapter 2001, Government Code.

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 G. COMPLAINTS

28 TAC §§10.120 - 10.122

The new sections are proposed under Insurance Code Chapter 1305, Articles 5.55C and 5.62, 21.58A and §§31.001

and 36.001, and Labor Code Chapter 405. Insurance Code §1305.007 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Insurance Code Chapter 1305. In addition, §1305.005(i) authorizes the Commissioner of Insurance to adopt rules as necessary to implement §1305.005. Section 1305.052 requires a certificate application to be accompanied by a nonrefundable fee set by commissioner rule. Section 1305.401 provides that the Commissioner of Insurance may adopt rules as necessary to implement §1305.401. Section 1305.403 requires the Commissioner of Insurance to adopt rules designating the classification of network complaints under §1305.403. Insurance Code Article 5.55C(d) requires that a deductible policy provide that the company or association will make all payments for benefits that are payable from the deductible amount and that reimbursement by the policyholder shall be made periodically, rather than at the time claim costs are incurred. Article 5.55C(e) provides that the company or association shall service all claims that arise during the policy period, including those claims payable, in whole or in part, from the deductible amount. Insurance Code Article 5.62 empowers the Commissioner of Insurance to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of Insurance Code Chapter 5 Subchapter D, relating to workers' compensation insurance, as are necessary to carry out its provisions. Insurance Code Article 21.58A, §13 authorizes the commissioner to adopt rules and regulations to implement the provisions of Article 21.58A. Insurance Code §31.001 clarifies that in the Insurance Code, a reference to "commissioner" means the Commissioner of Insurance. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state. Labor Code §405.004(g) requires the Commissioner of Insurance to adopt rules as necessary to establish data reporting requirements to support the research duties under Chapter 405.

The following statutes are affected by this proposal: Insurance Code Chapter 1305 and Articles 5.55C, 5.65 and 2158A, and Labor Code Chapter 405.

§10.120. Complaint System Required.

Each network shall implement and maintain a complaint system compliant with Insurance Code §§1305.401 - 1305.405 and this subchapter that provides reasonable procedures for resolving an oral or written complaint.

§10.121. Complaints; Deadlines for Response and Resolution.

(a) Not later than seven calendar days after receipt of an oral or written complaint, the network must:

(1) acknowledge receipt of the complaint in writing;

(2) acknowledge the date of receipt; and

(3) provide a description of the network's complaint procedures and deadlines.

(b) A network shall investigate each complaint received in accordance with the network's policies and in compliance with this subchapter.

(c) After a network has investigated a complaint, the network shall issue a resolution letter to the complainant not later than the 30th day after the network receives the written complaint which:

(1) explains the network's resolution of the complaint;

(2) states the specific reasons for the resolution;

(3) states the specialization of any health care provider consulted; and

(4) states that, if the complainant is dissatisfied with the resolution of the complaint or the complaint process, the complainant may file a complaint with the department as described in §10.122 of this subchapter (relating to Submitting Complaints to the Department).

(d) A network shall maintain a complaint log regarding each complaint and categorize each complaint as one or more of the following:

(1) quality of care or services;

(2) accessibility and availability of services or providers;

(3) utilization review and retrospective review, as applicable;

(4) complaint procedures;

(5) health care provider contracts;

(6) bill payment, as applicable;

(7) fee disputes; and

(8) miscellaneous.

(e) Each network must maintain the complaint log required under subsection (d) of this section and documentation on each complaint, complaint proceeding, and action taken on the complaint until the third anniversary after the date the complaint was received.

§10.122. Submitting Complaints to the Department.

(a) Any person, including a person who has attempted to resolve a complaint through a network's complaint system process or attempted to resolve a dispute regarding whether the employee lives within the network's service area through the insurance carrier, who is dissatisfied with resolution of the complaint, may submit a complaint to the department.

(b) The department's complaint form may be obtained from:

(1) the department's website at www.tdi.state.tx.us; or

(2) the HMO Division, Texas Department of Insurance, Mail Code 103-6A, P. O. Box 149104, Austin, Texas 78714-9104.

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 August 22, 2005.

TRD-200503539
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: October 2, 2005
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 354. MEMORANDA OF UNDERSTANDING

31 TAC §354.4

The Texas Water Development Board (the board) proposes amendments to 31 TAC Chapter 354 concerning the Memoranda of Understanding. The amendments are proposed to §354.4, memorandum of understanding between the board and the Office of Rural Community Affairs.

The board proposes to amend §354.4, memorandum of understanding between the board and the Office of Rural Community Affairs, to execute a new memorandum of understanding (MOU) with the Office of Rural Community Affairs ("ORCA"). Pursuant to 2005 Appropriations Act of the Texas Legislature (Rider 8 of the board's appropriation and Rider 3 of the ORCA), the board and ORCA are again required to continue to coordinate funds as outlined in a MOU to assure that none of the funds appropriated therein are expended in manner that aids the proliferation of colonias or are otherwise used in a manner inconsistent with the intent of the Economically Distressed Areas Program (EDAP) and maximize delivery of the funds and minimize administrative delay in their expenditure. Therefore, the board proposes amendments to §354.4 that will reflect the new MOU with the ORCA, in line with the 2005 Appropriations Act of the Texas Legislature. The current memorandum is set to expire on August 31, 2005. The proposed amendments will establish a new memorandum that is significantly similar to the previous memorandum, and will run from September 1, 2005 to August 31, 2007. No change is proposed to the scope of the responsibilities for either party. ORCA staff has presented this MOU to its Executive Committee which approved the MOU at its August 4, 2005 meeting.

James LeBas, Chief Financial Officer, has determined that, for the first five-year period this section is in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the amendments.

Mr. LeBas has also determined that, for the first five years the section, as proposed, is in effect, the public benefit anticipated as a result of enforcing the proposed section will be continued coordination of funds of the EDAP, administered by the board, and the Colonia Fund of the Community Development Block Grant Program, administered by the ORCA, so as to maximize delivery of the funds and minimize administrative delay in their expenditure. Mr. LeBas has determined there will not be economic costs to small businesses or individuals required to comply with the section as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Deputy Counsel, General Counsel Office, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

The proposed amendments are proposed under the authority of the Texas Water Code, §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State and §6.104 which authorizes the board to enter into memorandum of understanding with other state agencies.

The statutory provision affected by the amendments is Texas Water Code, Chapter 6 and Texas Water Code, §16.342.

§354.4. Memorandum of Understanding Between Texas Water Development Board and the Office of Rural Community Affairs.

(a) Recitals.

(1) Pursuant to the 1995 Appropriations Act of the Texas Legislature[~~,~~] and continuing through [~~continued in~~] the 2003 Appropriations Act of the Texas Legislature, the Texas Water Development Board (TWDB) and the Texas Department of Housing and Community Affairs (TDHCA) were required to develop a Memorandum of Understanding (Memorandum) to detail the responsibilities [~~responsibility~~] of each agency regarding the coordination of funds of the Economically Distressed Areas Program (EDAP), administered by the TWDB, and the Colonia Fund of the Community Development Block Grant Program, administered by the TDHCA, so as to maximize delivery of the funds and minimize administrative delay in their expenditure. For each biennium between 1995 and 2001, the [~~The~~] TWDB and the TDHCA executed Memoranda [~~a Memorandum~~] and successfully performed [~~pursuant to~~] the terms of those Memoranda [~~that Memorandum~~].

(2) In 2003, pursuant [~~Pursuant~~] to Chapter 487 of the Texas Government Code, the Office of Rural Community Affairs (OFFICE) was created and the functions and obligations of TDHCA related to the Colonia Fund were transferred to the OFFICE including the requirement to execute a Memorandum of Understanding to detail the responsibilities [~~responsibility~~] of each agency regarding the coordination of funds out of the EDAP, administered by the TWDB, and the Colonia Fund of the Community Development Block Grant Program, now administered by OFFICE. To implement the requirements of the 2003 Appropriations Act, the TWDB and the OFFICE executed a Memorandum and have successfully performed the terms of that Memorandum.

(3) Pursuant to Rider No. 8, the Texas Water Development Board and Rider No. 3, Office of Rural Community Affairs of the 2005 Appropriations Act of the Texas Legislature, the TWDB and the OFFICE are required to continue to coordinate funds as outlined in a Memorandum to assure that none of the funds appropriated therein are expended in manner that aids the proliferation of colonias or are otherwise used in a manner inconsistent with the intent of EDAP and maximize delivery of the funds and minimize administrative delay in their expenditure.

(b) Parties. This Memorandum is made and entered into between the OFFICE, an agency of the State of Texas, and the TWDB, an agency of the State of Texas.

(c) Purpose. The purpose of this Memorandum is to assure that none of the funds appropriated under the Colonia Fund are expended in a manner that aids the proliferation of colonias or are otherwise used in a manner inconsistent with the intent of the EDAP operated by the TWDB, so as to maximize delivery of the funds and minimize administrative delay in their expenditure.

(d) Period of performance. This Memorandum shall begin on September 1, 2005 [~~2003~~], and shall terminate on August 31, 2007 [~~2005~~]. This Memorandum may be extended for an additional period of time to ensure compliance with the OFFICE's Rider No. 3 [~~, the responsibility for which was assigned to the OFFICE by Chapter 487 of the Texas Government Code~~] and the TWDB Rider No. 8 [~~7~~] to the General Appropriations Act, 79th [~~78th~~] Legislature for the 2006-2007 [~~2004-2005~~] Biennium.

(e) Performance. Each party to this Memorandum shall coordinate with the other in delivering water and sewer service lines, hook-ups, and plumbing improvements to residents of selected colonias in order to connect those residents' housing units to EDAP-funded water and sewer systems.

(1) OFFICE responsibilities. The OFFICE shall be responsible for the following functions:

(A) develop an application process for projects submitted by eligible units of local government;

(B) assist units of general local government in preparing an application to the Colonia Fund;

(C) determine whether projects meet federal requirements;

(D) select projects to receive funding in conjunction with the TWDB;

(E) make Colonia Fund grant awards for selected projects on an as-needed basis;

(F) prepare and execute contracts with units of general local government (Contractor localities);

(G) provide oversight and guidance to Contractor localities regarding applicable federal and state laws and program regulations (environmental, labor, acquisition of real property, relocation, procurement, financial management, fair housing, equal employment opportunity, etc.);

(H) provide on-site technical assistance if necessary to ensure that funds are efficiently and effectively used to accomplish the activities for which they were intended;

(I) review, approve, process, and honor valid reimbursement requests from Contractor localities;

(J) monitor each project prior to contract completion to ensure compliance with applicable federal and state laws and program regulations;

(K) consult with the TWDB regarding specific projects on an as-needed basis; and

(L) notify communities on list provided by the TWDB of the availability of funds.

(2) TWDB responsibilities. The TWDB shall be responsible for the following functions:

(A) provide the OFFICE with descriptions of and schedules for EDAP-funded projects that need Colonia Fund assistance to provide connections and plumbing improvements at least six (6) weeks before such assistance would be required;

(B) assist eligible units of general local government in preparing an application for assistance through the OFFICE's Colonia Fund;

(C) select projects to receive funding in conjunction with the OFFICE; and

(D) provide assistance with technical project-related concerns brought forward by Contractor localities or the OFFICE during the course of the project.

(f) Limitations. Eligible applicants shall be those counties eligible under both OFFICE's Colonia Fund and TWDB's EDAP. Non-entitlement cities located within eligible counties are also eligible applicants. Eligible projects shall be located in unincorporated colonias identified by the TWDB and in eligible cities that annexed the colonia where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the colonia where improvements are to be made. Eligibility shall be denied to any project in a county that has not adopted or is not enforcing the Model Subdivision Rules established pursuant to §16.343 of the Texas Water Code. If there is an insufficient number of TWDB EDAP projects ready for Colonia Economically Distressed Areas Program (CEDAP) funding within 12 months after the OFFICE receives the federal letter of credit, the CEDAP funds may be transferred at the OFFICE's discretion as stated within the current Community Development Block Grant action.

(g) Reporting requirements. Each party to this Memorandum shall submit, on or before the fifteenth day of the month following the end of the calendar quarter, to the other party a report of its activities and expenditures during the previous calendar quarter. The first such report shall be due December 15, 2005 [~~January 15, 2004~~]. No later than September 15, 2006 [~~December 15, 2004~~], the OFFICE and the TWDB shall submit a joint report to the Legislative Budget Board that describes and analyzes the effectiveness of projects funded as a result of coordinated Colonia Fund/EDAP efforts.

(h) Termination. This Memorandum shall terminate upon ten (10) days written notice by either party to the other party in this contract.

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

Filed with the Office of the Secretary of State on August 16, 2005.

TRD-200503421
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 19, 2005
For further information, please call: (512) 475-2052

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CHAPTER 356. GROUNDWATER MANAGEMENT

SUBCHAPTER A. GROUNDWATER MANAGEMENT PLAN APPROVAL

31 TAC §§356.1 - 356.13

The Texas Water Development Board (board) proposes amendments to 31 TAC §§356.1 - 356.10 and new §§356.11 - 356.13 concerning Groundwater Management, Subchapter A, Groundwater Management Plan Certification. These amendments and new sections are proposed in order to conform to the statutory changes of House Bill 1763, 79th Legislature, Regular Session (2005) and pursuant to the four-year rule review requirement of Texas Government Code §2001.039.

First, the board proposes to rename Subchapter A to Groundwater Management Plan Approval and proposes to amend §356.1 due to the fact that H.B. 1763 renamed the groundwater management plan certification process to be an approval process. Therefore, the board proposes removing the word "certifying" and replacing it with the word "approving."

The board proposes several changes to §356.2. First, the board proposes adding a new definition for the term "administratively complete." The purpose of this addition is to be consistent with H.B. 1763, which defines when a management plan is administratively complete and can be approved by the executive administrator of the board. This proposed definition is taken from H.B. 1763. Second, the board proposes changes to the definition for "approved regional water plan." House Bill 1763 changed the law to remove this term and replace it with "adopted state water plan." To be consistent with the law, the board proposes changing the term to "adopted state water plan." Third, the board

proposes adding a definition for the term "conflict." Under Chapters 16 and 36 of the Water Code, the board has the duty to resolve conflicts between a groundwater management plan and the adopted state water plan. In order for the public to understand what a conflict is and how the board resolves conflicts, the board proposes defining the term "conflict." This definition is consistent with the changes made by H.B. 1763 and will provide clarity on what a conflict is. Fourth, the board proposes adding a definition for "desired future conditions." House Bill 1763 requires groundwater conservation districts within a groundwater management area to work together to identify the desired future conditions of the groundwater resources within their area. Once the desired future conditions are identified, the districts will request the corresponding values of managed groundwater from the board. The board proposes to define the term for clarity and to provide consistency with H.B. 1763. Fifth, the board proposes adding a definition for the term "discharge." This is proposed to be consistent with H.B. 1763, which added the term as a required element of groundwater management plans. Sixth, the board proposes adding a definition for the term "inflows." This is proposed to be consistent with H.B. 1763, which added the term as a required element of groundwater management plans. Seventh, the board proposes adding a definition for the term "managed available groundwater." This is proposed to be consistent with H.B. 1763, which added the term as a required element of groundwater management plans. Eighth, the board proposes removing the definition for the term "projected water supply." This is proposed to be consistent with H.B. 1763, which requires a similar term, "managed available groundwater." The board, therefore, proposes removing the definition for projected water supply to avoid confusion. Ninth, the board proposes amending the definition for the term "recharge." This is proposed to be consistent with H.B. 1763, which defined recharge in a manner different from the current rule. Tenth, the board proposes to update the name of the Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Eleventh, the board proposes adding a definition for the term "total aquifer storage." This is proposed to be consistent with H.B. 1763, which added the term as a required element of groundwater management plans. The board proposes expanding on the statutory definition slightly in order to clarify how total aquifer storage is calculated so that the calculations are consistent across groundwater conservation districts.

The board proposes amending §356.3 for two reasons. First, the board proposes amending the rule to remove the requirement that a groundwater management plan be submitted within two years of the creation of a district and replace it with a requirement to submit the management plan within three years of creation. This is proposed to be consistent with H.B. 1763, which amended the law in this manner. Likewise, the board proposes amending the rule to state that districts must review and readopt their management plans every five years to track the language of H.B. 1763. The amendment is also proposed for clarity. The board proposes adding references to §356.5 and §356.6 in order to clarify how the management plans must be submitted to the board.

The board proposes amending §356.4 to clarify how a groundwater conservation district must share its management plan with regional water planning groups. First, the board proposes removing the phrase "For management plans certified after January 5, 2002," because it is no longer needed. Second, the board proposes adding the phrase "a copy of its approved management" before "plan" for clarity. Third, the board proposes changing the word "consideration" to "use" when discussing the action of the regional water planning groups to track the language of H.B. 1763. Lastly, the board proposes splitting the section into two subsections to add a new proposed subsection 2. This new proposed subsection will require the groundwater conservation districts to not only submit their management plans to the regional water planning groups within the territory of the district, but also any regional water planning group identified by the board. The board proposes this because regional water planning groups outside of the district may have a water management strategy that involves groundwater in the district. To ensure proper planning and because the districts may not know that a distant regional water planning group is considering its groundwater, the board will identify any regional water planning groups considering utilizing district groundwater and ask the district to send a copy of its management plan to that regional water planning group.

The board proposes amending §356.5. First, the board proposes amending §356.5(a) to remove language concerning certification of management plans and administrative completeness. This is to ensure consistency with H.B. 1763 and to account for the fact that the board proposes defining "administratively complete" in §356.2. Second, the board proposes adding, to §356.5(a), the requirement that districts identify why a required element of the management plan is omitted. This proposal is based on H.B. 1763. House Bill 1763 amended §36.1071, Water Code, to expand the required elements of a management plan. At §36.1071(a)(7), H.B. 1763 stated the elements for "recharge, enhancement, rainwater harvesting, precipitation enhancement, or brush control" should be included in the management plan "where appropriate and cost-effective." Further, §36.1071(a) already states the required elements should be included "where applicable." Currently, if a management plan omits a required element, it usually does not state why and the board must assume it is because the element was not applicable. Due to this ambiguity and based on the guidance provided by H.B. 1763, the board proposes amending §356.5(a) to simply require districts to provide a brief explanation of why a required element of the management plan is omitted. The board also proposes adding language to §356.5(a)(1)(B) in order to clarify what constitutes "waste of groundwater." The board proposes explaining the phrase to be "waste of groundwater through contamination induced by abandoned oil and gas wells, abandoned water wells, leaking pipelines, and other sources." This will clarify the requirement and bring consistency to management plans.

The board proposes amending §356.5(a)(1)(G) and adding new proposed §356.5(a)(1)(H) to track the language of H.B. 1763. Specifically, these changes mirror the new language in §36.1071(a)(7) and (8), Water Code.

The board proposes amending §356.5(a)(4) to provide clarity. Specifically, the board proposes to move the phrase "all specified in as much detail as possible" to make it clear this phrase references the actions, procedures, performance, and avoidance of the districts, and not their administrative rules. Further, the board proposes changing the phrase to read "all specified in as much detail as practicable" to make it clear that reasonableness is the standard. This proposed change is based on comments received from districts about this subsection.

The board proposes amending §356.5(a)(5) to be consistent with H.B. 1763. Specifically, the board proposes rewording §356.5(a)(5) to track the new language of §36.1071(e)(3), Water Code.

The board proposes amending §356.5(b) to be consistent with H.B. 1763. Under H.B. 1763, §36.1071(h) of the Water Code was amended to state that districts may use site-specific information in their management plans as long as this information has been provided to the executive administrator of the board for review and comment before being used in the plan. The board proposes amending §356.5(b) to be consistent with this new statutory language.

The board proposes removing §356.5(c) and (d) to be consistent with H.B. 1763. Under H.B. 1763, management plans no longer have to be consistent with regional water plans, so the board proposes simply removing this requirement from the rules and replacing it with new §356.5(a)(7), which tracks the language of H.B. 1763. Specifically, the new provision will require the districts to consider the water supply needs and water management strategies included in the adopted state water plan.

The board proposes amending §356.6(a) to be consistent with H.B. 1763. Specifically, the board proposes removing language referring to "certification" and replacing it with "approval." The board also proposes removing the phrase "administrative completeness of" to avoid confusion. The board proposes adding a definition for the term "administratively complete" in §356.2.

The board also proposes amending §356.6(a)(1) to require districts to submit one hard copy and one electronic copy of their management plans. The board proposes this to save costs. An electronic copy can be easily routed for review and approval without requiring several hard copies be made at state expense.

The board proposes new §356.6(a)(3) to require districts to provide one unbound copy of all existing and proposed district rules. Section 36.1071(f), Water Code, requires districts to have administrative rules necessary to implement their management plans. Often, these rules provide guidance and explanation of the management plans. Therefore, in order to understand the full scope of the management plans, the board proposes requiring the districts to submit one unbound copy of their current and proposed rules at the time of submitting their management plans for approval. Former §356.6(a)(3) has been renumbered to §356.6(a)(4).

The board proposes amending §356.6(a)(4) to, first, renumber it to §356.6(a)(5) and to make it consistent with H.B. 1763. Specifically, the board proposes rewording the paragraph to take account of the new "desired future conditions" requirements of H.B. 1763 and simply states the districts must show evidence of the desired future conditions developed under §36.108, Water Code.

The board proposes removing the original §356.6(a)(5) because it is no longer needed under H.B. 1763. House Bill 1763 removed the requirement that management plans be consistent with regional water plans. The board proposes removing this paragraph to take this into account.

The board proposes amending §356.6(b) for clarity. The board only has 60 days to review and approve a management plan under §36.1072, Water Code. This proposed amendment makes it clear that the 60-day review period does not begin until a management plan has been submitted in accordance with law.

The board proposes amending §356.7. First, the board proposes renaming the section "Approval" instead of "Certification" to be consistent with H.B. 1763. Second, the board proposes amending §356.7(a) for clarity and to be consistent with H.B. 1763. Specifically, the board proposes amending §356.7(a) to make it clear that the approval process only begins once a management plan has been properly submitted. The board also proposes amending the subsection to make it clear that the approval process applies to amendments and readoptions of management plans. The board also proposes removing references to "certification" and replacing them with "approval."

The board proposes amending §356.7(b) to replace "certification" with "approval" to be consistent with H.B. 1763.

The board proposes new §356.7(c) to be consistent with H.B. 1763. Specifically, this new proposed subsection merely tracks the language H.B. 1763 added to §36.1072(e), Water Code.

The board proposes amending §356.8(a) to be consistent with H.B. 1763 by replacing the term "certification" with "approval." The board proposes making the same substitution in §356.8(b) and removing the language about the board's action being final. This is proposed because H.B. 1763 now provides an appeal mechanism and this rule language is no longer correct.

The board proposes new §356.8(c) to track the new appeals process language of H.B. 1763. Specifically, the proposed new subsection tracks the language added by H.B. 1763 to §36.1072(f), Water Code.

The board proposes amending §356.9. First, the board proposes amending the title of the section to replace "Certification" with "Approval." Second, the board proposes amending the section to make it clear that amendments can either be submitted as an addendum to the current management plan or by highlighting the changes in the entire management plan. This will make it easier for the districts to submit amendments and easier for the board to approve amendments. Lastly, the board proposes removing the language about the approval process and, instead, simply referring to the process already established in §356.6.

The board proposes amending §356.10(a) to replace the word "certified" with "approved" to be consistent with H.B. 1763. The board proposes amending §356.10(b). Specifically, the board proposes removing the phrase "Within 30 days of receiving the petition" to be consistent with H.B. 1763. The board also proposes adding the phrase "provide technical assistance to and" to also be consistent with and track the language of H.B. 1763.

The board proposes amending §356.10(c) through (e) and adding new proposed subsection (f) to track the language of H.B. 1763 regarding conflict resolution. Specifically, the board proposes amending these subsections to track the language H.B. 1763 added to §36.1072(g), Water Code.

The board proposes new §356.11 to be consistent with H.B. 1763. Specifically, this proposed language tracks the new language H.B. 1763 added to §36.108(l) through (n), Water Code, regarding a petition about the desired future water conditions of groundwater resources.

The board proposes new §356.12 to be consistent with H.B. 1763. Specifically, this proposed language tracks the new language H.B. 1763 added to §36.1071(d), Water Code.

Lastly, the board proposes new §356.13 to be consistent with H.B. 1763. Specifically, this proposed language tracks the new language H.B. 1763 added to §36.109, Water Code.

James LeBas, Chief Financial Officer, has determined that, for the first five-year period these sections are in effect, there will

be additional fiscal implications on state and local government. The state will incur a cost due to the need for the board to make estimates of the values of managed available groundwater for districts on the basis of desired future conditions, provide technical assistance on data collection and conflict resolution, and pay for mediation services. To fully implement these changes, the costs to the state would be approximately $314,110 in the first year, $278,429 in the second year, $278,429 in the third year, $307,529 in the fourth year, and $278,429 in the fifth year. These costs are based on the costs of employing three geologists and one lawyer to perform the work, mediation services, travel, equipment costs, and operating expenses. However, the board did not receive appropriations to implement H.B. 1763. Therefore, it will have to implement the new requirements with existing staff. The board estimates a cost of approximately $79,281 in the first year and $43,600 in the second year to implement these changes with existing staff. However, full implementation may not be possible and partial implementation may require staff to slow down or put off work on other board programs. The conflict resolution and appeals process has the potential to divert significant staff time and resources, which could seriously harm other board programs. Further, there may be additional costs for local government associated with challenging board decisions in court and with mediation, but those costs are discretionary and cannot be accurately estimated or anticipated because it will be up to each district or local entity to determine if a decision should be appealed and, if so, how far.

Mr. LeBas has also determined that, for the first five years the amendments and new sections, as proposed, are in effect, the public benefit anticipated as a result of enforcing the proposed sections and new sections will be to clarify and update the rules consistent with state law. Mr. LeBas has determined there may be a cost to small businesses and individuals who participate in the rulemaking process for groundwater conservation districts and if they monitor the joint planning to develop desired future conditions for the groundwater resources in a groundwater management area. However, these costs are discretionary and not related to the rules proposed here.

Comments on the proposed amendments and new sections will be accepted through September 30, 2005 and may be submitted to Ron Pigott, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email at Ron.Pigott@twdb.state.tx.us, or by fax at (512) 463-5580. The board will hold a public hearing on these proposed rules on September 13, 2005 at 1:00 P.M. in Room 1-100 in the Travis Building, located at 1701 North Congress Avenue, Austin, Texas 78701.

The amendments and new sections are proposed under the authority of the Texas Water Code §6.101 and Chapters 16 and 36, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties of the board and for administration of the groundwater management plan approval process and the regional water planning process.

The statutory provisions affected by the proposed amendments and new sections are Texas Water Code Chapters 16 and 36.

§356.1. Scope of Subchapter.

This subchapter governs the board's procedures for reviewing and approving [~~certifying~~] management plans as administratively complete.

§356.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Texas Water Code, Chapter 36 that are not defined here shall have the meanings provided in Chapter 36.

(1) Administratively complete--A plan is considered administratively complete when it contains the information required by §36.1071(a) and (e) of the Texas Water Code.

(2) [~~(1)~~] Amount of groundwater being used--The quantity of groundwater withdrawn or flowing from an aquifer naturally or artificially on an annual basis.

(3) [~~(2)~~] Adopted state [~~Approved regional~~] water plan--A water plan developed pursuant to Texas Water Code, §16.051 [~~§16.053~~] and which has been adopted [~~approved~~] by the board.

(4) [~~(3)~~] Artificial recharge--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.

(5) [~~(4)~~] Board--Texas Water Development Board.

(6) Conflict--A situation where the managed available groundwater identified in a management plan or the adopted state water plan is not the managed available groundwater based on the desired future conditions set by the groundwater conservation districts in the groundwater management area.

(7) [~~(5)~~] Conjunctive surface water management issues--Issues relating to the active use of both surface water and groundwater to achieve increased water supply or enhanced water quality.

(8) Desired future conditions--the desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) at a specified time in the future or in perpetuity, as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process.

(9) Discharge--The amount of water that leaves an aquifer by natural or artificial means.

(10) [~~(6)~~] District--Any district or authority created under Texas Constitution, Article III, §52 or Article XVI, §59 that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(11) [~~(7)~~] Estimates--Calculations using best available data and methodologies specified in the management plan such that the quantifications will be reasonable for use by the district and can be tracked over time.

(12) [~~(8)~~] Executive administrator--The executive administrator of the board.

(13) Inflows--The amount of water that flows into an aquifer from another formation.

(14) Managed available groundwater--The amount of water that may be permitted by a district for beneficial use in accordance with the desired future condition of the aquifer.

(15) [~~(9)~~] Management goals--The qualitative and quantitative ends toward which a district directs its efforts.

(16) [~~(10)~~] Management plan--The groundwater management plan required pursuant to Texas Water Code, §36.1071.

(17) [~~(11)~~] Most efficient use of groundwater--Those practices, techniques and technologies that the district determines will provide the least consumption of groundwater for each type of use balanced with the benefits of using groundwater.

(18) [~~(12)~~] Projected water demand--The quantity of water needed per annum for beneficial use during the period covered by the management plan. The demands shall be projected for the types of use that are included in the state water plan. Each type of use may be subdivided into sub-types by the district.

~~[(13) Projected water supply--The usable amount of groundwater of acceptable quality that is available per annum as determined by the district using the best available data and the quantity of surface water available per annum during the period covered by the management plan based on full implementation of any applicable, approved regional water plan.]~~

(19) [~~(14)~~] Recharge--The amount of water that infiltrates to the water table of an aquifer. [~~The addition of water from precipitation or runoff by seepage or infiltration to an aquifer from the land surface, streams, or lakes directly into a formation or indirectly by way of leakage from another formation.~~]

(20) [~~(15)~~] Surface water management entities--Political subdivisions as defined by Texas Water Code, Chapter 15, and identified from Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~] records which are granted authority to store, take, divert, or supply surface water either directly or by contract under Texas Water Code, Chapter 11, for use within the boundaries of a district.

(21) Total aquifer storage--The total calculated volume of groundwater that an aquifer is capable of producing, which is calculated by multiplying the current volume of the aquifer by its specific yield at the time of submitting the management plan.

§356.3. Required Management Plan.

As required by Texas Water Code, §36.1071 and §36.1072, a district shall submit to the executive administrator a management plan that meets the requirements of §356.5 of this title (relating to Required Content of Management Plan). The management plan shall be submitted not later than three [~~two~~] years after the creation of the district or, if the district requires confirmation, not later than three [~~two~~] years after the election confirming the district. The district may review the plan annually, and must review and [~~shall~~] readopt the plan, with or without revisions, at least once every five years and resubmit the management plan for approval pursuant to §356.5 of this title (relating to Required Content of Management Plan) and §356.6 of this title (relating to Plan Submittal).

§356.4. Sharing with Regional Water Planning Groups.

Each [~~For management plans certified after January 5, 2002, the~~] district shall forward a copy of its approved management [~~the~~] plan to :

(1) the chair of each regional water planning group with territory within the boundaries of the district for that region's use [~~consideration~~] in its [~~their~~] planning process; and[~~.~~]

(2) the chair of any regional water planning group to which the board instructs the district to send a copy of its approved management plan. The board will only require a district to send a copy of its management plan to a regional water planning group that does not have territory within the boundaries of the district if that regional water planning group plans to use water within the district to meet a water need.

§356.5. Required Content of Management Plan.

(a) The [~~executive administrator shall certify a~~] management plan shall contain [~~as administratively complete if it uses a planning period of at least ten years and contains~~] the following elements. If the management plan does not contain one or more of the listed elements, it must explain how the required element is either inappropriate or not cost-effective:

(1) management goals, as applicable:

(A) providing the most efficient use of groundwater;

(B) controlling and preventing waste of groundwater , which may include the waste of groundwater through contamination induced by abandoned oil and gas wells, abandoned water wells, leaking pipelines, and other sources;

(C) controlling and preventing subsidence;

(D) addressing conjunctive surface water management issues;

(E) addressing natural resource issues which impact the use and availability of groundwater, and which are impacted by the use of groundwater;

(F) addressing drought conditions ; [~~, and~~]

(G) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and

(H) addressing, in a quantitative manner, the desired future conditions of the groundwater resources selected pursuant to §36.108, Water Code;

(2) management objectives that the district will use to achieve the management goals in paragraph (1) of this subsection. Management objectives are specific, quantifiable, and time-based statements of desired future accomplishments or outcomes, each linked to a management goal, which set the individual priority for district strategies. Each desired future accomplishment or outcome must be the result of actions that can be taken by district staff or assigns;

(3) performance standards for each management objective. Performance standards are indicators or measures used to evaluate the effectiveness and efficiency of district activities by quantifying the results of actions. Evaluation of the effectiveness of district activities measures the accomplishments of the district. Evaluation of the efficiency of district activities measures how well resources are used to produce an output, such as the amount of resources devoted per unit of accomplishment;

(4) actions, procedures, performance, and avoidance, all specified in as much detail as practicable, necessary to effectuate the management plan, including specifications and proposed rules [~~, all specified in as much detail as possible~~]; [~~and~~]

(5) estimates of:

(A) managed available [~~the existing total usable amount of~~] groundwater in the district , based on the desired future condition selected pursuant to §36.108, Water Code;

(B) the amount of groundwater being used within the district on an annual basis;

(C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district [~~and how natural or artificial recharge may be increased~~]; [~~and~~]

(D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) [~~(D)~~] the projected total demand for water in [~~supply and demand within~~] the district, according to the most recently adopted state water plan;

(6) details of how the district will manage groundwater supplies in the district, including a methodology by which a district will track its progress on an annual basis in achieving its management goals; and[~~.~~]

(7) consideration of water supply needs and water management strategies included in the adopted state water plan.

(b) The management goals, performance standards and management objectives required in subsection (a)(1), (2), and (3) of this section and the actions, procedures, performance and avoidance specified in subsection (a)(4) of this section are to be established by each district based on specific needs of that district and any parameters established by joint groundwater planning under §36.108, Water Code, when completed. Each district shall use the best information available to it, including an existing groundwater management plan of the district, to make the estimates required in subsection (a) of this section and to develop the plan required by these rules, except that the district shall use the groundwater availability modeling information provided by the executive administrator in conjunction with any available site-specific information provided by the district to the executive administrator for review and comment before being used in the management plan [~~and acceptable to the executive administrator~~] when developing the estimates required in subsection (a)(5) of this section.

[~~(c) In addition to the requirements of subsection (a) of this section, the management plan shall address water supply needs in a manner that does not conflict with an approved regional water plan for each region in which any part of the district is located.~~]

[~~(d) The requirement of subsection (c) of this section may be waived if the executive administrator determines that conditions justify such waiver. Waiver will only be granted upon the written request of the district accompanied by evidence acceptable to the executive administrator in form and substance of conditions justifying such waiver.~~]

§356.6. Plan Submittal.

(a) A district requesting approval [~~review and certification of the administrative completeness~~] of its management plan shall submit to the executive administrator the following:

(1) one hard [~~a~~] copy and one electronic copy of the adopted management plan;

(2) a certified copy of the district's resolution adopting the plan or other evidence of the district's official action to adopt the plan;

(3) an unbound copy of all existing and proposed district rules;

(4) [~~(3)~~] evidence that the plan was adopted after notice and hearing; and

(5) [~~(4)~~] evidence of the desired future conditions developed from joint planning in the groundwater management area under §36.108, Water Code. [~~that, following notice and hearing, the district coordinated in the development of its management plan with surface water management entities; and~~]

[~~(5) identification of any potential conflict between the proposed management plan and an approved regional water plan for each region in which any part of the district is located, if such regional water management plan has been approved by the board. To meet the requirements of this paragraph, the district shall send, by certified mail, return receipt requested, to the chair of each regional water planning group formed under Texas Water Code, §16.053(c) for each region in which any part of the district is located, a letter asking the regional water planning group to review the management plan and specify any areas of conflict between the management plan and the regional water plan. The district shall provide to the board a copy of any comments on the management plan provided by the regional water planning group. The executive administrator, with input from the regional water planning groups, will determine if there are any conflicts between the management plan and the regional water plans.~~]

(b) The plan or revised plan under §356.7 of this title (relating to Approval [~~Certification~~]) shall be considered properly submitted to the board when all of the items specified in subsection (a) of this section are [~~it is~~] received in the Austin offices of the board. Once a management plan or amendment is properly submitted to the board, the time lines of §356.7 of this title begin.

§356.7. Approval [~~Certification~~].

(a) Within 60 days of receipt of a properly submitted management plan, readopted plan, or amendments as specified in §356.6(b) of this title (relating to Plan Submittal), the executive administrator shall approve [~~certify~~] the plan as administratively complete if it complies with the requirements of §§356.5(a)(1) through 356.5(a)(5) and §356.5(a)(7) [~~§356.5~~] of this title (relating to Required Content of Management Plan). The executive administrator may waive the requirement of §356.5(a)(7) when justified. Upon approval [~~or shall deny certification of the plan if it does not comply with such requirements. Within five days of making a certification determination~~], the executive administrator shall notify the district in writing of the determination.

(b) If approval [~~certification~~] is denied, the executive administrator shall include written reasons for the denial with the notice of denial. If the executive administrator denies approval [~~certification~~], the district may submit a revised management plan for review and approval [~~certification~~] within 180 days from receipt of notice that the executive administrator has denied approval [~~certification~~]. The review and approval [~~certification~~] of a revised management plan must comply with all the requirements of this chapter pertaining to the review and approval [~~certification~~] of originally submitted management plans.

(c) Approval of a management plan remains in effect until:

(1) the district fails to timely readopt a management plan;

(2) the district fails to timely submit the district's readopted management plan to the executive administrator; or

(3) the executive administrator determines that the readopted management plan does not meet the required approval, and the district has exhausted all appeals to the board or appropriate court.

§356.8. Appeal of Denied Management Plan Approval [~~Certification~~].

(a) If the executive administrator denies approval [~~certification~~] of a management plan, [~~or~~] a revised management plan, or an amendment to the management plan, the district submitting the plan may appeal the denial to the board by notifying the executive administrator in writing of its intent to appeal, not later than 60 days after receipt of the executive administrator's written notice of denial. Not later than 30 days after filing its notice of intent to appeal, a district shall submit to the executive administrator in writing points of appeal addressing each of the executive administrator's reasons for denial of approval [~~certification~~]. The written points of appeal shall not exceed 50 pages (double spaced, single sided, 8.5 inches by 11 inches). The board shall hear the appeal at the first regularly scheduled meeting of the board to occur after the expiration of 30 days from the receipt of the

district's written points of appeal. Written notice of appeal and written points of appeal shall be considered to be received by the executive administrator when received in the Austin offices of the board. The executive administrator may file a written response to the district's points of appeal.

(b) The district shall designate one or more representatives to present the appeal to the board. The district's representatives shall have not more than 20 minutes total to orally present the district's points of appeal to the board at the appropriate time during the meeting set to consider the appeal. After the district presents points the executive administrator or the executive administrator's designee may present an oral response not to exceed 20 minutes in length. The board may extend the presentation time limits. At the close of the executive administrator's response, the district's representative shall be allowed up to five minutes of rebuttal. At the close of rebuttal the board may discuss the matter and direct the executive administrator to either approve [~~certify~~] or withhold approval [~~certification~~] of the management plan. [~~The board's decision shall be the final action on certification of the management plan and may not be appealed.~~]

(c) If the board decides not to direct the executive administrator to approve the management plan, the district may request that the matter be mediated. The district and the board may request the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, to obtain a qualified, impartial third party to mediate the matter. The cost of the mediation services must be specified in the agreement between the parties and the mediation services provider. If the board and the district do not resolve the matter through mediation, the board's decision not to direct the executive administrator to approve the management plan may be appealed to district court in Travis County.

§356.9. Approval [~~Certification~~] of Amendments.

A district shall submit all amendments to the management plan to the board within 60 days of adoption of the amendment by the district's board. Amendments shall be submitted either in the form of an addendum to the management plan or as changes highlighted within the entire management plan. If the amendment is significant and not merely a minor correction of an error, the amendment should be in the form of an amended plan instead of an addendum to avoid confusion and preserve the integrity of the plan. Amendments must be submitted in accordance with §356.6 of this title (relating to Plan Submittal). [~~Within 60 days of receipt of amendments to the management plan, the executive administrator either shall notify the district that the amendments do not substantially affect the management plan, or shall provide the district with written notification of certification or denial of certification of the plan as amended as administratively complete. The requirements of this chapter apply to any amendment to a district's management plan that substantially affects the management plan.~~]

§356.10. Possible Conflicts with State Water Plan.

(a) A person with a legally defined interest in groundwater in a district or the regional water planning group may file a written petition with the board stating that a conflict requiring resolution may exist between the district's approved [~~certified~~] groundwater conservation district management plan developed under Texas Water Code, §36.1071, and the state water plan developed under Texas Water Code, §16.051. A person with a legally defined interest in groundwater in a district includes, but is not limited to, a person who owns land or groundwater rights in the district, has a legal interest in a well in the district, or has an authorization from or application pending with the district to produce groundwater. A copy of the petition shall be provided to the district and to the chairperson of any involved regional water planning group. The petition must state:

(1) the specific nature of the conflict;

(2) the specific sections and provisions of the approved [~~certified~~] management plan and the state water plan that are in conflict, and

(3) the proposed resolution to the conflict.

(b) If [~~Within 30 days of receiving the petition, if~~] the executive administrator determines that a conflict does exist, the executive administrator will provide technical assistance to and facilitate coordination between the affected parties. Coordination may include any of the following processes:

(1) requiring the affected parties to respond to the petition in writing;

(2) meeting with representatives from the affected parties to informally mediate the conflict; and/or

(3) coordinating a formal mediation session between representatives of the affected parties.

(c) If the conflict has not been resolved within 45 days of the date the person or regional water planning group filed the petition with the board, the parties may request mediation. The parties may request the assistance of the Center for Public Policy Dispute Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, to obtain a qualified, impartial third party to mediate the matter. The cost of the mediation services must be specified in the agreement between the parties and the mediation services provider. If the parties cannot resolve the conflict through mediation, the board shall resolve the conflict by the 60th day after the date mediation is completed. To resolve the conflict [~~The executive administrator will inform the parties how long they have to attempt to resolve the conflict. If the parties do not reach resolution in that time period~~], the executive administrator will recommend a resolution to the conflict to the board. Before presenting the issue to the board, the executive administrator will provide the affected parties 15 [~~30~~] days notice. The board shall adopt a resolution to the conflict at a public meeting. [~~If the board finds that a conflict exists, the board shall adopt a resolution to the conflict at a public meeting.~~] Resolution may include requiring a revision to the groundwater conservation district's approved [~~certified~~] management plan or consolidating the resolution with an action being taken by the board pursuant to §357.15 of this title (relating to Interaction with Groundwater Conservation District Management Plans).

(d) If the board requires a revision to the [~~groundwater conservation~~] district's approved [~~certified~~] management plan, the board shall [~~suspend the certification of the plan and~~] provide information to the [~~groundwater conservation~~] district on what revisions are required and why. The [~~groundwater conservation~~] district shall prepare any revisions based on the information provided [~~to its plan required~~] by the board and hold, after notice, at least one public hearing at a central location within the district. The [~~groundwater conservation~~] district shall consider all public and board comments, prepare, revise, and adopt its plan, and submit the revised plan to the board for approval [~~certification~~] pursuant to this subchapter.

(e) At the request of either the [~~groundwater conservation~~] district or the affected regional water planning group, the board shall include in the state water plan a discussion of the conflict and its resolution.

(f) If the district disagrees with the decision of the board, the district may appeal the decision to a district court in Travis County.

§356.11. Appealing Approval of the Desired Future Conditions of the Groundwater Resources.

(a) A person with a legally defined interest in the groundwater in the groundwater management area, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area may file a petition with the board appealing the approval of the desired future conditions of the groundwater resources established under §36.108, Water Code. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the groundwater management area.

(b) The board shall review the petition and any evidence relevant to the petition. The board shall hold at least one hearing at a central location in the management area to take testimony on the petition. The board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. If the board finds that the conditions require revision, the board shall submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources.

(c) The districts shall prepare a revised plan in accordance with board recommendations and hold, after notice, at least one public hearing at a central location in the groundwater management area. After consideration of all public and board comments, the districts shall revise the conditions and submit the conditions to the board for review.

§356.12. Training on Data Collection Methodology.

If requested by a district in writing to the executive administrator, the board shall provide the district training on basic data collection methodology and provide technical assistance.

§356.13. Data Collected by the District.

Upon written request of the executive administrator, a district shall provide any data collected by the district to the executive administrator in a format acceptable to the executive administrator.

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 August 17, 2005.

TRD-200503443
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 19, 2005
For further information, please call: (512) 475-2052

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 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.16

The Texas Funeral Service Commission withdraws the proposed amendment to §203.16 which appeared in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1562).

Filed with the Office of the Secretary of State on August 17, 2005.

TRD-200503452
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: August 17, 2005
For further information, please call: (512) 936-2466

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.31, §291.33

The Texas State Board of Pharmacy withdraws the proposed amendments to §291.31 and §291.33 which appeared in the June 24, 2005, issue of the *Texas Register* (30 TexReg 3717).

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503540
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: August 22, 2005
For further information, please call: (512) 305-8028

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.2

The Texas Real Estate Commission withdraws the proposed amendment to §535.2 which appeared in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1400).

Filed with the Office of the Secretary of State on August 15, 2005.

TRD-200503410
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: August 15, 2005
For further information, please call: (512) 465-3900

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 41. FEVER TICKS

4 TAC §§41.1, 41.8, 41.9

The Texas Animal Health Commission adopts an amendment to Chapter 41, which is entitled "Fever Ticks." The rules are adopted without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3499) and will not be republished.

The adopted amendments to Chapter 41 include: an amendment to §41.1, "Definition of Terms", to define treatment methods for control of fever ticks on free ranging wildlife and exotics. This will provide a mechanism to ensure that deer, and other wildlife capable of carrying fever ticks, are treated for fever ticks when present in an infested pasture or when a pasture is vacated; an amendment to §41.8, "Dipping and treatment of livestock", to require treatment of free ranging wildlife and exotics for control of fever ticks utilizing treatment methods approved by the commission and §41.9, "Vacation and Inspection of a Premise," regarding the release of restrictions on infested premises that are vacated. The amendments to this section clarify the starting date for the vacation period, reclassify vacated premises to check premises at the end of the vacation period, specify when the check premises restrictions will be released and provide requirements for treatment of free ranging wildlife and exotics on vacated premises. The amendments to this section are necessary for the following reasons: (a) recent empirical data and field trial results indicate that fever ticks can survive longer on vacated pastures (pastures on which there are no known hosts for fever ticks) than previously thought; and (b) Deer and some exotics may continue to serve as hosts for ticks in vacated pastures.

The commission received the following comment:

We had a comment letter from a property manager for approximately 80,000 acres of land located along the border with Mexico. His comment letter contained several questions that are addressed below. The Commenter has stated when done right the process in place now works but as he read these changes the agency wants to extend the time property is held in Vacation and they want no limits on the time they can hold it. The Commission begins the response by noting that since 1976 the Tick Force has utilized a control purpose quarantine for all released vacated pastures located in the Free Area. The purpose of this restriction is to provide for further monitoring of the animals which are placed in vacated pasture by requiring animals to be dipped prior to movement as well as prior of the restrictions to release the animals must be scratched to determine if there are any ticks. Also the Commission would note that traditionally the vacation periods have been managed along certain specified timeframes. Those timeframes were based on a belief that if a pasture has had all cattle vacated for a specific period of time the pasture would be free from ticks because the pasture was without a host. However current studies from the ARS Cattle Fever Tick Research Laboratory have shown that the fever ticks are able to survive longer periods without a host. That has been further compounded by the fact that deer are serving as a host for the ticks contributing to them being found after the traditional vacation period. The purpose of this program and the reason for having an area restricted is to eradicate any ticks found on a premise in Texas. The last thing the program would want to do is release a premise that is truly not free of ticks. If a premise was prematurely released because the vacation period is complete and ticks still exist on that property creating a serious concern for the Commission. Because these premises are located in the Free Area once a premise is deemed clean and released if there is not some monitoring to ensure that the ticks were eradicated from the pasture then the potential for ticks being moved is great and this is not a risk the Commission can afford which is a primary reason for this rule.

The Commenter also read into this proposal that the agency expects the private property owners to be responsible for what ever treatment the agency determines is necessary to treat animals the state considers its own. Currently this form of treatment is paid for through the USDA. The requirement ensures treatment of free ranging wildlife in order to prevent the transmission of ticks being hosted by the deer. The requirement is making sure that USDA is able to have the treatment done on that property.

The state claims ownership of the deer herd but expects private property owners to treat the deer herd for ticks or restrict the deer herd's movement according to undefined guidelines determined by the agency. I believe this is a taking of private property rights because the state refuses to bear the cost of these changes. This requirement is do not require the property owner to provide for the treatment and the cost of treatment is borne by the program.

Every paper I have read states whitetail deer are not a reproductive host for the fever tick. I have heard the speculation that the fever tick might hitch a ride on a deer but could not use it as a reproductive host. The references made to empirical data and field test should be verified and sent to private property owners after it is published so we can all understand the ramifications of this revelation the agency has had. What did the field test consist of and what are the controls placed on this test? The Commission is not sure what documents the commenter is referencing that show whitetail deer are not a reproductive host for the fever tick. It is scientifically been proven that white tail deer do serve as a host for the fever tick. White Tail deer may not be as efficient a

host as cattle but do host the ticks and are therefore a transmission vector for the fever tick. The ramifications are that if white tail deer are not treated in vacated pastures then they will serve as a host for the tick and make it impossible to eradicate the tick from that pasture. Also because of the range and movement of these animals the failure to treat the deer exposed all adjacent properties to ticks from the deer.

Exactly what does the agency want private property owners to do and pay for? Feed Ivomec corn free choice to every animal along the border? High fence every pasture along the border to restrict deer movement? The commission is not having the private landowner pay for the treatment for deer. As with the dip used for cattle those costs are borne out by government.

What would such a restriction to the state's deer herd to the genetics of the states deer herd? The Commission is not sure how these restrictions will affect the genetics of the states deer.

How much will this cost the private property owner? There is not any additional cost from this rule change that is not already inherent in the Fever Tick Program.

Native deer and some exotic species are known to be hosts for the Boophilus tick and natural movement of these animals from a quarantine area or quarantined premises to clean areas could promote and propagate the spread of these ticks. In order to ensure that deer or exotics do not spread the tick into a clean pasture or area this amendment will provide the authority to require and specify the mechanism for treatment, should treatment of free ranging wildlife or exotics be necessary to eliminate fever ticks from an area or premises;

STATUTORY AUTHORITY

The amendments are adopted under the Texas Agriculture Code, Chapter 167, §167.003, which provides for general powers and duties of the commission to eradicate fever ticks and provides authority for adopting the necessary rules to fulfill those duties. Section 167.004 authorizes the commission, by rule, to define which animals can be classified as exposed to ticks. Section 167.006 authorizes the commission to designate for tick eradication any county or part of a county that the Commission believes contains ticks. Section 167.007 authorizes the Commission to conduct tick eradication in the free area. Section 167.021, entitled "General Quarantine Power" provides that "[t]he commission may establish quarantines on land, premises, and livestock as necessary for tick eradication." Section 167.022, entitled "Quarantine of Tick Eradication Area" provides the commission authority to designate a county or part of a county for tick eradication. Section 167.023, entitled "Quarantine of Free Area" provides the commission authority to establish quarantines in the Free Area. Section 167.024, entitled "Movement In or From Quarantined Area" provides the requirement to get appropriate authorization and compliance with the requirements prior to movement. Section 167.032 provides the commission may restrict movement of commodities which are capable of carrying ticks.

Also the Commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by Section 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 Section 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 Section 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 Section 161.054. That authority is found in Section 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 Section 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 certain 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.

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 August 22, 2005.

TRD-200503510
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: September 11, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 719-0714

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.8

The Texas Animal Health Commission (commission) adopts amendments to Chapter 51, entitled "Entry Requirements", §51.8, concerning entry requirements for cattle for tuberculosis. The amendment is adopted without changes to the proposed text as published in the June 17, 2005 issue of the *Texas Register* (30 TexReg 3501) and will not be republished.

The commission recently adopted a new §51.8(b)(3) to require that all sexually intact dairy cattle originating from a tuberculosis free state, or area, that are 6 months of age or older need to be officially identified, and are accompanied by a certificate stating they were negative to an official tuberculosis test conducted within 60 days prior to the date of movement. The requirement also included that heifers which are less than six months of age must enter on a entry permit obtained from the Commission and be moved to a designated facility where the animals will be held

until they are tested negative at the age of six months. The original intent was to require "any sexually intact animals" that enter Texas under 6 months of age (without a test), to be restricted until they receive a negative test upon reaching 6 months of age. The Commission is proposing this amendment to correct this oversight.

No comments were received regarding adoption of the rule.

STATUTORY AUTHORITY

Chapter 51 is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by Section 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 Section 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 Section 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 Section 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 Section 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 161.061 provides that if the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

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 August 22, 2005.

TRD-200503511

Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: September 11, 2005
Proposal publication date: June 17, 2005
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CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.11

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 59, entitled General Practices and Procedures, by adding a new §59.11 for issuance of a Certificate of Veterinary Inspection (CVI) and assessing a fee. The rule was published for comment in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3502). The commission received 75 comments and the Commission provides a response to comments below. The Commission is adopting the rules with changes; however, the changes are not in response to the comments but rather to correct some language in the proposal. The Commission has determined that the rule regarding accepting credit cards need to be modified. Currently the Commission is looking into being able to accept credit cards for all the CVI orders. The Commission has not currently established such a system and therefore the rule is being modified to reflect the fact that when we do accept credit cards the CVI's can be ordered by phone. The rule is being modified to state that "[w]hen established the Commission may also accept phone orders when paid for by an accepted credit card". Also when the Commission proposed the rule the standard number of certificates were books of twenty five certificates. However based on the cost for a book of twenty the number per book has been modified to ten.

Because all the comments were of the same nature the Commission provides global response to the universal issues and themes contained within the various comments. The Commission has created a separate document which contains the unabridged versions of all the comment letters and it is incorporated by reference into this document.

Animals being exported, or transported to locations such as livestock shows, must be inspected and/or tested by an accredited veterinarian to ensure they meet the testing and certification requirements of the destination authority and that required information is recorded on a CVI. The Commission issues CVI's to veterinarians and the veterinarians fill in the relevant information upon inspection and/or testing of the animals. Agriculture Code, sec. 161.081(d), set the fee for a health certificate at 25 cents per certificate. HB 1363, as amended, would repeal Sec. 161.081(d) and authorize the Commission, through sec. 161.0601, to use rulemaking to issue a certificate of veterinary inspection, as well as establish the fee for the certificate. The provisions of the bill will take effect September 1, 2005.

The Commission currently issues three types of CVIs: 1.) "Certificate of Veterinary Inspection" TAHC Form 00-10; 2.) "Equine Certificate of Veterinary Inspection" TAHC Form 99-08; and, 3.) "Equine Interstate Movement Passport" TAHC Form 00-02. Currently the Commission sells the certificates in books of 25 certificates. The Certificates will be provided in sets of ten (10) certificates per book. This rule would establish a fee of five dollars ($5.00) for each certificate.

In order to ensure that there is an equitable transition from utilizing the old CVI's to those issued under this rule, the Commission provides the following milestones. Effective September 1, 2005, the Commission will only issue new CVI's. The Commission cannot provide new CVI's until September 1, 2005. Any checks for new CVI's received prior to August 31, 2005, will be returned. Those CVI's issued prior to September 1, 2005, may be used and issued by an accredited veterinarian through October 31, 2005. After that date old CVI's will be considered null and void by the Commission. CVI's completed, dated and signed by an accredited veterinarian prior to October 31, 2005, will be valid for the life of the completed document as provided by regulations of the entity receiving the animals represented on the certificate. The Equine Interstate Movement Passport will be valid for six months from the date of the issuance. Commission staff will review and monitor incoming and outgoing health certificates to ensure compliance with the transition timeline for the new CVI's.

The Commission will refund a veterinarian for every old CVI, returned and unused to TAHC, provided it is a complete set (four (4) sheets of the exact same number per set three (3) sheets for Equine Interstate Movement Passports). The Commission will only refund for these old CVI's returned with a postmark of December 31, 2005, or earlier. The refund will be in accordance with the original amount that the practitioner paid per CVI set.

The Commission received seventy five (75) comments regarding the increase in the cost of the health certificates. These comments all captured the same theme in their comment of frustration with a large increase in the cost of health certificates. The single largest complaint or query was regarding the fact that the proposal is a very large increase, percentage wise, for each health certificates. A common theme in all the comments was to urge the Commission "to re-evaluate the increase and come up with something a little closer to reality." To most commenters "[t]o go from $0.25 /certificate to $5.00 is absurd." They wanted to know "[w]hat is the reason for the huge increase??????" Another comment stated that "[t]he increase from $0.25 to $5.00 per certificate amounts to the wholesale robbery of a sector of the livestock owners in Texas. when you are talking multiple animals (in my situation - 10 mares and associated foals) and that in turn will limit those who will participate and support equine activities within the state. Please reduce the proposed cost of these Health Certificates to a more reasonable amount to say $1.00 per form instead of $5.00 per form." Another one stated that "I think that this is an unfair "tax" , geared towards those who are required to have these papers! Please rethink this decision. Even another 10.00 per month per horse is a huge increase to those of us struggling now."

The Commission begins with the recognition that this is a large increase. However the Commission would provide the following background for such an increase. The previous fee of twenty five (.25) cents has been a statutory standard since the 1980's and that cost did not cover the cost of printing and distributing these certificates. However the primary reason for such a large increase is found in the in the need to charge fees for services provided by the agency. The Commission is an old state agency with a venerable history of trying to protect the Texas livestock industry from disease and pests. Within the last five years the media attention on Foot and Mouth disease, Avian Influenza, Exotic Newcastle Disease and now Bovine Spongiform Encephalopathy (BSE) has provided some high profile concern for areas which involve the agency's mission and workforce. We have been actively trying to address all these critical issues and ensure that we are able to protect our various livestock industries. As our mission changes so do the agency needs. However we are one of the few agencies that operates solely without any kind of significant fee revenue as we rely on funds from the federal government and the General Revenue fund of the state. As the state promotes a greater reliance on fees generated in support of services provided this agency has explored various fee options to achieve this goal. To that end the agency worked with members of all the various livestock and veterinary industry groups and associations in order to try and develop various options for implementing fees which supported services. After careful evaluation with input from all the various groups it was recognized that the fee for Certificates of Veterinary Inspections were artificially low because of the statutory established fee. Also these documents are a necessary and important part of ensuring that animals which are moved interstate or participating in events or exhibitions are healthy and in compliance with applicable test requirements. This document is utilized by all the various livestock industries to document health status and compliance with entry requirements. Though a number of the commenters might disagree the Commission feels that this is an equitable fee because of the document is used by all the various livestock animal groups to ensure the animals on the document are healthy. The document also is an essential and integral part of ability to trace, restrict and test all potentially exposed animals through information contained on those documents. This is an essential in our mission of protecting all the various livestock groups from disease and pests.

There were also comments from Veterinarians who stated that "[m]ost of the health certificates that I write are for 4-H and FFA kids who are competing in various livestock shows." I generally always do this as a free service for these kids. They wanted to know "[w]hat was the position of the Texas and Southwestern Cattle Raisers or the AQHA or did anyone bother to ask them?" Was anyone at TAHC or TVMA or The Texas Agricultural Extension Service or any of the many farm or ranch organizations in Texas asked for input or comment prior to passage of this fiasco?"

The comments were almost universally critical of the fact that the increase was very large in going from .25 cents to 5.00 dollars. The Commission understands the fee increase can be seen as being enormous but the Commission would make the following points in support. The initial charge of 25 cents was one that was artificially low and was less than the Commission costs to print and distribute. The documents do provide an internationally recognized standard for demonstrating health status as well as compliance with specific test requirements. In a global market this document is an inherent part of doing business and the value at five dollars is still cost effective for the purpose that it supports. As the largest livestock state in this country with a major concentration of all the major livestock and poultry industries the value and importance of these documents can not be properly stated. Some of the commenters indicated that in their perspective the CVI had little value and in some cases was not adequately issued by the veterinarian. There were several comments about the value of the document which deserves clarification form the Commission. One Commenter stated that these certificates are cheap to print and should not cost a veterinarian any more than that cost plus shipping. Anything else is a rip-off to make money for state government. Another stated "[p]lease allow me to voice my protest against the proposed increase in fees for health certificate papers. This is a poorly thought out, horrible idea. Health papers, which frankly have minimal value as it

is, are already expensive enough. This increase will only further serve to disincentive people to travel with their horses to shows and stimulate the horse industry." A third Commenter stated that "[y]ou are charging $25 for a piece of paper. The veterinarian is the one who determines whether said horse on that particular day passes a health inspection. They use their facilities and equipment to perform a service that the state mandates. This is certainly not helpful to the equine industry. But that wasn't the intention was it?" Even another one stated "[t]he whole requirement for a health certificate is actually meaningless. One can make a visit to a Veterinary and have the animal inspected and it can be healthy the day of inspection and in within a few days the animal inspected can come down with the flue or any other ailment. Why is the State of Texas charging such an outrageous price for a paper book?" Another one stated that "I do not like the fact that the cost "has" to go up on these certificate books. I refuse to go to any equine event that requires one if I have to pay more than the normal $25. Show managers are not stupid, they will find a way around this law, you just watch and see how many certificates are actually issued after this passes (if it passes). There is no reason for these books to cost so much. This cannot be passed into use."

Another one stated that "[t]he increase in Health Certificates is outrageous." The increase from $6.25 to $125 per book is a blatant abuse of authority. These papers take, at the very most, 5 minutes to fill out. The VET secretary fills out the papers and the VET signs them. They are meaningless as it is. Every VET that we have ever received papers from have never even looked at out horses. They also feel that these papers are a waste of time for everyone involved. Health Certificates are a joke that some politicians, who are clueless, have come up with to deal with valid health concerns. They serve no purpose. Now, to raise the cost of meaningless papers to this exorbitant amount is inexcusable. I thought your job was to protect animals and their owners from predators (disease, ticks and such) not to join in on the feeding frenzy."

"I would like to submit my objection to the price increase. This is an absolute rip off. Of course the vets won't absorb the cost, the patients will. And for our own safety we really need to be required to have health certificates everywhere we go with our horses. So, what you will be doing at least to me, as a single horse owner, who enjoys going on organized trail rides, is cut our ability to be able to do so down substantially. I feel that it may be necessary for you to raise your prices some but don't you think this is way too high a jump? As one who sips horses several times you make it just too costly. Would rather try going without them. I object."

As noted above this document is an extremely valuable and important part of our animal health infrastructure and such be treated and handled as such by each individual veterinarian and that is something we continually promote through our compliance and education programs

Another point of criticism was focused on the impact of the increased fee on 4-H or Future Farmers of America (FFA) activities where students are raising animals to show at exhibitions and events. There were comments from Veterinarians who stated that "[m]ost of the health certificates that I write are for 4-H and FFA kids who are competing in various livestock shows. I generally always do this as a free service for these kids." They wanted to know "[w]hat was the position of the Texas and Southwestern Cattle Raisers or the AQHA or did anyone bother to ask them? Was anyone at TAHC or TVMA or The Texas Agricultural Extension Service or any of the many farm or ranch organizations in Texas asked for input or comment prior to passage of this fiasco?"

The Commission recognizes that many veterinarians provided these CVI's to the students for free and the Commission commends that service. However to make a distinction for this type activity and allow for such service to be handled through issuance of a free CVI is administratively impossible and would be cost prohibitive for this agency to try and do. A fundamental purpose of those organizations is to provide a learning opportunity for students as preparation for participation in some type of agri-business opportunity. The Commission would note that this is a cost of doing business and a five dollars health certificate compared with all other costs associated with raising, showing and selling an animal is a comparative value.

A large number of the Comments were from equine owners who feel that their involvement in a show or exhibition circuit will be negatively impacted by such fee increase. To some degree the Commission can understand the concern of the equine group because they do participate in a forum that actively uses CVI's to travel and participate. For those equine owners who travel to other states for this purpose the Commission would note that we do participate with a number of states in the region in recognizing an Equine Passport. The Passport is recognized by certain states for the purpose of allowing an equine to move between these states with a document that is valid for six months. Where applicable some equine owners may have their concerns minimized by using this form rather than a CVI which is typically valid for only thirty days. Also in response to the various comments and concerns the Commission would assert again that there is a value for all equine owners in knowing that the animals who participate have been recently seen by a veterinarian and are considered to be healthy.

STATUTORY AUTHORITY

HB 1363, as amended, would repeal sec. 161.081(d) and establish Section 161.0601 which authorizes the Texas Animal Health Commission through rulemaking to issue and to set the fee for a certificate of veterinary inspection for the transport of domestic and exotic livestock and fowl. The provisions of the bill would take effect September 1, 2005. Furthermore the Commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by Section 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 Section 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 Section 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 Section 161.054. That authority is found in Section 161.048.

§59.11. Certificate of Veterinary Inspections.

(a) All Veterinarians, licensed and accredited in Texas, that utilize a certificate of veterinary inspection (CVI) for livestock, exotic livestock or domestic fowl shall utilize a current CVI issued by the Commission on or after September 1, 2005. All certificates printed and issued prior to September 1, 2005 will be null and void for issuance after October 31, 2005.

(b) The Commission shall assess a fee of five ($5.00) dollars for each individual CVI. CVI's will be sold in books of ten (10) certificates per book.

(c) The CVI may be procured from the Commission through a written request accompanied by a check or money order, for the full amount to cover the requested number of CVI's. The written request shall be sent to TAHC, P.O. Box 12966, Austin, Texas 78711-2966. When established the Commission may also accept phone orders when paid for by an accepted credit card. Phone orders may be made by calling 1-800-550-8242.

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 August 16, 2005.

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Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: September 5, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 719-0714

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER J. AUTHORIZED LENDER'S DUTIES AND AUTHORITY

7 TAC §§1.828, 1.836, 1.839, 1.841, 1.845

The Finance Commission of Texas (the commission) adopts amendments to Subchapter J, §§1.828, 1.836, 1.839, 1.841, and 1.845, concerning authorized lender's duties and authority, in conjunction with the commission's review of Subchapters J, K, P, and R. The rules are adopted without changes to the proposal published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3777).

In general, the purpose of the amendments to Subchapter J is to conform the rules to the commission's current practice, to eliminate obsolete provisions, to add clarification, and to correct typographical errors. In §1.828(b), the definition of "collected funds" has been added for clarification. New subsection (e) in §1.836 clarifies the procedure to correct errors made using the true daily earnings method. Section 1.839 has been extensively revised to conform with current agency practice in collecting follow-up examination fees. A clarification concerning the acceptable electronic formats for submitting non-standard contract filings has been added to subsection (c) of §1.841.

The agency received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 and §348.513 authorize the commission to adopt rules for the enforcement of the consumer loan chapter and the motor vehicle installment sales chapter, respectively.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 342, Subchapter J.

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 August 19, 2005.

TRD-200503488
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 8, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 936-7611

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SUBCHAPTER K. PROHIBITIONS ON AUTHORIZED LENDERS

7 TAC §§1.856 - 1.858, 1.861

The Finance Commission of Texas (the commission) adopts amendments to Subchapter K, §§1.856 - 1.858 and 1.861, concerning prohibitions on authorized lenders, in conjunction with the commission's review of Subchapters J, K, P, and R. The rules are adopted without changes to the proposal published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3778).

The purpose of the amendments to Subchapter K is to add clarification and to correct typographical errors. A clarification has been added to §1.856 to note that a substantially similar statement to the quote contained in this section may be utilized when using the state agency's name. In §1.861, corrections have been made as to whom may be contacted for collection purposes, and in particular, removing the borrower's spouse as a contact in subsections (b) and (e). The remaining changes are technical and non-substantive in nature.

The agency received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 and §348.513 authorize the commission to adopt rules for the enforcement of the consumer loan chapter and the motor vehicle installment sales chapter, respectively.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 342, Subchapter K.

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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Leslie L. Pettijohn
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Effective date: September 8, 2005
Proposal publication date: July 1, 2005
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SUBCHAPTER P. REGISTRATION OF RETAIL CREDITORS

7 TAC §1.901, §1.902

The Finance Commission of Texas (the commission) adopts amendments to Subchapter P, §1.901 and §1.902, concerning registration of retail creditors, in conjunction with the commission's review of Subchapters J, K, P, and R. The rules are adopted without changes to the proposal published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3779).

The amendments to Subchapter P remove obsolete provisions and correct typographical errors. Subsection (c) has been removed from §1.901, as subsection (c) was only intended to address issues arising within one year after the initial adoption of this rule. In §1.902, the references to Chapter 348 have been deleted, as lenders under Chapter 348 are now required to be licensed (not just registered) with the agency, and are no longer required to pay annual registration fees.

The agency received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 and §348.513 authorize the commission to adopt rules for the enforcement of the consumer loan chapter and the motor vehicle installment sales chapter, respectively.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 347, Subchapters J and K.

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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Leslie L. Pettijohn
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Proposal publication date: July 1, 2005
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SUBCHAPTER R. MOTOR VEHICLE INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§1.1301, 1.1303, 1.1307, 1.1308

The Finance Commission of Texas (the commission) adopts amendments to Subchapter R, §§1.1301, 1.1303, 1.1307 and 1.1308, concerning motor vehicle installment sales contract provisions, in conjunction with the commission's review of Subchapters J, K, P, and R. The rules are adopted with nonsubstantive changes to the proposal published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3780).

The purpose of the amendments to Subchapter R is to make technical corrections, to add clarification, and to update the revised section numbers referencing other law. In §1.1303, the definition of "contract rate" has been added. In §1.1308, clarification has been made concerning the meaning of "peacefully." The remaining changes are technical and nonsubstantive in nature. Technical corrections to several figures have been made as well.

The agency received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 and §348.513 authorize the commission to adopt rules for the enforcement of the consumer loan chapter and the motor vehicle installment sales chapter, respectively.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 348.

§1.1301. Purpose.

(a) The purpose of this subchapter is to provide model provisions and a model plain language contract in English for Texas Finance Code, Chapter 348 motor vehicle installment sales contract provisions. The establishment of model provisions for these transactions will encourage the use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a seller is not mandatory. The seller, however, may not use a contract other than a model contract unless the seller has submitted the contract to the commissioner in compliance with 7 TAC §1.841. The commissioner shall issue an order disapproving the contract if the commissioner determines the contract does not comply with this section or rules adopted under this section. A seller may not claim the commissioner's failure to disapprove a contract constitutes approval.

(b) These provisions are intended to constitute a complete plain language motor vehicle installment sales contract; however, a seller is not limited to the contract provisions contained in these rules.

§1.1303. Definitions.

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

(1) Accrual method--A method to compute a finance charge and apply the finance charge to the unpaid principal balance. Both the true daily earnings method and the scheduled installment earnings method are accrual methods.

(2) Add-on method--A method for calculating a precomputed time price differential charge in which the retail buyer agrees to pay the total of payments. The total of payments includes both the principal balance of the contract and the time price differential charge. The add-on time price differential charge is calculated at the inception of the contract on the principal balance for the full term, as if the principal balance of the contract did not decline over the term of the contract.

(3) Contract rate--The annual time price differential rate that may be stated in a retail installment contract, and that accrues or is assessed against the principal balance that is subject to a finance charge for the term of the contract. The contract rate cannot exceed the daily rate converted to an annualized rate.

(4) Creditor--The seller or any subsequent holder or assignee of the retail installment contract.

(5) Daily rate--The rate authorized under Texas Finance Code §348.105, or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code §348.104, computed on a daily basis using a 365-day calendar year.

(6) Irregular payment contract--A contract:

(A) That is payable in installments that are not consecutive, monthly, and substantially equal in amount; or

(B) The first scheduled installment of which is due later than 1 month and 15 days after the date of the contract.

(7) Regular payment contract--Any contract that is not an irregular payment contract.

(8) Scheduled installment earnings method--The scheduled installment earnings method is a method to compute a finance charge by applying a daily rate to the unpaid principal balance as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal balance. Under this method, a finance charge refund is calculated by deducting the earned finance charges from the total finance charges. If prepayment in full or demand for payment in full occurs between payment due dates, a daily rate equal to 1/365th of the annual rate is multiplied by the unpaid principal balance. The result is then multiplied by the actual number of days from the date of the previous scheduled installment through the date of prepayment or demand for payment in full to determine earned finance charges for the abbreviated period. In addition to the earned finance charges calculated in this paragraph, the creditor may also earn a $150 acquisition fee for a heavy commercial vehicle, or a $25 fee for other vehicles, so long as the total of the earned finance charges and the acquisition fee do not exceed the finance charge disclosed in the contract. The creditor is not required to refund unearned finance charges if the refund is less than $1.00. The scheduled installment earnings method may be used with either an irregular payment contract or a regular payment contract. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(9) Seller--The seller of the motor vehicle.

(10) Sum of the periodic balances method (Rule of 78s)--

(A) Under this method, the finance charge refund is calculated as follows:

(i) Subtract an acquisition fee not greater than $150 for a heavy commercial vehicle, or $25 for other vehicles, from the total finance charge.

(ii) Multiply the amount computed in clause (i) of this subparagraph by the refund percentage computed below. The result is the finance charge refund.

(iii) Compute the refund percentage by:

(I) Computing the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full; that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract, or;

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Dividing the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(B) As an alternative for heavy commercial vehicles, as defined in the Texas Finance Code, the sum of the periodic balances method may be computed as follows:

(i) Multiply the total finance charge by a refund percentage determined as follows:

(I) Compute the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full; that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract, or;

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Divide the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(ii) From the result derived in clause (i) of this subparagraph, deduct an acquisition fee not to exceed $150.

(C) The creditor is not required to give a finance charge refund if it would be less than $1.00.

(D) These methods may not be used with an irregular payment contract.

(11) True daily earnings method--The true daily earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance. The daily rate is 1/365th of the equivalent contract rate. The earned finance charge is computed by multiplying the daily rate of the finance charge by the number of days the actual unpaid principal balance is outstanding. Payments are credited as of the time received; therefore, payments received prior to the scheduled installment date result in a greater reduction of the unpaid principal balance than the scheduled reduction, and payments received after the scheduled installment date result in less than the scheduled reduction of the unpaid principal balance. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(12) Vehicle--A motor vehicle as defined by §348.001(4).

§1.1307. Contract Provisions.

A Chapter 348 motor vehicle installment sales contract may include, the following contract provisions to the extent not prohibited by law or regulation. If the seller desires to assess certain charges or exercise certain rights under one of the following provisions, except provisions relating to default, repossessions, acceleration, and assignment of the contract, the seller must include the provision in the contract. A seller may delete inapplicable provisions. A seller who does not desire to apply a provision is not required to include it in the contract. For example, the seller may omit the balloon payment provisions if there is no balloon payment. A seller may also exclude non-relevant portions of a model clause. For example, a seller who does not routinely finance

certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 348 motor vehicle installment sales contract may contain the following provisions:

(1) Identification of the parties, including the name and address of each party and specifying the pronouns that designate the buyer and the seller.

(2) An assignment of contract provision.

(3) A buyer's affirmation and promise to pay provision.

(4) An inspection acknowledgement provision.

(5) An identification of the motor vehicle.

(6) A description of the trade-in vehicle.

(7) A Truth-in-Lending Act (TILA) disclosure box.

(8) An itemization of amount financed box.

(9) A documentary fee notice provision.

(10) A deferred downpayments provision.

(11) A required physical damage insurance provision.

(12) Optional insurance coverages provision.

(13) Optional credit life and accident and health insurance provision.

(14) A liability insurance provision.

(15) A provision prohibiting oral modification of the contract.

(16) A provision stating the finance charge earnings method.

(17) A consumer warning provision.

(18) A buyer's acknowledgment of receipt of the retail installment contract as permitted under Texas Finance Code, §348.112.

(19) Consumer credit commissioner notice.

(20) A provision stating the finance charge refund method.

(21) A provision describing the application of payments.

(22) A provision describing the effect of early and late payments.

(23) A provision providing for interest on any matured amount at any rate permitted by law.

(24) Balloon payment provisions.

(25) An agreement to keep the motor vehicle insured.

(26) An agreement authorizing the creditor to purchase required insurance if the buyer fails to keep the motor vehicle insured.

(27) Physical damage insurance proceeds provision.

(28) Returned insurance premiums and service contract charges provision.

(29) An application of credits provision.

(30) A transfer of rights provision.

(31) An agreement granting a security interest in collateral.

(32) Agreements regarding the use and transfer of the motor vehicle, including prohibiting unauthorized transfer and transfer of equity fee limitations.

(33) Agreements regarding the care of the motor vehicle, which may include: keeping the motor vehicle in good working order and repair; keeping the vehicle free from liens and encumbrances; not exposing the motor vehicle to seizure, confiscation, or other involuntary transfer; and repaying the creditor for any amounts paid to satisfy liens or encumbrances.

(34) Default rights and repossession provisions, including consequences of default, collection costs, late charges, buyer's right to redeem, disposition of the motor vehicle, cancellation of optional contracts, and acceleration.

(35) A waiver of any right to receive notice of the intent to accelerate or notice of acceleration.

(36) A provision describing a refund of unearned finance charge upon acceleration.

(37) An integration provision and severability clause.

(38) Provision expressing no waiver and limitations on creditor's rights and usury savings clause.

(39) A provision stating Texas and federal law will apply to the contract.

(40) Disclaimer of express or implied warranties.

(41) Preservation of consumers' claims and defenses provision.

(42) Used car buyer's guide provision.

(43) A guarantee provision.

(44) An arbitration provision.

(45) A negotiation and assignment provision.

§1.1308. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Chapter 348.

(1) Identification of parties. This information identifies the parties to the contract.

(A) The model identification clause lists the name and address of the creditor, the date of the contract, and the name and address of the buyer. At the creditor's option, a creditor may include an account number or contract number. The model clause reads:
Figure: 7 TAC §1.1308(1)(A)

(B) The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your."

(2) Assignment of contract. The model clause regarding assignment of contract reads: "This contract may be transferred by the Seller."

(3) Buyer's affirmation and promise to pay. The model clause regarding buyer's affirmation and promise to pay reads: "The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not."

(4) Inspection acknowledgement. The model clause regarding inspection acknowledgement reads: "I have thoroughly inspected, accepted, and approved the motor vehicle in all respects."

(5) Identification of the motor vehicle. The motor vehicle identification information provision should contain the following information about the motor vehicle: the seller's stock number; the manufacturer's year model; the manufacturer's make; the manufacturer's model type or number; the vehicle identification number; the license plate number (if applicable); a new/used designation; and the primary purpose designation. The seller's stock number and the license number are both optional; the omission will not make a contract non-standard. The motor vehicle identification information provision may include additional information about the vehicle including, odometer reading, color, the designation as a heavy commercial vehicle, and key code. If the creditor includes this additional information about the motor vehicle, the change will not make the provision a non-standard provision. The model clause regarding identification of the motor vehicle reads:
Figure: 7 TAC §1.1308(5)

(6) Trade-in vehicle description. The model clause regarding trade-in vehicle description reads:
Figure: 7 TAC §1.1308(6) (No change.)

(7) Truth-in-Lending Act disclosure. The model clause regarding Truth-in-Lending Act disclosure reads:
Figure: 7 TAC §1.1308(7) (No change.)

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) The model clause regarding itemization of amount financed-sales tax advance reads:
Figure: 7 TAC §1.1308(8)(A) (No change.)

(B) The model clause regarding itemization of amount financed-sales tax deferred reads:
Figure: 7 TAC §1.1308(8)(B) (No change.)

(9) Documentary fee.

(A) The following notice satisfies the requirements of Texas Finance Code §348.006 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous and within reasonable proximity to the place at which the fee is disclosed. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The model clause is contained in the Itemization of Amount Financed. The documentary fee clause reads: "A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50 (for a motor vehicle contract or a reasonable amount agreed to by the parties for a heavy commercial vehicle contract). This notice is required by law."

(B) The following notice is a sufficient Spanish translation of the documentary fee disclosure required by Texas Finance Code §348.006. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The Spanish translation may read: "Un honorario de documentación no es un honorario oficial. Un honorario de documentación no es requerido por la ley, pero puede ser cargada al comparador como gastos de manojo de documentos y para realizar servicios relacionados con el cierre de una venta. Un honorario de documentación no puede exceder $50 (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehiculo comercial pesado). Esta notificación es requerida por la ley." Or "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero éste podría cobrarse a los compradores por el manejo de la documentación y la prestación de servicios en relación con el cierre de una venta. Un cargo documental no puede exceder de $50 para (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación se exige por ley."

(10) Deferred downpayments. The creditor has considerable flexibility in disclosing the deferred downpayments. The model provision discloses the deferred downpayments by placing the information, the due date and dollar amount of the deferred downpayments, in several boxes. If a creditor uses this model provision, the creditor would enter the due date and dollar amount of each deferred downpayment in the appropriate boxes. As an alternative to this model provision, a creditor may disclose the deferred downpayments in the Payment Schedule of the Amount Financed in the federal disclosure box. If a creditor elects this option, the due date and the dollar amount of the deferred downpayment must be shown. If the total amount of the deferred downpayment is not satisfied by the date of the second regularly scheduled installment, the deferred downpayment must be included in the Payment Schedule. As another alternative, the creditor may disclose the deferred downpayment amount in the Payment Schedule. The model clause regarding deferred downpayments reads:
Figure: 7 TAC §1.1308(10) (No change.)

(11) Required physical damage insurance. The creditor may chose to omit the statement of the retail buyer's right to obtain substitute coverage from another source. The model clause regarding required physical damage insurance reads:
Figure: 7 TAC §1.1308(11)

(12) Optional insurance coverages. The model clause regarding optional insurance coverages reads:
Figure: 7 TAC §1.1308(12)

(13) Optional credit life and accident and health insurance. The model clause regarding optional credit life and accident and health insurance reads:
Figure: 7 TAC §1.1308(13)

(14) Liability insurance. If liability insurance coverage is not included in the contract, any of the following notices are sufficient to satisfy the requirements of Texas Finance Code §348.205 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

(A) "THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS."

(B) "UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY

INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT."

(C) "UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS."

(15) Prohibition against oral modifications. The contract may include a provision barring oral modifications of the contract. A unilateral change to a contract may nevertheless occur as prescribed by the procedures in Subchapter C of Chapter 349. The model clause regarding prohibition against oral modifications reads:
Figure: 7 TAC §1.1308(15) (No change.)

(16) Finance charge earnings methods.

(A) Regular transaction using sum of the periodic balances method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance.

(I) "You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract."

(II) "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00."

(ii) Deferred sales tax. The model clause regarding deferred sales tax reads: "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00."

(B) True daily earnings method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance.

(I) "You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges."

(II) If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is not deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges."

(ii) Deferred sales tax: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges."

(C) Scheduled installment earnings method:

(i) Sales tax advance: At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance.

(I) "You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges."

(II) If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is not deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges."

(ii) Deferred sales tax: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges."

(17) Consumer warning. The following notices satisfy the requirements of Texas Finance Code §348.102(d) if printed in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous.

(A) For Contracts Using the Sum of the Periodic Balances Method (Rule of 78s) or the Scheduled Installment Earnings Method. The notice may read:

(i) "NOTICE TO THE BUYER -- I WILL NOT SIGN THIS CONTRACT BEFORE I READ IT OR IF IT CONTAINS ANY BLANK SPACES. I AM ENTITLED TO A COPY OF THE CONTRACT I SIGN. UNDER THE LAW, I HAVE THE RIGHT TO PAY OFF IN ADVANCE ALL THAT I OWE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. I WILL KEEP THIS CONTRACT TO PROTECT MY LEGAL RIGHTS." or

(ii) "NOTICE TO THE BUYER -- THE BUYER SHOULD NOT SIGN THIS CONTRACT BEFORE READING IT OR

IF IT CONTAINS ANY BLANK SPACES. THE BUYER IS ENTITLED TO A COPY OF THE SIGNED CONTRACT. UNDER THE LAW, THE BUYER HAS THE RIGHT TO PAY OFF IN ADVANCE ALL THAT THE BUYER OWES AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. THE BUYER SHOULD KEEP THIS CONTRACT TO PROTECT ITS LEGAL RIGHTS."

(B) For contracts using the true daily earnings method. The notice may read: "NOTICE TO THE BUYER -- I WILL NOT SIGN THIS CONTRACT BEFORE I READ IT OR IF IT CONTAINS ANY BLANK SPACES. I AM ENTITLED TO A COPY OF THE CONTRACT I SIGN. UNDER THE LAW, I HAVE THE RIGHT TO PAY OFF IN ADVANCE ALL THAT I OWE AND UNDER CERTAIN CONDITIONS MAY SAVE A PORTION OF THE FINANCE CHARGE. I WILL KEEP THIS CONTRACT TO PROTECT MY LEGAL RIGHTS."

(18) Buyer's acknowledgment of contract receipt.

(A) The following acknowledgments conform to the requirements of Texas Finance Code §348.112 if they appear directly above the place for the buyer's signature in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. A creditor may choose the most appropriate option:

(i) If the buyer's signature is dated. If this clause is chosen, the copy must be mailed within a reasonable period of time. A reasonable period of time would ordinarily be three days, excluding Sundays and holidays. The model acknowledgement may read: "I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME."

(ii) If the buyer's signature is not dated. The model acknowledgment may read: "I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)."

(iii) If the buyer's signature is not dated. If this clause is chosen, the copy must be mailed within a reasonable period of time. The model acknowledgment may read: "I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME."

(iv) If the buyer's signature is not dated but the contract contains the date of the transaction. The model acknowledgement may read: "I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT."

(B) Acceptance of contract receipt. The model clause regarding acceptance of contract receipt reads:
Figure: 7 TAC §1.1308(18)(B) (No change.)

(19) Consumer credit commissioner notice. The following notice satisfies the requirements of Texas Finance Code §14.104 and §1.901 of this title relating to Consumer Notifications. The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice required by Texas Finance Code §14.104 is amended to direct the reader's attention to the area of the contract where the telephone number may be found. The consumer credit commissioner notice reads: "To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579; (512) 936-7600, and can be contacted relative to any inquiries or complaints."

(20) Finance charge refund method. If a contract uses the finance charge refunding method of the sum of the periodic balances or the scheduled installment earnings method, the finance charge refund provision reads: "If I prepay in full, I may be entitled to a refund of part of the Finance Charge." On contracts using the true daily earnings method, this Finance Charge Refund provision should not be disclosed because it is not applicable.

(A) Contracts using the sum of the periodic balances method.

(i) Name of the method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule."

(ii) Optional description of the method. The creditor may include the following additional description of the method. The model clause reads: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than $1.00."

(iii) At the creditor's option, a contract for a heavy commercial vehicle, as defined in the Texas Finance Code, may include the following description of the method. The model clause reads: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than $1.00."

(B) Contracts using the scheduled installment earnings method.

(i) Name of the method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule."

(ii) Optional description of the method. The creditor may include the following additional description of the method: "You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than $1.00."

(C) Flexible contract forms designed to accommodate alternative methods. Creditors may use a flexible contract form with

alternative earnings methods, so long as the method used on a particular contract is permissible for that contract. The following illustrates one way that this may be done: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than $1.00."

(21) Application of payments. In this provision, the term "finance charge" should not be construed to have the same meaning as Finance Charge as defined by the Truth in Lending Act. A default or late charge is considered to be a finance charge under Texas law; therefore, a default or late charge can be charged and collected as part of the earned finance charge. At the creditor's option the creditor may modify the application of payments language by adding "and late charges" following the phrase "earned but unpaid finance charge." The model clause reads:
Figure: 7 TAC §1.1308(21) (No change.)

(22) Effect of early and late payments. True daily earnings method: The model clause reads: "You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase."

(23) Interest on matured amount. The model provision for interest on any matured amount at any rate permitted by law reads: "If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due." In this provision, the maximum rate allowed by law refers to the rate found in Chapter 303 of the Texas Finance Code.

(24) Balloon payments. If the contract has a balloon payment, the creditor must include a provision in the contract that allows the buyer to refinance the balloon payment over time. The provision must comply with Section 348.123 of the Texas Finance Code. The model provision for defining the balloon payment reads: "A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment."

(A) Paying the balloon payment. If a retail installment contract contains a balloon payment that is the final payment, the contract must also provide the right for the retail buyer to pay the balloon payment. The model provision for paying the amount of the final scheduled balloon payment reads: "I can pay all I owe when the balloon payment is due and keep my motor vehicle."

(B) Balloon payment alternatives. If the retail installment contract contains the right for a retail buyer to refinance a balloon installment, the contract provision to refinance the installment must comply with either clause (i) or (ii) of this subparagraph. A contract under clause (ii) of this subparagraph must also contain the right of the retail buyer to sell the motor vehicle back to holder or retail seller.

(25) Agreement to keep the motor vehicle insured. The model clause regarding agreement to keep the motor vehicle insured reads: "I agree to have physical damage insurance covering loss or damage to the motor vehicle for the term of this contract. The insurance must cover your interest in the vehicle." The creditor may include the following optional provision: "The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage."

(26) Your right to purchase required insurance if I fail to keep the motor vehicle insured. The model clause regarding agreement to allow creditor to purchase required insurance if buyer fails to keep the motor vehicle insured reads: "If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file."

(27) Physical damage insurance proceeds. The model clause regarding physical damage insurance proceeds reads: "I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me."

(28) Returned insurance premiums and service contract charges. The contract may authorize a creditor to apply charges returned to the creditor for canceled insurance, service contract, and extended warranty charges to the buyer's obligation under the agreement as permitted by law, regardless of whether or not the buyer is in default under the contract.

(A) The model clause for contracts using the true daily earnings method reads: "If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me."

(B) For contracts using the scheduled installment earnings or sum of the periodic balances method, the creditor may substitute the following: "If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me."

(29) Application of credits. The model clause regarding application of credits reads: "Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments."

(30) Transfer of rights. The seller does not have a duty to disclose the terms on which a contract or a balance under a contract is acquired, including any discount or difference between the rates, charges, or balance under the contract and the rates, charges, or balance acquired as provided by Texas Finance Code, §348.301. The model clause regarding transfer of rights reads: "You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies."

(31) Grant of a security interest in collateral. The model clause regarding a description of a security interest granted in a typical motor vehicle installment sale reads:
Figure: 7 TAC §1.1308(31) (No change.)

(32) Agreements regarding the use and transfer of the motor vehicle. The contract may contain a provision prohibiting a buyer from transferring any interest in the motor vehicle without the creditor's written permission, requiring the buyer to notify the seller of change of address, or prohibiting the removal of the motor vehicle from Texas. The transfer fee limitation establishes the maximum fee that a creditor could contract for, charge, or collect for transferring the buyer's equity in the motor vehicle to another party. If desired, a creditor could amend the model provision to reflect a lower transfer fee amount. The model clause regarding agreements regarding the use and transfer of the motor vehicle reads: "I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of $25.00 ($50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission."

(33) Care of the motor vehicle. The contract may obligate the buyer to keep the motor vehicle free of liens and encumbrances, require the buyer to keep the motor vehicle in good working order and repair, or prohibit the buyer from allowing the motor vehicle to be exposed to seizure, confiscation, or other involuntary transfer. The model clause regarding care of the motor vehicle reads: "I agree to keep the motor vehicle free from all liens, and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount."

(34) Default rights and repossession provisions. This subsection details agreements allowing acceleration of the buyer's obligation upon the buyer's default or upon the creditor's determination of insecurity as permitted by Business and Commerce Code, §1.309. The following provisions are samples of model clauses of some of the default rights and remedies of a creditor in a typical motor vehicle installment sale transaction:

(A) Acceleration and default. The model clause regarding acceleration and default reads:
Figure: 7 TAC §1.1308(34)(A) (No change.)

(B) Late charge. The model clause regarding late charge reads: "I will pay you a late charge as agreed to in this contract when it accrues."

(C) Repossession. At the creditor's option a creditor may choose one of the following model provisions pertaining to repossession. The model clauses regarding repossession read:

(i) "If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle." In this provision, the term "peacefully" is intended to have the same meaning as "without breaching the peace," as determined by the Texas courts, and as found under clause (ii) of this subparagraph.

(ii) "If I default, you may repossess the motor vehicle from me if you do so without breaching the peace. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle."

(D) Buyer's right to redeem. The model clause regarding buyer's right to redeem reads: "If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract."

(E) Disposition of motor vehicle. The model clause regarding disposition of motor vehicle reads: "If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title."

(F) Collection costs. The model clause regarding collection costs reads: "If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows."

(G) Cancellation of optional insurance or service contracts. The model clause regarding cancellation of optional insurance or service contracts reads: "This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle."

(35) Acceleration, waiver of notice of intent to accelerate, and notice of acceleration. A model clause regarding the holder's right to accelerate maturity of the contract and to waive the buyer's or co-buyer's common law right to notice of intent to accelerate, notice of acceleration, or both reads: "If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe."

(36) Refund upon acceleration. Sum of the periodic balances method or scheduled installment earnings method: The model clause regarding the buyer's right to a finance charge refund upon acceleration of the contract reads: "If you demand that I pay you all that

I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full."

(37) Integration and severability. The contract may include an integration clause indicating that the parties to the contract intend it to be final written expression their agreement, such as: "This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle." The contract may also include a severability clause providing that the invalidity of any portion of the contract does not render invalid other parts of the contract that would otherwise be valid. The model clause regarding severability reads: "If any part of this contract is not valid, all other parts stay valid."

(38) No waiver and limitations on creditor's rights and usury savings.

(A) A model clause to prevent a creditor's delay in enforcing rights under the contract from affecting a waiver of those rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(B) A provision establishing limitations on the creditor's rights reads: "You will exercise all of your rights in a lawful way."

(C) The model clause regarding usury savings reads: "I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts."

(39) Applicable law. A model clause to establish the law that will apply to the contract reads: "Federal and Texas law apply to this contract."

(40) Warranty disclaimer. The disclaimer of express and implied warranties should be set out from the surrounding text so that the disclosure is conspicuous. A disclaimer of express and implied warranties, such as the following, is permitted by Article 2, Subchapter C of the Business and Commerce Code, and reads: "Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide."

(41) Preservation of consumer's claims and defenses notice. This notice only applies if the motor vehicle financed in the contract was purchased for personal, family, or household use. The preservation of consumer's claims and defenses notice disclosure should be set out from the surrounding text so that the disclosure is in all capitals, boldfaced and in at least 10-point type. The preservation of consumer's claims and defenses notice disclosure, as required by the Federal Trade Commission's preservation of consumer's claims and defenses notice, 16 C.F.R. §433.1 et seq., reads: "NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS AND SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use."

(42) Used car buyer's guide. The used car buyer's guide disclosure should be set out from the surrounding text so that the disclosure is conspicuous. The disclosure should be prefaced by the words "In this box only, the word "you" refers to the Buyer." The used car buyer's guide disclosure, as required by the Federal Trade Commission's Used Car Regulation, 16 C.F.R. §455.1 et seq., reads:

(A) "Used Car Buyer's Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

(B) Spanish Translation: "Guía para compradors de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta."

(43) Negotiability and assignment. The disclosure of the negotiability of the contract should be placed on the front side of the contract and may read:

(A) "The Annual Percentage Rate may be negotiated with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge";

(B) "The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance"; or

(C) "A customer may obtain their own financing. The finance charge may be negotiable. The dealership may assign the retail installment contract. There is no duty to disclose the terms for the sale of this contract (e.g., price paid to retail seller to purchase retail installment contract)."

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 August 19, 2005.

TRD-200503492
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 8, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 936-7611

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. RULES OF OPERATION FOR PAWNSHOPS

SUBCHAPTER B. PAWNSHOP LICENSE

7 TAC §§85.202, 85.203, 85.205, 85.206, 85.210, 85.211

The Finance Commission of Texas (the commission) adopts amendments to Subchapter B, §§85.202, 85.203, 85.205, 85.206, 85.210, and 85.211, concerning pawnshop license, in conjunction with the commission's review of Chapter 85. The rules are adopted without changes to the proposal published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3786).

In general, the purpose of the amendments is to conform the rules to the commission's current practice, to add clarification, to correct section numbers referencing other law, and to correct typographical errors. Sections 85.202, 85.205, and 85.210 have

been revised, mainly to update form numbers and to align the rules with current agency licensing application procedures. In §85.203, three types of revisions have occurred: (1) the substantive language of §85.409 (which is being proposed for repeal separately in this issue of the *Texas Register*) has been added to §85.203, in order to more logically group together in one section the relocation of the pawnshops as well as the pawn transactions; (2) form number updates have been made; and (3) typographical errors have been corrected. In §85.206, a citation concerning the rules governing administrative hearings has been corrected. Section 85.211 has been updated to correlate with current agency practice concerning annual licensing fees.

The agency received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 371.

These rules are to be effective on September 19, 2005.

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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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7611

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SUBCHAPTER C. PAWNSHOP EMPLOYEE LICENSE

7 TAC §§85.301, 85.303, 85.304

The Finance Commission of Texas (the commission) adopts amendments to Subchapter C, §§85.301, 85.303, and 85.304, concerning pawnshop employee license, in conjunction with the commission's review of Chapter 85. In addition, the commission adopts new §85.308, published elsewhere in this issue of the *Texas Register*. The rules are adopted without changes to the proposal as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3791).

In general, the purpose of the amendments is to conform the rules to the commission's current practice, to correct a section number referencing other law, to add clarification, and to correct typographical and grammatical errors. A form number has been updated in §85.301 in order to align the rule with current agency licensing application procedures. A phrase has been moved for clarity to correct a grammatical error in §85.303. In §85.304, a citation concerning the rules governing administrative hearings has been corrected.

The agency received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 371.

These rules are to be effective on September 19, 2005.

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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Leslie L. Pettijohn
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For further information, please call: (512) 936-7611

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7 TAC §85.308

The Finance Commission of Texas (the commission) adopts new §85.308, concerning the availability of pawnshop employee license information, in conjunction with the commission's review of Chapter 85. The rule is adopted without changes to the proposal as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3792).

The purpose of the new rule is to require that pawnbrokers maintain readily available copies of pawnshop employee licenses and documents relating to pending pawnshop employee applications. This rule formalizes an existing examination practice and the recordkeeping commonly in place by pawnshops relative to pawnshop employee licenses.

No written comments were received on the proposal.

This new rule is adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the adopted new section are contained in Texas Finance Code, Chapter 371.

This rule is to be effective on September 19, 2005.

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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Leslie L. Pettijohn
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SUBCHAPTER D. OPERATION OF PAWNSHOPS

7 TAC §§85.401, 85.404, 85.407, 85.410, 85.413, 85.416, 85.418, 85.420

The Finance Commission of Texas (the commission) adopts amendments to Subchapter D, §§85.401, 85.404, 85.407, 85.410, 85.413, 85.416, 85.418, and 85.420, concerning operation of pawnshops, in conjunction with the commission's review of Chapter 85. The commission is adopting the repeal of §85.409, which is published elsewhere in this issue of the *Texas Register*. The rules are adopted without changes to the proposal as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3792).

In general, the purpose of the amendments is to add clarification, to correct section numbers referencing other law, and to correct typographical errors. The word "national" has been replaced by "federal" to clarify which holidays fall under §85.401. Citation references have been corrected in §85.404 and §85.420. Clarifying language has been added to §85.407 and §85.413. In §§85.410, 85.413, and 85.418, typographical errors have been corrected. New subsection (c) has been added to §85.416 in reference to the translation of foreign text in advertisements. Also, technical corrections have been made to figures contained within §85.407 and §85.418.

The agency received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 371.

These rules are to be effective on September 19, 2005.

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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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7611

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7 TAC §85.409

The Finance Commission of Texas (the commission) adopts the repeal of §85.409, concerning the sale of pawn transactions. The repeal is adopted without changes to the proposal as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3794).

As part of an agency rule review, the commission has determined that the substance of §85.409 would more logically be included as part of §85.203. Proposed amendments were published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3786) seeking to incorporate the old §85.409 within §85.203, concerning relocation.

No written comments were received on the proposal.

The repeal is adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the adopted repeal are contained in Texas Finance Code, Chapter 371.

This repeal is to be effective on September 19, 2005.

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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Leslie L. Pettijohn
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Office of Consumer Credit Commissioner
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SUBCHAPTER E. INSPECTIONS AND EXAMINATIONS

7 TAC §85.503

The Finance Commission of Texas (the commission) adopts amendments to Subchapter E, §85.503, concerning inspections and examination, in conjunction with the commission's review of Chapter 85. The rules are adopted without changes to the proposal published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3794).

In general, the purpose of the amendments is to conform the rule to the commission's current practice, to eliminate obsolete provisions, and to correct typographical errors. Section 85.503 has been extensively revised to align with current agency practice in collecting follow-up examination fees.

The agency received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 371

These rules are to be effective on September 19, 2005.

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. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

7 TAC §85.603, §85.607

The Finance Commission of Texas (the commission) adopts amendments to Subchapter F, §85.603 and §85.607, concerning license revocation, suspension, and surrender, in conjunction with the commission's review of Chapter 85. The rules are adopted without changes to the proposal as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3795).

In general, the purpose of the amendments is to conform the rules to the commission's current practice and to correct typographical errors. Section 85.603 has been updated to correlate with current agency practice concerning annual licensing fees. Typographical errors have been corrected in §85.607.

The agency received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 371.

These rules are to be effective on September 19, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES

(Editor's Note: The Railroad Commission of Texas adopted amendments and repeals to 16 TAC Chapter 9 in the August 19, 2005, issue of the Texas Register (30 TexReg 4810). Due to a Texas Register error, the word "inch" was omitted from the preamble and rule text in the print version of the issue. We are reprinting the corrected rulemaking documents in this issue.)

The Railroad Commission of Texas adopts amendments, repeals, and new sections in 16 TAC Chapter 9, relating to LP-Gas Safety Rules. Sections 9.3, 9.7, 9.10, 9.17, 9.102, 9.103, 9.107, 9.134, 9.140, 9.143, and 9.308, relating to LP-Gas Report Forms; Application for License and License Renewal Requirements; Rules Examination; Designation and Responsibilities of Company Representatives and Operations Supervisors; Notice of Stationary LP-Gas Installations; Objections to Proposed Stationary LP-Gas Installations; Hearings on Stationary LP-Gas Installations; Connecting Container to Piping; Uniform Protection Standards; Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individuals or Aggregate Water Capacities of 4,001 Gallons or More; and Identification of Piping Installation, are adopted with changes from the proposed versions published in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1730); the repeal of §9.114 is withdrawn; and the remaining sections are adopted without changes. Specifically, the Commission adopts in Subchapter A, relating to General Requirements, amendments to §§9.1, 9.2, 9.6, 9.8, 9.9, 9.11 - 9.13, 9.16, 9.18, 9.21, 9.22, and 9.26 - 9.28, relating to Application of Rules, Severability, and Retroactivity; Definitions; Licenses and Fees; Application for a New Certificate; Requirements for Certificate Renewal; Previously Certified Individuals; Trainees; General Installers and Repairman Exemption; Hearings for Denial, Suspension, or Revocation of Licenses or Certificates; Reciprocal Examination Agreements with Other States; Franchise Tax Certification and Assumed Name Certificates; Changes in Ownership, Form of Dealership, or Name of Dealership; Insurance and Self-Insurance Requirements; Application for an Exception to a Safety Rule; Reasonable Safety Provisions; the repeal of §9.33, relating to LP-Gas Welding Advisory Committee; new §9.35, relating to Written Procedure for LP-Gas Leaks; amendments to §§9.36 - 9.38, 9.41, 9.51, and 9.52, relating to Report of LP-Gas Incident/Accident; Termination of LP-Gas Service; Reporting Unsafe LP-Gas Activities; Testing of LP-Gas Systems in School Facilities; General Requirements for Training and Continuing Education; and Training and Continuing Education Courses; the repeal of §9.53, relating to Continuing Education Credit for Previous Courses; and amendments to §9.54, relating to Commission-Approved Outside Instructors.

In Subchapter B, relating to Stationary Installations and Container Requirements, the Commission adopts amendments to §§9.101, 9.109, 9.110, and 9.113, relating to Filings Required for Stationary LP-Gas Installations; Notice of Stationary LP-Gas Installations; Objections to Proposed Stationary LP-Gas Installations; Hearings on Stationary LP-Gas Installations; Physical Inspection of Stationary LP-Gas Installations; Emergency Use of Proposed Stationary LP-Gas Installations; Maintenance; amendments to §§9.115, 9.126, 9.129, 9.130, 9.132, 9.141, and 9.142, relating to Examination and Testing of Containers;

Appurtenances and Equipment; Manufacturer's Nameplate and Markings on ASME Containers; Commission Identification Nameplates; Sales to Unlicensed Individuals; Uniform Safety Standards; and LP-Gas Container Storage and Installation Requirements.

In Subchapter C, relating to Vehicles and Vehicle Dispensers, the Commission adopts amendments to §§9.201 - 9.203, relating to Applicability; Registration and Transfer of LP-Gas Transports or Container Delivery Units; School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; new §9.204, relating to Maintenance of Vehicles; the repeal of §9.207, relating to Requirements for Movable Fuel Storage Tenders Such as Farm Carts; and amendments to §9.208, and §9.211, relating to Testing Requirements; and Markings.

In Subchapter D, relating to Adoption by Reference of NFPA 54 (National Fuel Gas Code), the Commission adopts amendments to §9.303 and §9.312, relating to Exclusion of NFPA 54, §6.31, and Certification Requirements for Joining Methods.

In Subchapter E, relating to Adoption by Reference of NFPA 58 (LP-Gas Code), the Commission adopts amendments to §9.403, relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections.

The Commission also adopts the repeal of Subchapter F, relating to Adoption by Reference of NFPA 51 (Standard for the Design and Installation of Oxygen Fuel-Gas Systems for Welding, Cutting, and Allied Processes), including §§9.501 - 9.503, and 9.506 - 9.508, relating to Adoption by Reference of NFPA 51; Clarification and/or Exclusion of Definitions in NFPA 51; Exclusion of Certain Sections and Chapters 6, 7, and 8 in NFPA 51; Sections in NFPA 51 Adopted with Additional or Alternative Language; Container Installation Requirements; and LP-Gas Pressure Going into a Building.

The Commission adopts these amendments, repeals, and new rules to update some training and continuing education requirements, to clarify changes in Commission offices or procedures as a result of a reorganization of LP-gas activities among the AFRED, Gas Services, and Safety Division, to repeal some unnecessary rules, and to make other substantive and non-substantive amendments. The Commission adopts these amendments, new rules, and repeals with an effective date of September 1, 2005.

Non-substantive Amendments

Amendments to certain sections are non-substantive and are adopted for clarification. Section 9.1(a)(6) is deleted because it refers to Subchapter F regarding NFPA 51; the rules in Subchapter F are repealed (as discussed later in the preamble). Section 9.1(g) corrects references to NFPA 58.

The amendments in §9.3(13) proposed to delete a form that is no longer used by the Safety Division; however, the form is still used by the audit staff, and this proposal is not adopted, as discussed in subsequent paragraphs.

In §9.9, specific references to AFRED are added; fees are stated to be nonrefundable; and subsection (c)(1) includes new wording stating that if a person's certification expires, that person shall immediately cease performance of any LP-gas activities authorized by the certification. This wording is currently found in §9.7(f) regarding expiration of licenses, and is added in §9.9 to apply to certifications.

Amendments in §9.12(a)(2) add a reference to AFRED and delete the reference to the rules examination fee being on file; that wording is unnecessary because of the options available for exam locations and payments.

In §9.16, several references to the License and Permit Section of the Gas Services Division are added, and two internal procedures are clarified.

Amendments in §§9.18, 9.21, 9.22, 9.26, 9.27, 9.28, 9.37, 9.38, 9.102, and 9.107 add references to the Gas Services Division, the License and Permit Section of the Gas Services Division, or the Safety Division, as appropriate. The amendments to §9.103 add a reference to the License and Permit Section of the Gas Services Division and correct one internal citation to another rule. Amendments in §§9.109, 9.110, 9.115, 9.129, 9.141, 9.203, and 9.211, add references to the Safety Division. The amendment in §9.303 corrects the title in a reference to 16 TAC Chapter 13, and §9.312 adds a reference to the Safety Division.

Clarifying and Substantive Amendments

Some sections include more substantive proposed amendments, but the Commission does not consider them to be controversial.

The amendments in §9.6, in conjunction with amendments to §9.13, add references to the License and Permit Section, and in subsection (c)(4) add wording regarding a new registration program with the Texas State Board of Plumbing Examiners and the Texas Department of Licensing and Regulations. The new wording states that master or journeyman plumbers, or Class A or B Air Conditioning and Refrigeration Contractors, as licensed respectively by these two agencies, may register with the Section as stated more fully in §9.13. The registration fee is $50 and the renewal fee is $20.

Changes in §9.7 add references to the License and Permit Section, and new wording requiring a 24-hour emergency response telephone number to be included on LPG Form 1; other amendments clarify that certain fees are nonrefundable. The Commission adopts some clarifying wording in subsections (d)(1) and (f) to state that the 24-hour number is required only for licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4).

Amendments in §9.8 specify AFRED as the Commission office to receive the LPG Form 16 and clarify that fees are nonrefundable.

In §9.11, references to AFRED are added, as is a 10-calendar day period for a licensee to notify AFRED when a previously certified individual is hired; the current rule states this notification shall take place "immediately," which is not defined.

Section 9.13 includes wording for the new registration program with the Texas State Board of Plumbing Examiners and the Texas Department of Licensing and Regulations. The new wording states that master or journeyman plumbers, or Class A or B Air Conditioning and Refrigeration Contractors, as licensed respectively by these two agencies, may register with the Commission. This program was jointly agreed upon by the Commission and these two agencies as a way to recognize the skills and training of the individuals who perform LP-gas activities, as authorized by the three agencies. Registration with the Commission is an easier and cheaper way for these skilled workers to be recognized by the Commission as performing authorized LP-gas activities without the expense and time required to obtain a Category D license or renewal.

Changes to §9.36 add references to the Safety Division, amend subsection (a)(4) to ensure that damage has not occurred in an incident or accident involving an LP-gas vehicle, and add new subsection (a)(7) requiring the reporting to the Safety Division of any event involving LP-gas which is required to be reported to any other state or federal agency.

In §9.101(a), changes include a new sentence stating that LP-gas systems under the jurisdiction of DOT safety regulations in 49 CFR Parts 192 and 199, and Part 40 shall comply with Chapter 8 of this title (relating to Pipeline Safety Regulations) prior to implementation of service. In changes to subsection (b)(1), the 10-day period is changed to 30 days for submission of LPG Form 501 and a reference is added to the Gas Services Division. In subsection (b)(2), the resubmission charge is changed from $20 to $35; because additional time is being given, a higher resubmission fee is warranted. Wording in subsection (g) is deleted and moved to new subsection (c)(6) to properly place this requirement under the installations with aggregate water capacities of 10,000 gallons or more.

Section 9.114 was proposed for repeal because the odorization reports described in this rule are no longer used by the Safety Division; however, the repeal is not adopted because the odorization reports are used by the audit staff.

Section 9.126(a)(3) is amended to require all appurtenances and equipment placed into LP-gas service to be used and in compliance with any NFPA standard adopted by the Commission. In subsection (c), references to the Safety Division are added. Subsection (d) is deleted as unnecessary.

In §9.130, the changes include references to the Safety Division added throughout. In subsection (a)(2)(B), the Commission specifies a $60 fee plus mileage and rate from Austin as set by the official state travel mileage chart for a replacement nameplate; and in subsection (a)(2)(C), deletes a reference to hourly research fees.

Amendments in §9.140 add references to the Safety Division, and in subsection (d)(4) change the word "required" to "permitted" to make this situation permissive. The changes in the table in subsection (g) include one change in row 7, where the words "or storage" are added to the situation where lettering is required for cylinder exchange or storage racks. New subsection (g)(5) addresses signs for underground containers. In subsection (h)(3)(C), the six-inch-high cement parking wheelstop was proposed to be changed to a four-inch height requirement, and proposed new wording would have added that it must be at least 12 inches from the curb; in subsection (h)(3)(E), the 48-inch requirement was proposed to be increased to 60 inches. As explained in subsequent paragraphs, however, and based on comments, the original requirements were retained and the new requirements added as an alternative.

Amendments in §9.142 correct references to some sections in NFPA 58.

Section 9.207 is repealed because the situation is covered in NFPA 58.

Amendments in §9.208 add references to the License and Permit Section, clarify a specific references to 49 CFR 180.407, and add a reference to 49 CFR Parts 100 - 185.

Sections 9.501 - 9.503, and 9.506 - 9.508 (all of Subchapter F) are repealed; these rules concern the adoption by reference of NFPA 51 relating to welding applications. Since the adoption by reference of NFPA 51, the Commission has adopted NFPA 58, which encompasses NFPA 51; therefore, the rules in this subchapter are no longer necessary.

Substantive and Possibly Controversial Changes

Section 9.2 includes two new definitions in paragraphs (6) and (50) for "bobtail driver" and "transport driver." The definitions will help differentiate between these types of vehicles, and will assist applicants and certificate holders to know which type of training or continuing education courses they need to complete. The definition of "assistant director" in current paragraph (6) is deleted; following the Commission's recent reorganization, this definition is no longer needed. Paragraph (3) contains non-substantive corrections to the definition of "AFT materials"; amendments to paragraphs (9) and (21) are clarified; paragraph (27) provides a definition for "MPS gas"; the definition is substantively the same as the definition for "MPS gas" currently in §9.502, which is repealed.

The definition for "operations supervisor" (renumbered to be paragraph (30)) was proposed to add the wording "and is authorized by the licensee to implement operational changes." The Commission proposed to add this wording to make clear that an operations supervisor must have the authority over the day-to-day LP-gas activities being supervised without having to obtain the licensee's approval. In the definition of "outlet" (renumbered to be paragraph (31)) the proposed change attempted to address a situation which has caused confusion in the past over whether an outlet "materially duplicates" the originally-licensed location. The changes will result in more locations being considered outlets. The Commission also proposed amendments to §9.17(a)(3) to allow an operations supervisor to supervise multiple outlets in certain situations; the amendments to §9.17 will be discussed in more detail in subsequent paragraphs of the preamble. The definitions for "operations supervisor" and "outlet" are adopted without changes from the proposal, but are clarified by changes adopted in §9.17(a)(3).

Other proposed amendments in §9.2 correct references to Commission offices or renumber existing definitions.

Several amendments are adopted in §9.10, Rules Examination. In subsection (a), the Commission proposes that examinations will no longer be offered at the Commission's headquarters building, but rather at the AFRED Training Center, 6506 Bolm Road, Austin, Texas. This location has available free parking, which will assist applicants in arriving on time for exams. The hours that exams will be offered are changed slightly to end at 12:00 noon; a Commission employee must be present during examinations, so the noon deadline will allow sufficient time for exam takers to complete the exams and allow Commission staff to perform other required job duties. AFRED recommends that individuals take exams on Tuesdays and Thursdays, which are more efficient for Commission staff. New subsection (a)(1) clarifies when and where exams will be given. Current subsection (a)(1) is deleted because it refers to admittance letters, which will no longer be needed. Amendments in subsection (a)(2) add Categories F, G, and J to Categories E and I as those which are required to complete management-level examinations and management-level courses of instruction. Proposed new wording would have clarified that the E, F, G, I, and J exams are given only in conjunction with those courses, and other exams are given at the AFRED Training Center and other locations statewide. Based on comments, more fully discussed in subsequent paragraphs, the adopted wording in this subsection has been modified.

New subsection (a)(3) requires applicants in categories that require a course of instruction to complete both the course and the required exam before a certification card will be issued. New subsection (a)(4) allows applicants two years to complete a required course of instruction after passing the management-level rules exam; after two years, the applicant must reapply as a new applicant. In subsection (a)(5) (renumbered from (a)(3)), amendments clarify that the fees are nonrefundable, add Categories F, G, and J, and correct an internal rule reference.

The Commission adopts several changes in the table in subsection (b). In the first row, the "delivery truck exam" is changed to "bobtail" exam to correspond with the new definition in §9.2 for "bobtail driver." The wording also includes the specific activities covered by this course. Row 6, which referred to manufactured housing technician exam, is deleted because there is only one individual currently certified in this category, and other examinations are available to cover this little-used category. In the row for "service and installation exam," the Commission deletes the word "entire," which is misleading, and adds references to "plus containers and appliances," which is more accurate. In the row for "appliance service and installation exam," Category N is added to the list of categories for which this course applies.

In subsection (c), AFRED will notify individuals of scores within 15 days, instead of 30 days. New subsection (c)(3) is added to require individuals to carry their certification cards with them as proof of certification if a Commission employee requests it. In subsection (d), individuals who fail an exam no longer have to request an analysis in writing. Subsection (d)(2) is deleted because it refers to admittance letters, which will no longer be used.

In §9.17(a)(1), the Commission adds a reference to the License and Permit Section. In subsection (a)(3), new wording is added in conjunction with the changes to the definition of "outlet" in §9.2 to allow an individual to be operations supervisor "at more than one outlet provided each outlet has a designated LP-gas certified employee who is responsible for the activities at that outlet." This change is made for safety reasons: if a Commission inspector finds a safety violation at an outlet, the inspector must be able to immediately locate that certified employee to take the outlet out of service, make repairs, or whatever other action may be necessary to address the safety situation. The Commission adopts additional wording that requires licensees to post the 24-hour emergency response telephone number at every outlet. These changes are discussed more fully in subsequent paragraphs.

In subsection (g), Categories F, G, and J are added to Categories E and I as those which may receive work experience substitution in certain instances. The Commission adopts additional wording in this subsection, for consistency, as discussed in subsequent paragraphs.

The Commission adopts the repeal of §9.33, concerning the welding advisory committee, which was formed before the Commission adopted NFPA 51 by reference, currently in Subchapter F. This committee has since disbanded, as its purpose was completed.

New §9.35 requires licensees to have written gas leak notification procedures in place and for their employees to know what these procedures are. The new rule requires that each licensee maintain a written procedure to be followed when any employee receives notification of a possible leak. The licensee must ensure that all employees are familiar with the procedure and must authorize employees to implement the procedure without management oversight. The written procedure must be available to emergency response agencies as specified in NFPA 58, 3.10.2.1, and as stated in Table 1 of §9.403 of this title.

Amendments in §9.41 clarify the use of pressure tests versus leakage tests or other inspections. The terms "pressure test" and "leakage test" are often used interchangeably; in fact, they are not the same. The Commission requires a pressure test for schools, so clarifying wording is adopted in subsection (b), in (b)(4), (e)(1), and (e)(2). References to the Safety Division are added in several places.

Amendments in §9.51 add references to fees being nonrefundable, add references to the License and Permit Section, add Category M to the list of categories requiring training for management-level and certain employee-level certificates, delete a reference to completing any AFT, add references to AFRED, and add Category J as requiring the 16-hour training course.

Amendments in §9.52 also add Category J and Category M as requiring certain training, change the name of "delivery truck employee-level" to "bobtail employee-level," and add recreational vehicle technician employee-level. In subsection (a), new wording addresses the only situation in which a training deadline is extended; an individual cannot retake and pass an examination in order to extend this deadline, but must complete the applicable training class. In subsection (b)(1)(B), new wording states that beginning September 1, 2005, Category M and recreational vehicle technician certificate holders have until May 31, 2006, to complete their initial continuing education requirements. The Commission adds Category M licensees and recreational vehicle technician certificate holders to that group of multiple certificate holders who, if they hold more than one certification as of February 1, 2001 (the original date of adoption of the continuing education requirements), must complete the continuing education requirement by the deadline assigned for the initial certificate.

The most extensive changes for the training and continuing education requirements are found in the four tables in subsection (g). The changes are addressed narratively as follows.

In Table 1, a date of September 2005 is added in the title to show when this table will become effective. Current course 2.2/2.4 is changed to 2.2, and the course title corrected; other course titles for 2.1, 2.3, 3.1, 3.2, 3.5, 3.11, 6.1, the 80-hour and 16-hour courses are also corrected. For courses 3.1, 3.2, 3.5, 3.7, 3.11, and the 16-hour Category F, G, I, and J management course, an "x" is added in the AFT column to indicate those courses will include AFT. New rows are added for new courses 3.3 and 3.8, with an "x" added in the appropriate columns for the categories to which these two new courses apply. A new column is added for Category M and an "x" added on the appropriate rows for the courses which apply to this new category. Finally, in the row for course 6.1, the current table shows an "x" only in the column for Category E; in the new table, this course may fulfill the requirements for all the categories.

In Table 2, the September 2005 date is added to the title of the table. The title of the "Delivery Truck/Service & Installation" category is changed to "Bobtail Service & Installation." Current course 2.2/2.4 is changed to 2.2, and the course title corrected; other course titles for 2.1, 2.3, 3.1, 3.2, 3.5, 3.11, and the 80-hour and 16-hour courses are also corrected. For courses 3.1, 3.2, 3.5, 3.7, 3.11, and the 16-hour course, an "x" is added in the AFT column to indicate these courses will include AFT. New rows are added for new courses 3.3 and 3.8, with an "x"

added in the appropriate columns for the categories to which these two new courses apply. A new column is added for RV technician, and an "x" added on the appropriate rows for the courses which apply to this new category. With the addition of some new courses, the current courses have slight revisions as to who can take those courses to comply with the requirements for their category; in particular, the "x" in the current table is deleted for courses 2.1 and 2.2 for "Bobtail" and "Bobtail Service & Installation"; for course 2.3, for "Portable Cylinder Filling;" and for course 3.1, "Bobtail" and "Appliance Service & Installation." In the footnotes on Table 2, the references to "delivery truck" are changed to "bobtail," and the specific activities covered by the "Bobtail Driver" certification are added.

On Table 3, the September 2005 date is added to the title of the table. The Category M column is added. The AFT column is deleted because none of the CETP courses include AFT. Current CETP courses 2, 3, and 4 are split into several smaller courses, shown on the Table as CETP 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, and 4.2. The titles for courses 5 and 8 are corrected. Finally, on the row for CETP 8, the "x" in the column for Category K is deleted.

On Table 4, the September 2005 date is added to the title of the table. The RV Technician column is added. The AFT column is deleted because none of the CETP courses include AFT. Current CETP courses 2, 3, and 4 are proposed to be split into several smaller courses, shown on the Table as CETP 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, and 4.2. The titles for courses 5 and 8 are corrected. In the row for CETP 5, this course no longer applies to "Portable Cylinder Filling" or "Motor & Mobile Fuel," but now applies to "Bobtail," "Bobtail Service & Installation," and "Service & Installation." The PERC GAS Check course applies to "Bobtail." In the Note for this table, it is stated that CETP courses 2.4, 3, 3.6, and 3.7 are not accepted by the Commission for continuing education credit. Finally, in footnotes 2 and 3, the references to "delivery truck" are changed to "bobtail," and the specific activities covered by the "Bobtail" certification are added.

The Commission has been informed that CETP is in the process of also changing its courses 5, 6, 7, and 8, so other changes to this Table may be necessary in a future rulemaking.

Section 9.53 is repealed because it addresses situations where individuals could have received continuing education credit for attendance at previous courses that were held before the Commission's training and continuing education program was adopted. The rule included a four-year window, which has now passed; therefore, the rule is no longer necessary.

Section 9.54 includes mostly non-substantive proposed amendments including adding references to AFRED and adding new subsection (a)(1)(C) to address outside instructors for Category M courses.

Amendments in §9.113 add "gas utilization equipment, and appliances" to the list of other items that must be maintained in "safe" working order. If any of these items is not in safe wording order, the Safety Division may require that the installation be removed from service until repairs are made. This amendment addresses situations in which, for example, an appliance may be working, but it is not working safely.

Amendments in §9.132 prohibit a licensee from selling an LP-gas container to an unlicensed individual for resale or installation without determining that such container will be installed by a licensee authorized to perform such installation. The Commission adopts an amendment adding that LP-gas shall not be sold for resale to an unlicensed individual as well. The Commission views the sale of LP-gas to an unlicensed individual for resale as more of a safety risk than selling a perhaps-empty LP-gas container. If an individual is going to sell or resell LP-gas, that individual must be properly licensed by the Commission.

New wording in §9.134 states that a licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the piping has been installed according to the LP-Gas Safety Rules, properly tagged the installation, and filed a properly-completed LPG Form 22 with the Safety Division. This is because the Commission must be informed of LP-gas installations that may have been incorrectly or unsafely installed, especially if the Commission would not otherwise be aware of such installations; for example, members of a church may add on to the church building and pipe it to use LP-gas. The Commission adopts one clarifying change to state that the properly-completed LPG Form 22 must identify the unlicensed person who installed the LP-gas piping.

In §9.143(a), some NFPA 58 references are corrected. An option to allow a back check valve where the flow is into the container only or a back check valve in lieu of the ESV is added. The last sentence in subsection (a) before the wording for new paragraph (1) begins is deleted, along with the same sentence at the end of subsection (b) before the deleted wording in subsection (b)(1) begins, and this wording is added with some clarifications as new subsection (i). In subsection (a), new paragraphs (1) through (5) are added; however, for the most part, this wording is not new. It is currently found in subsection (b), but the more logical placement is under subsection (a). The only changes from the current paragraphs (1) through (5) are in paragraph (2), where the wording "and will activate the ESV at the bulkhead and the primary discharge valves at the container or containers" is added for clarification, and in paragraph (5), where the phrase "interconnected and" is added referring to pneumatically-operated internal valves and ESVs being interconnected and incorporated into at least one remote operating system. Also in subsection (a)(1), the 24-inch requirement is changed to 36 inches to comply with NFPA 58. In subsection (b), the existing paragraphs (1) through (5) are deleted. In subsection (d)(4), wording is added to address underground or mounded containers, which are beginning to be used in Texas. In (d)(7)(C), wording changes mean that the top cross member of a vertical bulkhead is not required to be 28 inches or less above ground level, but rather the height of it shall not result in torsional stress on the vertical supports of the bulkhead in the event of a pull-away. In subsection (e), the distance for the remote emergency shutoff device that is currently between 20 and 100 feet from the ESV is changed, effective September 1, 2005, to a minimum of 25 feet to match the requirement in NFPA 58; existing installations may remain at 20 feet.

Some new wording in §9.201 addresses some potentially unsafe situations involving transports. New subsection (a)(1) states that the transfer of LP-gas from one transport to another shall be permitted only through a hose with a nominal inside diameter of 1 1/4 inch or less and protected by an off-truck remote control shutdown as required in 49 CFR. New subsection (a)(2) states that an LP-gas transport shall not be joined to manifold piping or to a stationary container for use as an auxiliary storage container at any stationary installation except with prior approval from the

Safety Division. In subsection (c), an amendment corrects the wording of 49 CFR §177.834(j).

In §9.202, references to the License and Permit Section are added. In subsection (c)(5), new subparagraphs (B) and (C) are added to state that the Section shall not issue an LPG Form 4 if the Section does not have an inspection record of the transport or cylinder delivery unit by a Commission representative within four years of its initial registration on or after January 1, 2006, or the Section has not inspected the transport or cylinder delivery unit at least once within a four-year cycle thereafter. This new wording addresses a situation where the Commission may need to inspect the vehicles of a single company with a large number of vehicles; the wording will ensure that all of a company's vehicles are routinely inspected, without adding a harsher requirement that all vehicles must be present at a particular day and time.

New §9.204 mirrors proposed new §9.113, but is specific to maintenance of vehicles. The wording of the two rules is generally the same and requires that the LP-gas vehicles and vehicle containers, valves, dispensers, accessories, piping, transfer equipment, gas container, gas utilization equipment, and appliances be maintained in safe working order. If any of these items is not in safe working order, the Safety Division may require that the vehicle be immediately removed from LP-gas service until necessary repairs are made.

Amendments in §9.308(a), (b), and (b)(3) clarify that pressure testing and leakage testing must be performed only by persons properly licensed or certified by the Commission; the Commission modified the wording on adoption not to require tagging a system upon completion of leakage testing. Instead licensees are required to retain documentation of leakage testing, stated in a new subsection (d).

Most changes in §9.403 are in the Table, except for new subsection (c), which adds an explanation concerning the errata from NFPA. The changes in the Table are as follows: The current rows for 1.3 and 1.7.40 were proposed to be deleted. Because the Commission does not adopt the repeal of §9.114, the row for 1.3 is retained. The row for 1.7.40 is deleted as unnecessary because it refers to low emission transfer, which is covered in 3.11, which is not adopted. Several changes are proposed in the row for 2.3.3.2(b)(2). In the wording for "2a," the phrase "or a positive shutoff valve in combination with a back flow check valve" is added. Also, wording in "b" is added back to the Table; it was erroneously deleted during the last amendments to the Table. In the wording for "c," the word "Containers" is changed to "Each container" for clarification. Also in "c," the phrase "and retrofitted" is changed to "shall be retrofitted" to make the requirement clear. In "c1," the phrase "installed directly into the container" is added for clarity and to ensure that the valve is installed in the best place for optimum safety. In "c2," the phrase "as close as practical" is deleted and the specific distance of "within four feet" added for clarity; the distance of four feet is reasonable because an ESV for a bulkhead is already required to be installed within four feet of the bulkhead. A new row for 3.2.2.2 is added to state that "Exception No. 1 and Exception No. 3" are not adopted. In the row for 3.2.5, for the firm foundation of concrete, masonry, or metal, the word "and" is added so that it must also be otherwise firmly secured "against displacement." In the row for 3.2.12.1, the words "on or" are added before the February 1, 2001, date in order to encompass the actual date of February 1. In the rows for 3.2.18.1, 3.2.18.2, and 3.2.18.3, the phrase "liquid or vapor service" is changed to "liquid and/or vapor service". In the rows for 3.4.2.1, 3.4.2.7, 3.4.4.1(b), and 3.4.9.2, some references to water capacity are corrected to "LP-gas capacity." A new row is added for 3.10.2.1 which refers to proposed new §9.35, relating to Written Procedures for LP-Gas Leaks. A new row is added to not adopt 3.10.2.2, which refers to the fire safety analysis, which the Commission determines is not needed because Commission rules already require redundant safety features. A new row is added to indicate that 3.11 is not adopted, and current rows for 3.11.3, 3.11.3.1, 3.11.3.3, 3.11.4.3(c), and 3.11.5 are deleted. In the row for 8.2.3(l), the section number is corrected to 8.2.3.1(l).

Finally, the six rules in Subchapter F are repealed. This subchapter adopted by reference NFPA 51 concerning welding activities. Subsequently, the Commission adopted by reference NFPA 58, which encompasses NFPA 51. Therefore, the separate subchapter for NFPA 51 is no longer needed.

The Commission received 43 comments on the proposals. One was from the Texas Propane Gas Association (TPGA), one was from the chairman of the Commission's LP-Gas Advisory Committee on behalf of the committee, and the remainder were from individuals. The comments addressed 16 of the proposed rules, but most were directed to only about nine of the proposals. Many contained the same general comments. TPGA opposed specific proposed amendments; the comments offered suggested changes to the Commission's proposed language. The chairman of the Commission's LP-Gas Advisory Committee filed comments on behalf of the committee, stating that the committee agreed that most of the proposed rules are necessary and/or beneficial with no adverse effect on the LP-gas industry or public. The Committee commented on six particular proposals. In the following paragraphs, the Commission addresses all comments by rule number in numerical order.

One comment from an individual asserted that the amended definition of "licensee" in §9.2(21) that adds master or journeyman plumbers and Class A and B heating/air conditioning licensees will create problems because, in the past, these types of licensees occasionally used unapproved piping materials; the commenter questioned if the Commission could enforce compliance with these additional activities. The Commission disagrees with this comment. Non-compliance with LP-gas safety rules is not limited to master and journeyman plumbers and Class A and B heating/air conditioning licensees. The Commission is confident that compliance can be adequately enforced at existing staffing levels.

The same commenter also stated that the definition of "MPS gas" is not needed because it is included in Texas Natural Resources Code, §113.002(4). The Commission disagrees with this comment. The cited statutory definition is for "liquefied petroleum gas," "LPG," or "LP-gas," which is defined to mean any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylene. "MPS gas (methylacetylene-propadiene, stabilized)" is defined as "a mixture of gases in the liquid phase and as defined in Texas Natural Resources Code, Chapter 113, §113.002(4)," and is essentially moved from §9.502(c)(2), which is being repealed.

Most comments about §9.2 concerned the proposed definitions of "operations supervisor" and "outlet" in paragraphs (30) and (31), respectively. One commenter asserted that the amendments would increase the number of outlets for his company from 28 to 50, and that most of these are unmanned storage tanks. The comment stated that requiring an individual to be assigned

to each location will increase paperwork and costs to the customers. This commenter also disagreed with the definition of "operations supervisor," stating that the Commission should accept that a trained and qualified individual can supervise more than one location. Twenty-eight other individuals made similar comments. Another commenter stated that the definition of "operations supervisor" may be suitable for a small dealer with two or three employees and only one location, but not for a large company. Another commenter stated that this definition "would require remote and presently manned or unmanned storage sites to be attended by a Category E licensee," and would require "a supervisor to ride in the delivery or service truck." Another commenter, who operates 13 storage tank sites, stated that the definition of "outlet" would require employees at every location and would affect the company's centralized distribution system by causing higher costs to customers. Two comments, one from an individual and one from TPGA, stated that the proposal would add hundreds of installations, including unmanned storage sites, and suggested that the inspection procedure be changed so that an inspector would call a licensee about a week prior to an inspection. The LP-Gas Advisory Committee made similar comments regarding the number of outlets and costs to consumers being increased, and stated that a licensee would have to have a different Category E employee for each site, and in some cases, may have more locations than employees; the comment stated that the amendments to §9.17(a)(3) must be adopted with §9.2, with some clarifications (discussed in a later paragraph in this preamble). One individual stated that the rule language should remain as is and a Category E should be able to cover a certain mile radius. Another individual stated that changing the definition of "outlet" to include any place where regulated LP-gas activities are performed would place large responsibilities on licensees operating an outlet, and suggested that the specific LP-gas activities should also be defined.

The Commission agrees with the comments from TPGA and the LP-Gas Advisory Committee that the amendments in §9.2 and §9.17(a)(3) must be adopted together in order for the two rules to be complied with. The Commission disagrees with those comments opposing the proposed definitions for "outlet" and "operations supervisor" on the basis that an employee would have to be stationed at each outlet at all times or that the definitions would be suitable for a dealer with only one outlet. The amendments to the definitions do not require that a person physically be present at every LP-gas outlet, nor do they require a supervisor to ride in every delivery or service truck. The Commission agrees that the amendment to the definition of "outlet" expands its scope, so that more LP-gas locations would fall within it; however, the amended definition does not require that a licensee have either a supervisor or even an employee physically present at the site at all times. The Commission disagrees that the amended definition for "operations supervisor" changes any existing requirement with respect to whether that individual is present at the locations he or she supervises, or that an "operations supervisor" could not supervise more than one location. The Commission disagrees that there is anything in the proposed definition of either term that changes the requirements with respect to supervision of day-to-day LP-gas activities. The amendment to the definition of "operations supervisor" simply adds as a condition the requirement that the individual be authorized to implement operational changes; the amended definition does not require the physical presence of the individual at any outlet or location. The Commission disagrees with comments suggesting that the Commission inspection procedures be changed to require an inspector to call a licensee about a week prior to inspection because it would unduly limit the ability of the inspectors to structure their work for maximum efficiency or to respond to the occasional emergency event. The Commission also disagrees that the definition of "outlet" should include a list of regulated LP-gas activities. Texas Natural Resources Code, §113.081, lists those LP-gas activities for which a license is required, as does 16 Texas Administrative Code §9.6; there is no reason to include yet another list of LP-gas activities in the rules.

The Commission adopts the definitions of "licensee," "MPS gas," "operations supervisor," and "outlet" in §9.2 as proposed.

Regarding the proposed amendments to §9.3, one commenter stated that LPG Form 17 should not be deleted because it was established to enforce Vernon's Civil Statutes, Article 6053.

The Commission responds to these comments by pointing out that in 1997, the 75th Legislature repealed Vernon's Civil Statutes, Article 6053-6066g, and enacted codified versions of these provisions in the Texas Utilities Code (Acts 1997, 75th Leg., ch. 166, §1, eff. Sept. 1, 1997). The portions of Article 6053 that applied to LP-gas are now found in Texas Utilities Code, §§121.251-121.253. Those statutory provisions are the legal basis for the Commission's rule §9.114, which was proposed to be repealed because the Safety Division no longer needs the odorization reports. The Commission did not propose the repeal of the requirement that LP-gas be odorized, which is still applicable pursuant to the Commission's adoption of the National Fire Protection Association's 2001 edition of the *Liquefied Petroleum Gas Code,* formerly titled *Standard for the Storage and Handling of Liquefied Petroleum Gases,* and commonly referred to as "NFPA 58" or "Pamphlet 58." In 16 Texas Administrative Code §9.403(a), the table shows that §9.114 imposes an additional requirement on Texas LP-gas licensees, *i.e.,* filing quarterly odorization reports with the Railroad Commission. Adoption of the amendment to §9.3 that would have deleted LPG Form 17 would not have changed the requirement for odorizing LP-gas. However, because the Commission audit staff does use the LPG Form 17 in its auditing work, the Commission is withdrawing the proposal to remove this form from the list of LP-gas forms in §9.3, and is not adopting the repeal of §9.114, as explained in subsequent paragraphs in this preamble.

Regarding the proposed amendments to §9.10, two commenters suggested that the Commission offer the management-level exam independently as well as in conjunction with classes, which would give people more options to take the exam. Eleven commenters made similar comments and added that the current process under §9.17(g) to allow a work experience substitution for Category E and I licenses should continue, with one of these commenters suggesting a minimum of five to 10 years of experience. Another commenter stated that if an individual holds a certification card, the individual should be able to upgrade to management level by taking the exam only; this commenter also suggested that the exams be given independently as well as with the classes. An individual stated that for "mom and pop" operators, requiring the 80-hour course prior to taking the exam would be a hardship, and another individual questioned why the Commission would want to make the certification process more difficult. One individual commented that it is almost impossible to obtain a Category E or I certification because it takes almost four months to complete and requires attending a class and taking the exam in Austin; the commenter stated

that "it seems in the name of safety, the Railroad Commission (through over-regulating) is trying to strangle the propane industry." Another individual stated that a marketer could ask the Commission for permission to assign somebody temporary, such as a Category E from another outlet or a certified employee, to oversee the outlet until a replacement can attend the management-level course and take the test; this commenter agreed with the Commission's longstanding recommendation that a Category E licensee should have more than one Category E employee within the company. One individual questioned whether §9.10 and §9.17 conflict with regard to the conditional qualification in §9.17(g).

The Commission disagrees with the comment that there should be a prescribed minimum number of years of work experience to be able to substitute work experience under §9.17(g) because it would severely constrain the ability of the Commission to be flexible in certain circumstances. The Commission disagrees also with the comment that an individual should be able to upgrade to management level by taking the exam only; the course is an important opportunity to review or possibly to learn new information that is helpful in conducting LP-gas activities safely. The Commission further disagrees with the comment that requiring the 80-hour course prior to taking the exam would be a hardship for "mom and pop" operators, and the implied suggestion that "mom and pop" operators should be exempt from the course requirement. The safety with which LP-gas activities are conducted does not depend on whether the person conducting them is a "mom and pop" operator or any other type of operator. The training courses are an important component in ensuring that the health, safety, and welfare of the general public are not harmed because of LP-gas activities.

To ensure continuous safe operation, the Commission has consistently recommended that every licensed company employ more than one qualified manager; however, the rules do not require this. The Commission also recognizes that flexibility in administering certain management-level examinations may be achieved without compromising safety. Accordingly, the Commission adopts the amendments to §9.10(a)(2) with clarified wording. The change means that Category E, F, G, I, and J management-level rules examinations may be administered otherwise than in conjunction with the corresponding required management course, but only to a person who has submitted a written request and received approval for a conditional qualification in compliance with §9.17(g). As adopted, §9.10(a)(2) includes the phrase "Except in a case where a conditional qualification has been requested in writing and approved under §9.17(g)" to the beginning of the paragraph. This change will allow the Commission to make exceptions in certain circumstances without compromising LP-gas safety.

Regarding the proposed amendments to §9.13, one commenter questioned how the Commission could perform inspections for general installers and repairmen when it does not have enough inspectors to cover yearly inspections for Category E licensees. The Commission disagrees with this comment. The Safety Division has adopted a risk-based inspection schedule; installations are periodically inspected according to their risk category. Further, the change to §9.13 does not require additional inspections by the Safety Division Staff because the amendment would accept these exempt entities within license Category D. The Commission adopts the amendment to §9.13 without change to the proposal.

Regarding the proposed amendments to §9.17(a)(3), two individuals made comments similar to those for §9.2 and asserted that a change in the definition of "operations supervisor" would require an employee to be stationed at every storage facility, increasing costs to consumers. Two commenters stated that §9.17(a)(3) would be advantageous for a small business with only two outlets, and asked that the definition of "outlet" be clarified to exclude bulk storage sites. Four comments expressed support for this amendment, stating that the proposal would allow the propane industry to operate more efficiently without compromising the health, safety, and welfare of the public. Two other commenters, one individual and TPGA, suggested the rule be changed to clarify that the intent of the Commission is only to designate a certified individual for each outlet, not to require that a certified individual be present at each outlet. Two commenters suggested that Commission inspectors call the licensee to have a representative meet at the storage site. Another individual stated that an outlet, under the current definition, should still be required to have a Category E licensee, but this should not include remote storage sites; the commenter also suggested that the Commission call ahead to schedule inspections. The LP-Gas Advisory Committee commented that the §9.17(a)(3) amendments must be required with the §9.2 amendments, with some clarifications to state that "a designated LP-gas certified employee may be responsible for more than one outlet." Four individuals stated that it is a good idea to allow the appointment of an LP-gas certified employee as the responsible contact person, but disagreed that a remote bulk plant should require this, and added that the Commission inspectors should call a company to set up an inspection time. Another individual stated that a Category E licensee should be able to cover various locations within a certain mile radius and a certified employee could be the responsible person, while another individual made almost the opposite comment, stating that the number of outlets a Category E can oversee would be different for different areas of the state. One commenter stated that the rule should not be adopted because of liability reasons and urged that the current rule be left in place as it requires one person identified by the licensee as the person in charge of LP-gas activities at an outlet, and that person would have taken the most extensive management exam administered by the Commission for that category of license. The commenter stated that the proposal would allow someone who has taken only an employee-level exam to supervise the outlet's activities. The commenter also stated that the proposed rule would allow one person to be in charge of 40 to 50 outlets and there is no way one person can be directly responsible for actively supervising that many outlets.

The Commission agrees that the amendments in §9.2 and §9.17(a)(3) must be adopted together in order for the two rules to be complied with. The Commission agrees that the amendment in §9.17(a)(3) would allow the propane industry to operate more efficiently without compromising the health, safety, and welfare of the public. The Commission also agrees that it would be helpful to clarify that the intent of the Commission is only to designate a certified individual for each outlet, not to require that a certified individual be present at each outlet. The Commission agrees that a Category E licensee should be able to cover various locations within a certain mile radius and a certified employee could be the responsible person; the Commission also agrees that the number of outlets a Category E can oversee could be different based on the type of LP-gas activities performed, the geographic scope of a licensee's operations, and other factors. The Commission agrees that the amendment would allow an individual to be the operations

supervisor at more than one outlet, provided each outlet has a designated LP-gas certified employee who is responsible for the LP-gas activities conducted at or from that outlet. This still does not require that an LP-gas licensee have an employee on site at every outlet; that decision is up to the licensee. The rule does require that for every location at or from which LP-gas activities are conducted, there be a named, LP-gas certified individual who is responsible for those LP-gas activities.

The Commission disagrees with comments that an employee would have to be stationed at each outlet at all times or that these requirements would not be suitable for a remote storage site. The amendment requires that at every location at or from which a licensee performs regulated LP-gas activities, whether that location is staffed or not staffed, there be an LP-gas certified individual identified as the person in charge of the LP-gas activities at that location. The Commission disagrees with comments suggesting that the Commission inspection procedures be changed to require an inspector to call a licensee to schedule an inspection because that would unduly limit the ability of the inspectors to structure their work for maximum efficiency or to respond to the occasional emergency event. The Commission disagrees that the rule should not be adopted because of liability reasons; the Commission does not determine liability, and is charged only, but significantly, with adopting and enforcing rules that protect or tend to protect the health, safety, and welfare of the general public, with respect to LP-gas activities. The Commission neither agrees nor disagrees with the comment that there is "no way the rule would allow one person to be in charge of 40 to 50 outlets and there is no way one person can be directly responsible for actively supervising that many outlets." The rule would permit an operations supervisor to be responsible for more than one location, but there is no limit on how many locations that might be and, as previously noted, the number of locations that one operations supervisor can effectively supervise will vary depending on a number of factors.

The Commission adopts the amendments to §9.17(a)(3), with clarifying changes to the proposed wording. Because the intent of the rule is to enhance safety, the Commission adopts §9.17(a)(3) with an additional change. The additional wording requires that, at each outlet, licensees post a sign displaying the 24-hour emergency response telephone number. This will ensure that, with respect to every location at or from which an LP-gas licensee conducts LP-gas activities, there will be an emergency response telephone number that Commission inspectors, emergency responders, and customers may call when necessary.

To clarify §9.17(g) in conjunction with changes adopted in §9.10(a)(2) discussed previously, the Commission adopts two changes in §9.17(g), indicated by the italics in the following text. The subsection now begins: "Work experience substitution for Category E, F, G, I, and J. The assistant director for the Section may, upon written request, allow a conditional qualification for a Category E, F, G, I, or J company representative or operations supervisor who passes the applicable management-level rules examination provided that the individual attends and successfully completes the next available Category E, F, G, I, or J *management-level* training course, or *a subsequent Category E, F, G, I, or J management-level training course* agreed on by the assistant director and the applicant." The Commission adopts the remainder of subsection (g) as proposed.

Regarding the proposed repeal of §9.33, one commenter stated that if the LP-gas welding advisory committee is going to be repealed, the LP-gas advisory committee (established by §9.32, which was not included in the proposal) should be repealed as well because its membership does not represent the LP-gas industry or comply with §9.32.

As noted in the proposal preamble, the Commission proposed the repeal of §9.33, relating to the welding advisory committee, because the limited purpose for that committee had already been fulfilled and the committee disbanded; therefore, the rule is no longer necessary. Even were the Commission inclined to do so (and it is not), the Commission could not adopt the repeal of a rule that was not proposed to be repealed. The Commission adopts the repeal of §9.33 as proposed.

Regarding the proposed amendments to §9.35, three commenters commented that each company in the LP-gas business should have a written policy for handling leaks on customers' premises, as well as a procedure for handling leaks at their own storage facilities, and every employee of the company should know the procedure. The commenter asked for more detail on what would be required for such a procedure. Twenty other individuals and TPGA stated that if each company writes its own procedures, there would be many different versions; these commenters requested that the Commission give specific wording for the procedures to provide consistency statewide. Another commenter stated that a written procedure is a good idea, but not necessary; the proposal would make each company legally responsible to do something about a reported gas leak, but if the propane company has never sold gas to that customer before, the company would have no background information on that customer's system and the best response would be to tell the customer to call the fire department. The LP-Gas Advisory Committee also requested that the rule include a minimum standard for the written procedures; otherwise, it could be possible that a licensee might give instructions that could make a reported LP-gas leak less safe, such as telling a customer smelling gas not to worry because the tank is probably "just getting low." The Committee also noted that licensees are required by federal law to have emergency response plans for their locations. One individual asked whether the written procedures would apply both to leaks at storage facilities and leaks at customers' locations, and stated that the reference to NFPA 58, 3.10.2.1, refers to major storage installations of over 4,000 gallons, which would seem not to include residential installations.

The Commission adopts this new rule to address documented situations, such as the one in which a safety problem (a leak at a licensee's storage location) was occurring, and when the licensee was notified by the local fire department requesting assistance, the licensee said no employees would be available until after the weekend. By adopting this rule, the Commission is making all licensees aware of and responsible for developing and maintaining their own written safety procedures so that a licensee's employees will be informed of what to do in an emergency. The Commission intentionally declines to list or describe the minimum requirements of such a plan; the Commission intentionally leaves the specific elements of the written plan to the individual licensees, who best know their own customers and geographic areas. Licensees may consult with industry associations, local emergency responders, liability underwriters, or may refer to technical publications. The point of this rule is precisely not to have a "one size fits all" mandate for emergency response, but rather to ensure that every licensee has a written plan that its

employees understand and can implement immediately if necessary. The Commission adopts §9.35 as proposed.

Regarding the proposed amendments to §9.101, one commenter suggested that the word "incomplete" be added to describe a Form 501 that has to be resubmitted, so that the rule would read, "A nonrefundable $20 fee shall be required for an incomplete Form 501." The Commission disagrees with this comment and does not adopt the suggested change. The Commission finds that there could be several reasons for a Form 501 to be resubmitted, not just the fact that it might be incomplete. The Commission adopts §9.101 as proposed.

With respect to the proposed repeal of §9.114, one commenter stated that this rule should be retained because of Vernon's Civil Statutes, Article 6053. For the same reasons set forth previously with respect to the comments offered regarding the proposed amendments to §9.3, the Commission disagrees with this comment. However, the Commission withdraws its proposal to repeal §9.114 because the Commission's audit staff uses LPG Form 17 in its audit work.

Regarding the proposed amendments to §9.132, four individuals objected to the proposal because deliveries are frequently made to licensees at times when they are closed, making it difficult to verify that they have a valid license, and suggested that the Commission would have to have someone available at all times to answer phone calls from the LP-gas industry to check on valid licenses. Another commenter stated that her company should not have to "baby-sit" another company, while eight other commenters said it is the responsibility of the individual licensee to ensure that the license is current and it should not be one company's duty to make other companies follow the rules. One commenter asked if the amendment would require each licensee to have a person available to produce the current license when the transport company makes a delivery, while others said licensees would be limited as to the hours they could deliver to resellers. Three commenters stated that the rule would make LP-gas marketers responsible for enforcement of Commission rules on other marketers, that the Commission should enforce its current rules regarding unlicensed companies, and that marketers have no way to know if a license is in good standing. Another commenter said his company checks yearly to make sure its dealers are current, but suggested the Commission should alert the marketers in a general area when a dealer has lost his license, while another similar comment stated that the Commission should require each reseller licensee to list the gas suppliers used and then the Commission could notify the suppliers when there is a lapse in the license. One commenter said his company sells only to one licensed individual known to and trusted by the commenter, but that checking to see if a license is in compliance would be onerous. Five commenters said the marketer cannot be sure if a license is valid at the moment of delivery, the drivers would have to contact the Commission at every stop, the marketer has no power over an unlicensed individual other than not delivering the gas, the Commission should ensure that licenses are current, and the proposed amendment is not backed by statute. Two commenters, an individual and TPGA, asserted that the sale of LP-gas to an individual for resale does not pose a safety problem, but does when the unlicensed entity sells the product to others; the commenters cited ultimate consumers as an example of this situation, and also made comments similar to those summarized previously regarding the necessity for a Commission 24-hour phone number for licenses to be checked. The commenters also alleged that the proposal was made because the Commission is having problems stopping the sale of LP-gas by unlicensed entities and suggested that if the Commission stiffened penalties for these violations, they would stop. Finally, the commenters cited a situation such as when church members install an LP-gas container for a church; because they are not engaged in the business of installing containers, a license is not required. The commenters stated this rule conflicts with the Natural Resources Code. An individual commented that it is impossible for a delivery driver to check a current license because the driver's contact is usually with a desk clerk who knows nothing about the license; the commenter also stated that when he has called the Commission's Licensing Section in the past, he has been required to leave voice mail and did not receive a response for several days. Another individual also cited instances of having to leave voice mail when calling the Licensing Section and said that a driver having to wait for a return call would reduce the number of deliveries he can make, and suggested if the rule is adopted, the Commission should have a 24-hour number available. The LP-Gas Advisory Committee commented that at the time of an initial sale to an individual for resale, a requirement to confirm that the individual does have a current license would be reasonable; however, a license can be revoked for a variety of reasons and displaying a license would not necessarily be satisfactory proof. The Committee also stated that having to verify the license status for future deliveries would be difficult because deliveries are made at times when the Commission is closed. If the rule required the Commission to notify licensees when a license is revoked, then the burden of enforcement would remain with the Commission, not the licensee. An individual stated that the Commission should issue a "delivery certificate" per site to all licensed dealers and the driver should check the certificate before he makes a delivery. Another individual agreed with the proposal, but said the Commission would need to publish a list of licensed individuals for dealers to check, while another individual stated that a 24-hour phone number would not be cost feasible for the Commission.

The Commission agrees with comments that there are times when the Licensing Section is not open and it is not possible to immediately obtain the current status of an LP-gas license; however, the Commission has remedied some of the delay in responding to messages that are left. The Commission also agrees that LP-gas deliveries are made at times when the customer is closed, making it impossible for a delivery person to ask the customer for its license; and that merely displaying an LP-gas license does not ensure that it is currently in good standing. The Commission disagrees that it should have someone available at all times to check license validity, and agrees that having a 24-hour phone number answered by a Commission employee would not be cost-effective for the agency. The Commission disagrees with the suggestions that the Commission should notify suppliers in a general area that an LP-gas license has been revoked or is no longer in good standing or that the Commission should issue a "delivery certificate" per site to all licensed dealers so that delivery drivers can check the certificate before making a delivery; again, such a procedure would not be cost-effective for the Commission. Even if the Commission were to publish a list of licensed individuals for dealers to check, there would always be some gap between the time a license event occurs *(e.g.,* revocation) and the time the list is updated.

The Commission agrees that there is no procedure for checking the standing of a customer's license to engage in the sale of LP-gas that will be one hundred percent foolproof in determining the validity of that license. The Commission agrees that some methods for checking license status might be onerous, but the

rule does not require that licensees use a particular method for determining whether a purchaser for resale is licensed. However, that does not mean that a licensee cannot make good-faith efforts and take reasonable, common-sense steps to ensure that a person who buys LP-gas for resale is licensed to do so. For example, at the time such an account is established, the licensee can ask to see a current license and can confirm with the Commission the standing of that license.

The Commission disagrees with comments that the Commission is requiring LP-gas licensees to enforce the Commission rules with respect to other entities. The Commission agrees that a marketer has no power over an unlicensed individual other than not delivering the gas; that is the exact reason the Commission adopts the amendments to §9.132. The Commission disagrees with the comment that the sale of LP-gas to an individual for resale does not pose a safety problem. If a seller knows that a buyer intends to resell the LP-gas and also knows or has a good reason to suspect that the buyer is not licensed to resell the LP-gas, then the seller has not acted in good faith to protect the health, safety, and welfare of the general public because the seller has put LP-gas in the hands of an unlicensed person. The quantity of LP-gas sold for resale could pose a safety problem in the hands of an unlicensed person even if it is never resold.

The Commission agrees that one reason for the proposed amendment is the difficulty of stopping the sale of LP-gas by unlicensed entities. The Commission also agrees that imposing stiffer penalties for such violations may indeed reduce the activity; in addition, the Commission expects that imposing on licensees a reasonable requirement not to sell LP-gas for resale to unlicensed individuals may be successful in reducing the supply of LP-gas for unlicensed individuals to resell.

The Commission disagrees that the amendment is not backed by statute: Texas Natural Resources Code, §113.051, requires the Commission to promulgate and adopt rules or standards or both relating to any and all aspects or phases of the LPG industry that will protect or tend to protect the health, welfare, and safety of the general public. Texas Natural Resources Code, §113.081(a)(4), provides that unless a person has obtained a license from the Commission authorizing the activity, no person may engage in the sale, transportation, dispensation, or storage of liquefied petroleum gas in this state, except that no license is required to sell LPG where the vendor never obtains possessory rights to the product sold or where the product is transported or stored by the ultimate consumer for personal consumption only.

Finally, the Commission notes that the wording in §9.132 prohibiting sale of LP-gas containers to unlicensed individuals for resale has been in place for many years. The amendment to this rule merely adds to this existing prohibition the sale for resale of LP-gas. The Commission finds this additional prohibition to be reasonable and fully supported by statutory authority, as cited previously. The Commission adopts §9.132 as proposed.

Regarding the proposed amendments to §9.134, one commenter stated that if piping is in violation, he would not connect a tank to it, even though the rule appears to state that this is allowed as long as a Form 22 is sent to the Commission. Another commenter said the rule contradicts the Form 22, which is to report a violation; the commenter asked why would he connect to an installation in violation of the rule and then report himself.

The Commission disagrees that the amendments to §9.134 permit connection to piping that is in violation of the rule; the wording of the rule specifically states that a licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the piping has been installed according to the LP-Gas Safety Rules, properly tagged the installation, and filed a properly-completed LPG Form 22. The Commission disagrees that the violation being reported on LPG Form 22 is that of the connecting licensee. The LPG Form 22 reports the initial violation, which is the installation of piping by an unlicensed person, an act that is already prohibited by the current wording of the rule. The amendment is intended to prevent collusion between a licensee and a person along the lines of "you (unlicensed individual) do the work and I (LP-gas licensee) will tag it," and to prevent LP-gas activities by persons who should be licensed but are not. The Commission assumes that no LP-gas licensee would knowingly connect a tank to any system that the licensee has not tested to ensure that it is safe. The Commission adopts §9.134 as proposed.

Concerning §9.140, four commenters stated that the proposed amendment to subsection (h)(3)(E) to increase the distance between a portable cylinder exchange rack and a wheelstop from 48 inches to 60 inches is not justified; 48 inches is ample to protect these racks from parked vehicles; and the new distance would require retail outlets to give up additional parking area. Another commenter stated that the reference to NFPA 58, 5.4.2.2, found in §9.140(h) should be deleted because the Commission has not adopted 5.4.2.2; in addition, this commenter stated that the rule should be reworded so that there is an option to comply with subsection (h)(3)(C) or (E) because the commenter does not know of any six-inch concrete wheelstops available on the market.

The Commission agrees with these comments and adopts §9.140 with several clarifying changes. In subsection (h)(3)(C) and (E), the Commission both keeps the existing wording and adopts the new wording, thus enabling licensees to have the option of using a four-inch wheelstop with a 60-inch distance or a six-inch wheelstop with the 48-inch distance. This change will ensure safety while accommodating locations that may have limited parking space. With regard to the comment concerning the reference to NFPA 58, 5.4.2.2, the Commission agrees that this section was not adopted, so the wording at the beginning of subsection (h) has been modified slightly for clarification.

Regarding the proposed amendments to §9.143(e), one commenter stated that the rule should be clarified that all installations built before September 1, 2005, can retain the 20 to 100 feet distance, and all installations after September 1, 2005, must have the 25 to 100 foot distance.

The Commission agrees with this comment; this was the Commission's intention with the proposed wording. The Commission adopts the rule with one clarifying change to indicate that all "new" installations, *i.e.,* those installed on or after September 1, 2005, must comply with the 25 to 100 foot distance.

With respect to the proposed amendments to §9.202, one commenter stated that Commission inspectors frequently show up unannounced and demand to inspect all vehicles. Many times the vehicles have to be called in from deliveries to be inspected. The commenter requested a one-day advance notice of an inspection so that all trucks could be available, and pointed out that the United States Department of Transportation already requires annual inspections on delivery vehicles, and there is no exception for situations in which a truck is available but the inspector is not. In that case, according to the commenter, he would not be able to use the truck because the Commission could not

meet its own self-imposed deadline. The comment concluded that the rule may require the Commission to hire more employees to complete the inspections. Ten individuals and TPGA also requested advance notice of a Commission inspection and questioned whether the Commission could meet its deadline of inspecting all trucks every four years. Another commenter cited DOT, hydro, and other inspections and tests done on bobtails, and suggested that these could substitute for Commission inspections. Four comments also cited inspections performed by DOT; stated that licensees pay a fee to the Commission for each propane delivery vehicle so no additional income would be generated for the Commission from the duplicate inspections; and more Commission inspectors would have to be hired. Two individuals did not object to the Commission inspections, but questioned if the current inspection staff could meet the rule requirements. Four individuals stated that if a licensee made a truck available for inspection, the Commission must either inspect it or register it, and one of these commenters added that the Commission may need more inspectors. Another commenter also cited the multiple other inspections and also suggested that the Commission call ahead to schedule inspections and verify which trucks need to be inspected within a four-year time frame. The LP-Gas Advisory Committee commented that the inspection of each registered transport or cylinder delivery unit by the Commission periodically is an important requirement to ensure compliance with the safety rules; however, the Committee suggested that the rule also include language that if the Commission cannot inspect a vehicle within the four-year period, the vehicle may continue to be registered and operated until the Commission inspects it. An individual stated that his company's trucks are inspected by the Commission about once a year, but noted this may not occur in other parts of the state; the commenter said the Commission should notify licensees ahead of time and suggested that inspections be performed during the off-season (May through August). Another individual understood that it was the Commission's responsibility to inspect trucks whenever necessary, so the inspector should decide when to inspect and notify the licensee in advance to have the trucks available. Two individuals stated that the Commission should inspect every truck once every year. Another individual stated the proposal does not indicate how the inspections will be scheduled or conducted. Another individual asked if the DOT inspections already required once a year would make the Commission inspection redundant, and asserted that the Commission inspectors have many stationary installations to inspect that would take time away from truck inspections.

The Commission agrees that the inspection of each registered transport or cylinder delivery unit by the Commission periodically is an important requirement to ensure compliance with the safety rules. The Commission disagrees with all comments suggesting that this rule include a requirement of advance notice or scheduling of vehicle inspections. The Commission is not opposed to giving advance notice or scheduling vehicle inspections, but the Safety Division already has a schedule for its staff work. This allows an individual inspector to give advance notice of or to schedule vehicle inspections if that inspector wishes to do so. The Commission disagrees that if a licensee makes a vehicle available for inspection, the Commission must either inspect it or register it; this would unduly hamper the inspectors' ability to prioritize their work. The Commission also disagrees that every vehicle should be inspected every year.

The Commission also disagrees with comments that the Commission should hire more employees to meet its deadline of inspecting all vehicles every four years; the Commission is confident that it can meet these goals with current staffing. The Commission disagrees that inspections and tests done by or for other agencies can substitute for the Commission inspection; other entities are not inspecting for compliance with Railroad Commission requirements.

Finally, the Commission disagrees that if it fails to inspect every vehicle by the fourth year, the licensee should be allowed to continue to operate the vehicle. It is the obligation of licensees to ensure their own compliance with Commission rules; if a vehicle has not been inspected as the fourth anniversary of the initial registration nears, the licensee could contact the Commission to ensure that the licensee's vehicles are on the master list for inspection, or could offer to make its vehicles available on a date certain; the inspector would have the discretion to accept such an offer. The Commission adopts the amendments to §9.202 without changes to the proposal.

Regarding the proposed amendments to §9.211, one commenter stated that requiring the name of the licensee on the rear side of the truck should be deleted because it serves no purpose and confuses fire personnel and first responders. The commenter stated the name of the licensee is already on both sides of the vessel. The Commission disagrees with this comment and declines to adopt the suggestion made by the commenter. This requirement has been in place for many years, and the Commission is not aware of widespread confusion. Further, the only proposed change in §9.211 was to change the reference to "the Commission" to the "Safety Division." The Commission adopts this rule without change from the proposal.

Regarding the proposed amendments to §9.308, one commenter did not see the safety or economic reason for the rule because many customers own their own tanks and try to save money by doing their own piping and repairs on their propane systems. The rule does not require them to place a tag with their name on it after they have gone into their home and added or replaced piping. The commenter stated that the last time he serviced the system and placed his tag on it, everything could have been in order, but he would be blamed for changes made by someone else. The commenter also stated that many customers run out of gas on a repeated basis and asked if he would be required to tag all these systems. He also requested that the Commission spell out exactly what piping and leakage tests should be done, at what pressure, and how long that pressure should be held. Six commenters stated that there are hundreds of customer-owned tanks, and those customers can buy gas from anyone; some customers may call a dealer who would fill a tank without doing the proper testing even though there is another dealer's tag on the tank. Six commenters made the same statements and added that their company keeps records of all testing performed, which the Commission could request in the event of an incident. Another commenter stated that the Commission's rule should be eliminated and NFPA 54, Part 3, used without change. Yet another commenter stated that his company exceeds the Commission's rules and if other companies did the same, the rule would not be necessary. Another individual stated that NFPA 54 requires a leak test upon an interruption of service and the Commission should require written records of leak tests because the tagging of a system after a leak test does not enhance safety. Thirteen individuals and TPGA stated that the amendment would expose a licensee to litigation in an accident investigation where the licensee may

not have been the last company to fill or service the container, and that it is the testing, not the tag itself, that makes the container safe. Another individual stated that the rule does not address the real concern of performing a leak or pressure test, which would be difficult for the Commission to enforce because it does not require written proof of such a test; this commenter also said that most insurance companies require marketers to keep system test records, which the Commission could inspect. The LP-Gas Advisory Committee commented that the rule has included pressure testing, but never leakage testing, as required for an out-of-gas or GAS check situation. Requiring a tag after a leak check could be disastrous for a licensee because the tags do not enhance safety; the tags may remain in place after other licensees have serviced the installation. The comment stated that the Commission should not include leak testing and should continue its current interpretation of the rule. An individual stated that the rule should remain as is and that the Commission should enforce the requirement to perform a leak check if service has been interrupted. Another individual viewed the amendments as clarification of previously implied rules regarding "testing," but asked what wording the tag itself should include to indicate the type of activities performed. Another individual stated that some dealers do not tag an installation as is currently required and suggested that the Commission adopt the State of Oklahoma's leak test form.

The Commission agrees that many LP-gas customers own their own tanks and try to save money by doing their own piping and repairs on their propane systems, and that the rule does not require them to place a tag with their name on it after they have gone into their home and added or replaced piping. The Commission points out, however, that the statute does not give the Commission authority over customers. The Commission agrees that, as the rule was originally proposed, for every customer that runs out of gas on a repeated basis, the licensee would be required to tag all these systems, if the licensee performed a leakage test on the customer's system every time the customer was out of gas. The Commission agrees that there are hundreds of customer-owned tanks; that those customers can buy gas from anyone; and that some customers may call a dealer who would fill a tank without doing the proper testing even though there is another dealer's tag on the tank. The Commission agrees that keeping records of all testing performed, which the Commission could request in the event of an incident, is a good idea. The Commission agrees that if all companies exceeded the Commission's rule, the rule would not be necessary; the Commission's rules are the minimum safety standards. The Commission agrees that tagging of a system after performing a leak test does not enhance safety; the Commission also agrees that keeping written records of leak tests is a better practice. The Commission agrees that this rule does not address the real concern of performing a leak or pressure test, because this rule pertains to tagging, not testing. The Commission agrees that this rule should not include tagging after performing a leakage test provided written documentation is retained and has amended the rule language to include a requirement for retaining documentation of leakage tests rather than tagging of the system. The Commission agrees that a tag should include the type of activities performed on a system; those requirements are already included in the rule in subsection (b). The Commission agrees that there are likely some dealers who do not tag an installation as is currently required.

The Commission neither agrees nor disagrees that a licensee would be blamed for changes made by someone else after he place his tag on a system; "blame" is a liability issue that is not within the scope of the Commission's authority. The Commission neither agrees nor disagrees that the amendment would expose a licensee to litigation in an accident investigation where the licensee may not have been the last company to fill or service the container, but agrees that it is the testing, not the tag itself, that makes the container safe.

The Commission disagrees that this rule should spell out exactly what piping and leakage tests should be done, at what pressure, and how long that pressure should be held, because this rule concerns the placement of a tag, not testing requirements that are already specified in NFPA 54. The Commission disagrees that the rule should be eliminated and NFPA 54, Part 3, used without change. The Commission disagrees with the suggestion to adopt the State of Oklahoma's leak test form, because this rule pertains to tagging, not testing.

The Commission points out that subsection (a) of this rule currently requires that certain LP-gas activities must be handled by licensed or certified persons; among these activities is testing. The proposed amendment would have specified that "testing" includes both pressure testing and leakage testing. This subsection is adopted as proposed.

Subsection (b) of this rule lists the activities that require the placement of a tag, but does not prescribe the kind of test that should be performed on a system. The rule currently requires that a tag should be placed on a system after completion of "testing." As proposed, the amendments would have clarified that both pressure tests and leakage tests should be followed by the placement of a tag. The Commission agrees that tagging in and of itself does not enhance or ensure safety, and that it is preferable for licensees to retain a record of pressure testing and leakage testing on LP-gas systems because the Commission could review those records if necessary. Pressure testing of a newly installed system or a modified system should be followed by placement of a tag; however, because the Commission agrees that performing a leakage test should not require the placement of a tag on a system, the wording has been clarified. In addition, the Commission agrees that licensees should retain documentation of all leakage and pressure testing, and subsection (b) has been modified to include this requirement in a new subsection (d).

One commenter also made some general comments that did not concern any particular rules. This comment stated that most of the rule changes place more responsibility on the licensees and less on the Commission; that the Texas Natural Resources Code, Chapter 113, requires the Commission to have sufficient employees to enforce that chapter; that the LP-gas industry fees exceed the LP-gas activity expenditures; and that all LP-gas funds collected need to be spent on the enforcement of LP-gas activities for safety reasons.

The Commission agrees that the rule changes place more responsibility on licensees than on the Railroad Commission; this is intentional. Every regulatory scheme that succeeds does so because most of the persons performing the regulated activity voluntarily comply with the regulations. The State of Texas is fortunate to have so many LP-gas licensees who take their safety responsibilities seriously and who are careful stewards of the trust placed in them by their customers.

The Commission also agrees that Texas Natural Resources Code, §113.014, directs that "sufficient employees shall be

provided for the enforcement of this chapter." The Commission also agrees that it is likely that the LP-gas industry fees exceed the LP-gas activity expenditures, but points out that the Commission has no authority to expend more for LP-gas regulatory enforcement than the Legislature appropriates for each biennium. The Commission neither agrees nor disagrees with the comment that all LP-gas funds collected need to be spent on the enforcement of LP-gas activities for safety reasons, because it is the Legislature, through its appropriations process, that decides how much money the Commission may expend on LP-gas safety regulation.

The Commission received no comments regarding any of the other proposed amendments, new rules, or repeals.

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.1 - 9.3, 9.6 - 9.13, 9.16 - 9.18, 9.21, 9.22, 9.26 - 9.28, 9.35 - 9.38, 9.41, 9.51, 9.52 9.54

The Commission adopts the amendments and new rule pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

§9.3. LP-Gas Report Forms.

Under the provision of the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the following forms.

(1) LPG Form 1. Application for License.

(2) LPG Form lA. Branch Outlet List.

(3) LPG Form 3. Liquefied Petroleum Gas License.

(4) LPG Form 4. Liquefied Petroleum Gas Vehicle Identification.

(5) LPG Form 5. Manufacturer's Data Report.

(6) LPG Form 7. Liquefied Petroleum Gas Truck Registration.

(7) LPG Form 8. Manufacturer's Report of Pressure Vessel Repair, Modification, or Testing.

(8) LPG Form 8A. Report of DOT Cylinder Repair.

(9) LPG Form 16. Application for Examination.

(10) LPG Form 16A. Certified Employee Transfer Certification.

(11) LPG Form 16B. Application for Examination Exemption by a Master Journeyman Plumber or a Class A or B Air Conditioning and Refrigeration Contractor.

(12) LPG Form 16R. Reciprocity Examination Exemption.

(13) LPG Form 17. Report of Odorization of Liquefied Petroleum Gases.

(14) LPG Form 18. Statement of Lost or Destroyed License.

(15) LPG Form 18B. Statement of Lost or Destroyed LPG Form 4.

(16) LPG Form 19. Inventory of LP-Gas Storage Facility.

(17) LPG Form 20. Report of LP-Gas Incident/Accident.

(18) LPG Form 21. Notice of Intent to Appear.

(19) LPG Form 22. Report of LP-Gas Safety Rule Violations.

(20) LPG Form 23. Statement in Lieu of Container Testing.

(21) LPG Form 25. Application and Notice of Exception to the LP-Gas Safety Rules.

(22) LPG Form 26. Franchise Tax Certification.

(23) LPG Form 28. Notice of Election to Self-Insure Per Rule 9.26.

(24) LPG Form 28A. Bank Declarations Regarding Irrevocable Letter of Credit.

(25) LPG Form 500. Application for Installation.

(26) LPG Form 500A. Notice of Proposed LP-Gas Installation.

(27) LPG Form 501. Completion Report for Commercial Installations of Less than 10,000 Gallons Aggregate Water Capacity.

(28) LPG Form 502. Request for Commission Identification Nameplate.

(29) LPG Form 503. Request for Inspection of an LP-Gas System on School Bus, Public Transportation, Mass Transit, or Special Transit Vehicles.

(30) LPG Form 505. Testing Procedures Certification for Category B and O Licenses.

(31) LPG Form 506. Polyethylene Pipe/Tubing Heat-Fusion Certification.

(32) LPG Form 995. Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance.

(33) LPG Form 996A. Certificate of Insurance, Workers' Compensation and Employer's Liability or Alternative Accident/Health Insurance.

(34) LPG Form 996B. Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Insurance or Alternative Accident/Health Insurance.

(35) LPG Form 997A. Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability.

(36) LPG Form 997B. Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance.

(37) LPG 998A. Certificate of Insurance, General Liability.

(38) LPG 998B. Statement in Lieu of General Liability Insurance and/or Completed Operations or Products Liability Insurance.

(39) LPG Form 999. Notice of Insurance Cancellation.

§9.7. Application for License and License Renewal Requirements.

(a) No person shall perform work or be employed in any capacity requiring contact with LP-gas until that individual has taken and passed any applicable rules examination specified in §9.10 of this title (relating to Rules Examination) and in §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors, and, except for a trainee described in §9.12 of this title (relating to Trainees), has successfully completed the training requirements beginning in §9.51 of this title (relating to General Requirements for Training and Continuing Education). Licensees, company representatives, and operations supervisors at each outlet shall have copies of all current licenses and examination identification cards for employees at that location available for inspection during regular business hours.

(b) Licensees shall maintain a current version of the LP-Gas Safety Rules and shall provide at least one copy to each company representative and operations supervisor. The copies shall be available to employees during business hours.

(c) Licenses issued under this chapter expire one year after issuance at midnight on the last day of the month prior to the month in which they are issued.

(d) An applicant for a new license shall file with the License and Permit Section of the Gas Services Division (the Section):

(1) a properly completed LPG Form 1 listing all names under which LP-gas related activities requiring licensing are to be conducted and, for licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), including a 24-hour emergency response telephone number. Any company performing LP-gas activities under an assumed name ("DBA" or "doing business as" name) shall file copies of the assumed name certificates which are required to be filed with the respective county clerk's office and/or the Secretary of State's office with the Section; and

(2) LPG Form 16 or 16B and any of the following applicable forms:

(A) LPG Form 1A if the applicant will establish any outlets;

(B) LPG Form 7 and any information requested in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) if the applicant intends to register any LP-gas transports or container delivery units;

(C) LPG Form 19 if the applicant will be transferring the operation of an existing bulk plant, service station, cylinder filling, or portable cylinder exchange rack installation from another owner or name;

(D) LPG Form 26 if the applicant for license is a corporation or limited liability company; and the applicant shall also comply with §9.21 of this title (relating to Franchise Tax Certification and Assumed Name Certificates);

(E) LPG Form 996A or 996B if the applicant is required to carry workers' compensation; and the applicant shall also comply with §9.26 of this title (relating to Insurance Requirements);

(F) LPG Form 997A or 997B if the applicant will operate a transport or container delivery unit; and the applicant shall also comply with §9.26; and/or

(G) LPG Form 998A or 998B if the applicant is required to carry general liability; and the applicant shall also comply with §9.26;

(3) pay the following fees:

(A) the applicable license fee specified in §9.6 of this title (relating to Licenses and Fees);

(B) transport registration fees specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units), if the applicant for license intends to operate a transport or container delivery unit; and

(C) the nonrefundable management-level rules examination fee specified in §9.10 of this title (relating to Rules Examination); and

(D) the nonrefundable fee for any required training course as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(e) An applicant for license shall not engage in LP-gas activities governed by the Texas Natural Resources Code, Chapter 113, and the LP-Gas Safety Rules, until it has employed a company representative and/or operations supervisor who has passed the management-level rules examination specified in §9.10 of this title (relating to Rules Examination) with a score of at least 75% and who has completed any required training in §9.51 and §9.52 of this title (relating to General Requirements for Training and Continuing Education; and Training and Continuing Education Courses), or who has obtained a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption). Company representatives and operations supervisors shall also comply with §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors).

(f) For license renewals, the Section shall notify the licensee in writing at the address on file with the Section of the impending license expiration at least 30 calendar days before the date a person's license is scheduled to expire. The renewal notice shall include copies of LPG Forms 1, 1A, 7, and 26, whichever are applicable, showing the information currently on file. Renewals shall be submitted to the Section with any necessary changes clearly marked on the forms. Licensees engaging in LP-gas product activities as defined in Texas Natural Resources Code, §113.081(a)(4), shall include on LPG Form 1 a 24-hour emergency response telephone number, if not previously submitted, along with the license renewal fee specified in §9.6 of this title (relating to Licenses and Fees) and any applicable transport registration fee specified in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) on or before the last day of the month in which the license expires in order for the licensee to continue LP-gas activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any LP-gas activities authorized by the license. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas activities.

(1) If a person's license has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee required by §9.6 of this title (relating to Licenses and Fees). Upon receipt of the renewal fee, the Section shall verify that the person's license has not been suspended, revoked, or expired for more than one year. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas activities.

(2) If a person's license has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee required by §9.6 of this title. Upon receipt of the renewal fee, the Section shall verify that the person's license has not been suspended, revoked, or expired for more

than one year. After verification, if the licensee has met all other requirements for licensing, the Section shall renew the license, and the person may resume LP-gas related activities.

(3) If a person's license has been expired for one year or more, that person shall not renew, but shall comply with the requirements for issuance of an original license.

(4) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person shall pay to the Section a fee that is equal to two times the renewal fee required by §9.6 of this title.

(A) As a prerequisite to licensing pursuant to this provision, the person shall submit, in addition to an application for licensing, proof of having been in practice and licensed in good standing in another state continuously for the two years immediately preceding the filing of the application;

(B) A person licensed under this provision shall be required to comply with all requirements of licensing other than the examination requirement, including but not limited to the insurance requirements as specified in §9.26 of this title (relating to Insurance Requirements) and the continuing education and training requirements as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(g) Applicants for license or license renewal in the following categories shall comply with these additional requirements:

(1) An applicant for a Category A license or renewal shall file with the Section for each of its outlets legible copies of:

(A) its current Department of Transportation (DOT) authorization. A licensee shall not continue to operate after the expiration date of the DOT authorization; and/or

(B) its current American Society of Mechanical Engineers (ASME) Code, Section VIII certificate of authorization.

(2) An applicant for a Category B or O license or renewal shall file with the Section a properly completed LPG Form 505 certifying that the applicant will follow the testing procedures indicated. The company representative designated on the licensee's LPG Form 1 shall sign the LPG Form 505.

(3) An applicant for Category A, B, or O license or renewal who tests tanks, subframes LP-gas cargo tanks, or performs other activities requiring DOT registration shall file with the Section a copy of any applicable current DOT registrations. Such registration shall comply with Title 49, Code of Federal Regulations, Part 107 (Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

§9.10. Rules Examination.

(a) An individual who files LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination at the Commission's AFRED Training Center, 6506 Bolm Road, Austin, Texas, between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Tuesdays and Thursdays are the preferred days for examinations at the AFRED Training Center.

(1) Dates and locations of available Commission LP-gas examinations may be obtained in the Austin offices of AFRED and on the Commission's web site at www.rrc.state.tx.us, and shall be updated at least monthly. Examinations shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFRED shall schedule its examinations and locations at its discretion.

(2) Except in a case where a conditional qualification has been requested in writing and approved under §9.17(g) of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors), the Category E, F, G, I, and J management-level rules examination shall be administered only in conjunction with the Category E, F, G, I, and J management-level courses of instruction. Management-level rules examinations other than Category E, F, G, I, and J may be administered on any scheduled examination day.

(3) The Commission may not issue a certification card to an applicant for a management-level certificate that requires completion of a course of instruction until the applicant completes both the required course of instruction and passes the required management-level rules examination.

(4) An applicant for a management-level certificate shall pass the management-level rules examination within two years after completing a required course of instruction. An applicant who fails to pass such an examination within two years of completing such a course shall reapply as a new applicant.

(5) Exam fees.

(A) The nonrefundable management-level rules examination fee (for company representatives and operations supervisors) is $50.

(B) The nonrefundable employee-level rules examination fee (for employees other than company representatives or operations supervisors) is $20.

(C) The nonrefundable examination fee shall be paid each time an individual wishes to take the examination.

(D) Individuals who register and pay for a Category E, F, G, I, or J training course as specified in §9.51(f)(2)(A) of this title (relating to General Requirements for Training and Continuing Education) shall pay the charge specified for the applicable examination.

(b) Table 1 of this subsection specifies the examinations offered by the Commission.
Figure: 16 TAC §9.10(b)

(c) Within 15 calendar days of the date an individual takes an examination, AFRED shall notify the individual of the results of the examination.

(1) If the examination is graded or reviewed by a testing service, AFRED shall notify the individual of the examination results within 14 days of the date AFRED receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFRED shall notify the individual of the reason for the delay before the 90th day. AFRED may require a testing service to notify an individual of the individual's examination results.

(2) Successful completion of any required examination shall be credited to and accrue to the individual.

(3) An individual who has been issued a certification card shall make the card readily available and shall present the card to any Commission employee or agent who requests proof of certification.

(d) Failure of any examination shall immediately disqualify the individual from performing any LP-gas related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed. If requested by

an individual who failed the examination, AFRED shall furnish the individual with an analysis of the individual's performance on the examination.

(1) Any individual who fails an examination administered by the Commission only at the Austin location may retake the same examination only one additional time during a business day.

(2) Any subsequent examination shall be taken on another business day, unless approved by the assistant director for the AFRED Research and Technical Services Section or the assistant director's designee.

§9.17. Designation and Responsibilities of Company Representatives and Operations Supervisors.

(a) Each licensee shall have at least one company representative for the license and, in the case of a licensee other than a Category P licensee, at least one operations supervisor for each outlet.

(1) A licensee maintaining one or more outlets shall file LPG Form 1 with the License and Permit Section of the Gas Services Division (the Section) designating the company representative for the license and/or LPG Form 1A designating the operations supervisor for each outlet.

(2) A licensee may have more than one company representative.

(3) An individual may be operations supervisor at more than one outlet provided that each outlet has a designated LP-gas certified employee who is responsible for the LP-gas activities at that outlet and that a sign, visible and legible at all times, with 24-hour emergency response telephone number be posted at that outlet.

(4) The company representative may also serve as operations supervisor for one of the licensee's outlets provided that the individual meets both the company representative and the operations supervisor requirements in this section.

(5) A licensee shall immediately notify the Section in writing upon termination, for whatever reason, of its company representative or any operations supervisor and shall at the same time designate a replacement by submitting a new LPG Form 1 for a new company representative or a new LPG Form 1A for a new operations supervisor.

(A) A licensee shall cease all LP-gas activities if, at the termination of its company representative, there is no other qualified company representative of the licensee who has complied with the Commission's requirements. A licensee shall not resume LP-gas activities until such time as it has a properly qualified company representative or it has been granted an extension of time in which to comply as specified in subsection (g) of this section.

(B) A licensee shall cease LP-gas activities at an outlet if, at the termination of its operations supervisor for that outlet, there is no other qualified operations supervisor at that outlet who has complied with the Commission's requirements. A licensee shall not resume LP-gas activities at that outlet until such time as it has a properly qualified operations supervisor or it has been granted an extension of time in which to comply as specified in subsection (g) of this section.

(b) Company representative. A company representative shall comply with the following requirements:

(1) be an owner or employee of the licensed entity, in the case of a licensee other than a Category P licensee;

(2) be the licensee's principal individual in authority and, in the case of a licensee other than a Category P licensee, responsible for actively supervising all LP-gas activities conducted by the licensee, including all appliance, container, portable cylinder, product, and system activities;

(3) have a working knowledge of the licensee's LP-gas activities to insure compliance with the LP-Gas Safety Rules;

(4) pass the appropriate management-level rules examination and complete any required training specified in §9.52 of this title (relating to Training and Continuing Education Courses), or in the case of an applicant for a Category D license, obtain a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption);

(5) comply with the work experience or training requirements in subsection (g) of this section, if applicable;

(6) be directly responsible for all employees performing their assigned LP-gas activities, unless an operations supervisor is fulfilling this requirement; and

(7) submit any additional information as deemed necessary by the Section.

(c) Operations supervisors. An operations supervisor, in the case of a licensee other than a Category P licensee, shall comply with the following requirements:

(1) be an owner or employee of the licensee;

(2) pass the applicable management-level rules examination and complete any required training specified in §9.52 of this title (relating to Training and Continuing Education Courses) or, in the case of a Category D license only, obtain a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption), before commencing or continuing the licensee's LP-gas activities at the outlet; and

(3) be directly responsible for actively supervising the LP-gas activities of the licensee at the designated outlet.

(d) In lieu of an operations supervisor requirement for a Category P license, the Category E, J, or other licensee providing the Category P licensee with portable cylinders for exchange shall be required to:

(1) prepare a manual containing, at a minimum, the following:

(A) a description of the basic characteristics and properties of LP-gas;

(B) an explanation of the various parts of an LP-gas cylinder, including what the purpose of each part is and how to operate the cylinder valve;

(C) complete instructions on how to properly transport cylinders in vehicles;

(D) a prohibition against moving or installing cylinder cages at any store location;

(E) a prohibition against taking or storing inside a building any cylinders that have or have had LP-gas in them;

(F) a requirement that all cylinders containing LP-gas be stored in a manner so that the relief valve is in the vapor space of the cylinder;

(G) a requirement that the employees who handle the cylinders know the location within the store of the manual and know the contents of the manual;

(H) instructions related to any potential hazards that may be specific to a location, including but not limited to the proper

distancing of cylinders from combustible materials and sources of ignition;

(I) detailed emergency procedures regarding a leaking cylinder, including all applicable emergency contact numbers;

(J) a requirement that any accidents be reported to the Category E, J, or other licensee who prepares the manual, and detailed procedures for reporting any accidents;

(K) all Railroad Commission rules applicable to the Category P license, including the requirement that the Category P licensee is responsible for complying with all such rules;

(L) all provisions of Subchapter H ("Enforcement") of Chapter 113 of the Texas Natural Resources Code;

(M) a detailed description of the training provided to each employee of the Category P licensee who may be engaged in any activities covered by the Category P license; and

(N) a page for the signatures, printed names and dates of training for each individual trained at each outlet on this manual.

(2) provide a copy of the manual for display at each outlet or location of the Category P licensee;

(3) provide training as to the contents of the manual to each employee who may be engaged in any activities covered by the Category P license at all outlets or locations of the Category P licensee and maintain records regarding the employees of the Category P licensee who have been trained; and

(4) complete all three requirements of this subsection, for existing Category P licensees, prior to October 25, 2001, and within 45 days of any Category P license obtained on or after September 1, 2001.

(e) The Category P licensee is responsible for the following:

(1) insuring that each employee who is involved with the activities covered by the Category P license is knowledgeable about the contents of the manual and has signed and dated the signature page of the manual; and

(2) insuring that each such employee is aware of the location of the manual and can show the manual to employees of the Commission upon their request.

(f) Category P licensees. The company representative requirement for a Category P licensee may be satisfied by employing a Category E, J, or other licensee company representative if the Category E, J, or other company representative is authorized by the Category P licensee to assign and remove any employee who does not comply with the LP-Gas Safety Rules or who performs any unsafe LP-gas activities.

(g) Work experience substitution for Category E, F, G, I, and J. The assistant director for the Section may, upon written request, allow a conditional qualification for a Category E, F, G, I, or J company representative or operations supervisor who passes the applicable management-level rules examination provided that the individual attends and successfully completes the next available Category E, F, G, I, or J management-level training course, or a subsequent Category E, F, G, I, or J management-level training course agreed on by the assistant director and the applicant. The written request shall include a description of the individual's LP-gas experience and other related information in order that the assistant director may properly evaluate the request. If the individual fails to complete the training requirements within the time granted by the assistant director, the conditional qualification shall immediately be voided and the conditionally qualified company representative or operations supervisor shall immediately cease all LP-gas activities. Applicants for company representative or operations supervisor who have less than three years' experience or experience which is not applicable to the category for which the individual is applying shall not be granted a conditional qualification and shall comply with the training requirements in §9.52 of this title (relating to Training and Continuing Education Courses) prior to the Section issuing a certificate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 2, 2005.

TRD-200503198
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: September 1, 2005
Proposal publication date: March 25, 2005
For further information, please call: (512) 475-1295

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16 TAC §9.33, §9.53

The Commission adopts the repeals pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. STATIONARY INSTALLATIONS AND CONTAINER REQUIREMENTS

16 TAC §§9.101 - 9.103, 9.107, 9.109, 9.110, 9.113, 9.115, 9.126, 9.129, 9.130, 9.132, 9.134, 9.140 - 9.143

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

§9.102. Notice of Stationary LP-Gas Installations.

(a) For a proposed installation with an aggregate water capacity of 10,000 gallons or more, an applicant shall send a copy of the filings required under §9.101(c) of this title (relating to Filings Required for Stationary LP-Gas Installations) by certified mail, return receipt requested or otherwise delivered, to all owners of real property situated within 500 feet of any proposed container location at the same time the originals are filed with the License and Permit Section of the Gas Services Division (the Section). The Section shall consider the notice to be sufficient when the applicant has provided evidence that copies of a complete application have been mailed or otherwise delivered to all real property owners. The applicant may obtain names and addresses of owners from current county tax rolls.

(b) An applicant shall notify owners of real property situated within 500 feet of any proposed container location if:

(1) the current aggregate water capacity of the installation is more than doubled in a 12-month period;

(2) the resulting aggregate water capacity of the installation will be more than 120,000 gallons; or

(3) the Section considers notice to be in the public interest.

(c) An applicant shall not be required to give notice for installations at "hot-mix" plants where LP-gas containers of 10,000 gallons aggregate water capacity or more are used as fuel storage supply for asphalt heating provided that:

(1) the applicant submits proof that such "hot-mix" operations will not exceed two years at the specified location; and

(2) the applicant has obtained approval from the fire marshal if the operations are within a city's limits or extraterritorial jurisdiction.

§9.103. Objections to Proposed Stationary LP-Gas Installations.

(a) Each owner of real property situated within 500 feet of the proposed location of any LP-gas containers of 10,000 gallon aggregate water capacity or more receiving notice of a proposed installation shall have 18 calendar days from the date the notice is postmarked to file a written objection using the LPG Form 500A sent to them by the applicant as described in §9.107(a)(1) of this title (relating to Hearings on Stationary LP-Gas Installations) with the License and Permit Section of the Gas Services Division (the Section). An objection is considered timely filed when it is actually received by the Commission.

(b) The Section shall review all objections within 10 business days of receipt. An objection shall be in writing and shall include a statement of facts showing that the proposed installation:

(1) does not comply with the *LP-Gas Safety Rules*, specifying which rules are violated;

(2) does not comply with the statutes of the State of Texas, specifying which statutes are violated; or

(3) constitutes a danger to the public health, safety, and welfare, specifying the exact nature of the danger. For purposes of this section, "danger" means an imminent threat or an unreasonable risk of bodily harm, but does not mean diminished property or esthetic values in the area.

(c) Upon review of the objection, the Section shall either:

(1) schedule a public hearing as specified in §9.107 of this title (relating to Hearings on Stationary LP-Gas Installations); or

(2) notify the objecting party in writing within 10 business days of receipt requesting further information for clarification and stating why the objection is being returned. The objecting entity shall have 10 calendar days from the postmark of the Section's letter to file its corrected objection. Clarification of incomplete or nonsubstantive objections shall be limited to two opportunities. If new objections are raised in the objecting party's clarification, the new objections shall be limited to one notice of correction.

§9.107. Hearings on Stationary LP-Gas Installations.

(a) Reason for hearing. The License and Permit Section of the Gas Services Division (the Section) shall call a public hearing if:

(1) the notice given to each real property owner situated within 500 feet of the proposed installation does not meet the requirements set forth in §9.102(a) of this title (relating to Notice of Stationary LP-Gas Installations);

(2) the Section receives an objection that complies with §9.103 of this title (relating to Objections to Proposed Stationary LP-Gas Installations); or

(3) the Section determines that a hearing is necessary to investigate the impact of the installation.

(b) Notice of public hearing. The Section shall give notice of the public hearing at least 21 calendar days prior to the date of the hearing to the applicant and to all real property owners who were required to receive notice of the proposed installation under §9.102 of this title (relating to Notice of Stationary LP-Gas Installations).

(c) Procedure at hearing. The public hearing shall be conducted in accordance with the Texas Government Code, Chapter 2001 et seq., the general rules of practice and procedure of the Railroad Commission of Texas, and the *LP-Gas Safety Rules.*

§9.134. Connecting Container to Piping.

LP-gas piping shall be installed only by a licensee authorized to perform such installation. A licensee shall not connect an LP-gas container or cylinder to a piping installation made by a person who is not licensed to make such installation, except that connection may be made to piping installed by an individual on that individual's single family residential home. A licensee may connect to piping installed by an unlicensed person provided the licensee has performed a pressure test, verified that the piping has been installed according to the LP-Gas Safety Rules, properly tagged the installation, and filed a properly-completed LPG Form 22 with the Safety Division, identifying the unlicensed person who installed the LP-gas piping.

§9.140. Uniform Protection Standards.

(a) LP-gas transfer systems and storage containers shall be protected from tampering and/or vehicular traffic as specified in this section. New LP-gas containers which have never been installed or had LP-gas introduced into them, or other installations listed in paragraphs (1) - (4) of this subsection, are not required to comply with the fencing and guardrailing requirements in subsections (b) and (d) of this section. The fencing and guardrailing requirements also do not apply to the following:

(1) LP-gas systems and containers located at private residences;

(2) LP-gas systems and containers which service vapor systems where the aggregate storage capacity of the installation is less than 4,001 gallons, unless the LP-gas system, transfer system, or container is subject to tampering or vehicular traffic;

(3) LP-gas piping which contains no valves and which complies with all other applicable *LP-Gas Safety Rules;* and

(4) LP-gas storage containers located on a rural consumer's property from which motor or mobile fuel containers are filled.

(b) In addition to NFPA 58, §§3.3.6.1, 3.4.2.4, 3.9.3.6, 4.2.3.8, 5.2.1.1, and 5.4.2.1, fencing at LP-gas installations shall comply with the following:

(1) Fencing material shall be chain link with wire at least 12 1/2 American wire gauge in size.

(2) Fencing shall be at least six feet in height at all points.

(3) Uprights, braces, and cornerposts of the fence shall be composed of noncombustible material.

(4) Gates in fences where bulkheads are installed shall be located directly in front of the bulkhead. Gates shall be locked whenever the area enclosed is unattended. The width of the gate shall be sufficient to prevent binding of the transfer hoses on the gate posts and to ensure breaking of the bulkhead pipe risers or nipples in the event of a pullaway. There shall be at least two means of emergency access from the fenced enclosure. If guard service is provided, it shall be extended to the LP-gas installation. Guard service shall be properly trained as set forth in §9.51(b)(4) of this title (relating to General Requirements for Training and Continuing Education). However, if a fenced area is not larger than 100 square feet in area, the point of transfer is within three feet of a gate, and any containers being filled are not located within the enclosure, a second gate shall not be required.

(5) Clearance of at least three feet shall be maintained between the fencing and the container, material handling equipment, and the entire dispensing system.

(6) Fencing which is located more than 25 feet from any point of an LP-gas transfer system or container shall be designated as perimeter fencing. If an LP-gas transfer system or container is located inside perimeter fencing and is subject to vehicular traffic, it shall be protected against damage according to the specifications set forth in subsection (d) of this section.

(7) The operating end of a container, including all material handling equipment and the entire dispensing system, shall be completely enclosed by fencing.

(c) Containers which are exempt from the fencing requirements include:

(1) ASME containers or manual dispensers originally manufactured to or modified to be considered by the Safety Division (the Division) as self-contained units. Self-contained units shall be protected as specified in subsection (d) of this section;

(2) DOT portable or forklift containers in storage racks or at single family dwellings used as private residences; and

(3) DOT portable or forklift containers that have been used in LP-gas service but are not awaiting use or resale.

(d) In addition to NFPA 58, §§3.2.4.2, 3.2.9.1(a)-(d), 3.2.9.2(d), 3.3.6.1, 3.9.3.8, 5.4.2.1, guardrails at LP-gas installations, except as noted in subsection (a) of this section, shall comply with the following:

(1) Where fencing is not used to protect the installation as specified in subsection (b) of this section, locks for the valves or other suitable means shall be provided to prevent unauthorized withdrawal of LP-gas.

(2) Vertical supports for guardrails shall be at least three-inch schedule 40 steel pipe or other material with equal or greater strength. The vertical supports shall be capped on the top or otherwise protected to prevent the entrance of water or debris into the guardpost; anchored in concrete at least 18 inches below the ground; and rise at least 30 inches above the ground. Supports shall be spaced four feet apart or less.

(3) The top of the horizontal guardrailing shall be secured to the vertical supports at least 30 inches above the ground. The horizontal guardrailing shall be at least three-inch schedule 40 steel pipe or other material with equal or greater strength. The horizontal guardrailing shall be capped on the ends or otherwise protected to prevent the entrance of water or debris into the guardpost; and welded or bolted to the vertical supports with bolts of sufficient size and strength to prevent damage to the protected equipment under normal conditions, including the nature of the traffic to which the protected equipment is subjected.

(4) Openings in horizontal guardrailing, except the opening that is permitted directly in front of a bulkhead, shall not exceed three feet. Only one opening is allowed on each side of the guardrailing. A means of temporarily removing the horizontal guardrailing and vertical supports to facilitate the handling of heavy equipment may be incorporated into the horizontal guardrailing and vertical supports. In no case shall the protection provided by the horizontal guardrailing and vertical supports be decreased. Transfer hoses from the bulkhead shall be routed only through the 45-degree opening in front of the bulkhead or over the horizontal guardrailing.

(5) Clearance of at least three feet shall be maintained between the railing and any part of an LP-gas transfer system or container or clearance of two feet for retail cylinder filling or service station installations. The two posts at the ends of any railing which protects a bulkhead shall be located at 45-degree angles to the nearest corner of the bulkhead.

(6) The operating end of the container, including all material handling equipment and the entire dispensing system, and any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic shall be protected from this type of damage. The protection shall extend at least three feet beyond any part of the LP-gas transfer system or container which is exposed to collision damage or vehicular traffic.

(e) A combination of fencing and guardrails specified in subsections (b) and (d) of this section shall not result in less protection than using either fencing or guardrails alone.

(f) If exceptional circumstances exist or will exist at an installation which would require additional protection such as larger-diameter guardrailing, then the licensee or operator shall install such additional protection. In addition, the Division at its own discretion may

require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. The Division shall notify the person in writing of the additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with the Division's determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by the Division or removed from service with all product withdrawn from it until the Division's final decision.

(g) LP-gas installations shall comply with the sign and lettering requirements specified in Table 1 of this section. An asterisk indicates that the requirement applies to the equipment or location listed in that column.
Figure: 16 TAC §9.140(g)

(1) Unless colors are specified, lettering shall be in a color that sharply contrasts to the background color of the sign, and shall be readily visible to the public.

(2) Items 1, 2, and 3 in Table 1 may be combined on one sign.

(3) Items 1, 2, and 3 in the column entitled "Licensee or Non-Licensee ASME 4001+ Gal. A.W.C." in Table 1 apply to installations with 4,001 gallons or more aggregate water capacity protected only by guardrailing as required in subsection (d) of this section, and bulkheads as required by §9.143 of this title (relating to Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More) for commercial, bulk storage, cylinder filling, or forklift installations.

(4) Item 11 in the column entitled "Requirements" in Table 1 applies to facilities which have two or more containers.

(5) Any information in Table 1 of this subsection required for an underground container shall be mounted on a sign posted within 15 feet horizontally of the manway or the container shroud.

(h) Storage racks used to store nominal 20-pound DOT portable or any size forklift containers shall be protected against vehicular damage by:

(1) meeting the guardrail requirements of subsection (d) of this section; or

(2) installing guardposts, provided that:

(A) the guardposts are at least three-inch schedule 40 steel pipe, capped on top or otherwise protected to prevent the entrance of water or debris into the guardpost, no more than four feet apart, and anchored in concrete at least 30 inches below ground and rising at least 30 inches above the ground; or

(B) if the guardposts cannot be anchored in concrete at least 30 inches below ground, they are constructed of at least four-inch schedule 40 steel pipe capped on top or otherwise protected to prevent the entrance of water or debris into the guardpost, and attached by welding to a minimum 8-inch by 8-inch steel plate at least 1/2 inch thick. The guardposts and steel plate shall be permanently installed.

(3) Guardrail or guardposts are not required to be installed if:

(A) any portable cylinder exchange rack is located against a building or attached structure;

(B) the rack is located on a walkway which is a minimum of four inches in height above the grade of the driveway or parking space;

(C) a minimum six-inch-high cement parking wheelstop is installed on the driveway or parking space, or a four-inch-high cement parking wheelstop is installed on the driveway or parking space at least 12 inches from the curb;

(D) the cement parking wheelstop is secured against displacement; and

(E) the distance from the cement parking wheelstop to any portable cylinder exchange rack is 48 inches or more for a six-inch-high wheelstop, or 60 inches or more for a four-inch-high wheelstop.

(4) A wheelstop is not required to be installed if a curb is at least six inches tall and the cylinder exchange rack is at least 48 inches away from the curb.

(5) If exceptional circumstances exist or will exist at the location of a storage rack which would require additional protection such as larger-diameter guardrailing or guardposts, then the licensee or operator of the installation shall install such additional protection. In addition, the Division at its own discretion may require an installation to be protected with added safeguards to adequately protect the health, safety, and welfare of the general public. The Division shall notify the person in writing of the specific additional protection needed and shall establish a reasonable time period during which the additional protection shall be installed. The licensee shall ensure that any necessary extra protection is installed. If a person owning or operating such an installation disagrees with the Division's determination made under this subsection, that person may request a public hearing on the matter. The installation shall either be protected in the manner prescribed by the Division or removed from service with all product withdrawn from it until the Division's final decision.

§9.143. Bulkhead, Internal Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

(a) Instead of NFPA 58, §§3.2.19.1, 3.2.19.2, 3.2.19.3, and 3.2.19.6, effective February 1, 2001, new stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, shall install a vertical bulkhead and pneumatically-operated internal valves and pneumatically-operated emergency shutoff valves (ESVs), as required in this section and in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted With Changes, Additional Requirements, or Corrections) for NFPA 58, §§3.2.18.1 and 3.3.3.6. In lieu of a pneumatically-operated internal valve or a pneumatically-operated ESV, a back check valve where the flow is into the container only may be installed.

(1) The pneumatic ESVs shall be installed in the fixed piping of the transfer system upstream of the bulkhead and within four feet of the bulkhead with a stainless steel flexible wire-braided hose not more than 36 inches long installed between the ESV and the bulkhead.

(2) The ESVs shall be installed in the piping so that any break resulting from a pullaway will occur on the hose or swivel-type piping side of the connection while retaining intact the valves and piping on the storage side of the connection and will activate the ESV at the bulkhead and the primary discharge valves at the container or containers. Provisions for anchorage and breakaway shall be provided on the cargo tank side for transfer from a railroad tank car directly into a cargo tank. Such anchorage shall not be required from the tank car side.

(3) Temperature sensitive elements of ESVs shall not be painted nor shall they have any ornamental finishes applied after manufacture.

(4) Internal valves, ESVs, and backflow check valves shall be tested annually for working order. The results of the tests shall be documented in writing and kept in a readily accessible location for one year following the performed tests.

(5) Pneumatically-operated internal valves and ESVs shall be interconnected and incorporated into at least one remote operating system.

(b) Within two years of February 1, 2001, or by February 1, 2003, at the latest, stationary LP-gas installations in existence as of February 1, 2001, with individual or aggregate water capacities of 4,001 gallons or more, including licensee and nonlicensee locations, or railroad tank car transfer systems to fill trucks with no stationary storage involved, which do not have a bulkhead and/or backflow check valves where the flow is in one direction into the container and ESVs installed shall install vertical bulkheads and pneumatic ESVs.

(c) Existing installations which have horizontal bulkheads and/or backflow check valves where the flow is in one direction into the container or cable-actuated ESVs are not required to replace that equipment except as follows:

(1) If the horizontal bulkhead requires replacement, it shall be replaced with a vertical bulkhead;

(2) If a backflow check valve or a cable-actuated ESV requires replacement, it shall be replaced with a pneumatic actuated ESV; or

(3) If the horizontal bulkhead or a backflow check valve or a cable-actuated ESV are moved from their original location to another location, no matter what the distance from the original location, then the installation shall comply with the requirements for a vertical bulkhead and pneumatic actuated ESVs.

(d) Bulkheads, whether horizontal or vertical, shall comply with the following requirements:

(1) Bulkheads shall be installed for both liquid and vapor return piping;

(2) Only one or two transfer hoses shall be attached to a pipe riser. If two hoses are simultaneously connected to one or two transports, the use of the two hoses shall not prevent the activation of the ESV in the event of a pullaway;

(3) Both liquid and vapor transfer hoses shall be plugged or capped;

(4) Bulkheads shall be located at least 10 feet from any aboveground container or containers and a minimum of 10 feet horizontally from any portion of a container or valve exposed aboveground on any underground or mounded container. If the 10-foot distance cannot be obtained, the licensee or nonlicensee shall inform the Safety Division (the Division) in writing and include all necessary information. The Division may grant administrative distance variances to a minimum distance of five feet. If the licensee or nonlicensee requests that the bulkhead be closer than five feet to the container or containers, the licensee or nonlicensee shall apply for an exception to a safety rule as specified in §9.27 of this title (relating to Application for an Exception to a Safety Rule);

(5) Horizontal bulkheads shall not be converted to vertical bulkheads;

(6) Bulkheads shall be anchored in reinforced concrete to prevent displacement of the bulkhead, piping, and fittings in the event of a pullaway;

(7) Bulkheads shall be constructed by welding using the following materials or materials with equal or greater strength, as shown in the diagram.
Figure: 16 TAC §9.143(d)(7) (No change.)

(A) Six-inch steel channel iron shall be used;

(B) Legs shall be four-inch schedule 80 piping;

(C) The top crossmember of a vertical bulkhead shall be six-inch standard weight steel channel iron. The channel iron shall be installed so the channel portion is pointing downward to prevent accumulation of water or other debris. The height of the top crossmember above ground shall not result in torsional stress on the vertical supports of the bulkhead in the event of a pullaway;

(D) The kick plate shall be at least 1/4 inch steel plate installed at least 10 inches from the top of the bulkhead crossmember. A kick plate is not required if the crossmember is constructed to prevent torsional stress from being placed on the piping to the pipe risers;

(E) Either a schedule 40 pipe sleeve or a 3,000-pound coupling shall be welded between the top crossmember and the kick plate;

(i) Pipe sleeves shall have a clearance of 1/4 inch or less for the piping to the pipe riser, and the piping shall terminate through the bulkhead with a schedule 80 pipe collar, a minimum 12-inch schedule 80 threaded (not welded) pipe riser (nipple), and an elbow or other fitting between the bulkhead and hose coupling;

(ii) If a 3,000-pound coupling is used, no collar is required; however, the minimum 12-inch length of schedule 80 threaded pipe riser and an elbow or other fitting between the bulkhead and hose coupling are required;

(iii) Elbows or other fittings shall comply with NFPA 58, §2.4.4 and shall direct the transfer hose from vertical to prevent binding or kinking of the hose.

(8) In lieu of a minimum 12-inch nipple or a vertical bulkhead, swivel-type piping (breakaway loading arm) may be installed. The swivel-type piping shall meet all applicable provisions of the LP-Gas Safety Rules. The swivel-type piping may also be used for unloading, but shall not be used in lieu of ESVs. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(9) The Division may require additional bulkhead protection if the installation is subject to exceptional circumstances or located in an unusual area where additional protection is necessary to protect the health, safety, and welfare of the general public.

(e) In addition to NFPA 58, §2.3.3.2 as amended in the table in §9.403 of this title (relating to Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes, Additional Requirements, or Corrections), ESVs and internal valves shall have emergency remote controls conspicuously marked according to the requirements of Table 1 of §9.140 of this title (relating to Uniform Protection Standards). Effective February 1, 2001, for all new facilities, where a bulkhead, internal valves, and ESVs are installed, at least one clearly identified and easily accessible manually operated remote emergency shutoff device shall be located between 20 and 100 feet from the ESV in the path of egress from the ESV; beginning September 1, 2005, for new installations, this distance shall be a minimum of 25 feet. Existing installations shall comply by August 1, 2001. The use of swivel-type piping

as specified in subsection (d)(8) of this section shall not eliminate the requirement for an ESV. Swivel-type piping may be installed between the bulkhead and the minimum 12-inch nipple, but shall not eliminate the requirement for an ESV. The swivel-type piping shall be installed and maintained according to the manufacturer's instructions.

(f) The bulkheads, internal valves, backflow check valves, and ESVs shall be kept in working order at all times in accordance with the manufacturer's instructions and the *LP-Gas Safety Rules.* If the bulkheads, internal valves, backflow check valves and ESVs are not in working order in accordance with the manufacturer's instructions and the *LP-Gas Safety Rules*, the licensee or operator of the installation shall immediately remove them from LP-gas service and shall not operate the installation until all necessary repairs have been made.

(g) By February 1, 2003, rubber flexible connectors which are 3/4-inch or larger in size installed in liquid or vapor piping at an existing liquid transfer operation shall be replaced with a stainless steel flexible connector. Stainless steel flexible connectors shall be 36 inches in length or less, and shall comply with all applicable *LP-Gas Safety Rules.* Flexible connectors installed at a new installation after February 1, 2001, shall be stainless steel.

(h) If necessary to increase LP-gas safety, the Division may require a pneumatically-operated internal valve equipped for remote closure and automatic shutoff through thermal (fire) actuation to be installed for certain liquid and/or vapor connections with an opening of 3/4 inch or one inch in size.

(i) Stationary LP-gas installations with individual or aggregate water capacities of 4,001 gallons or more are exempt from subsections (a) and (b) of this section provided:

(1) each container is filled solely through a 1 3/4 inch double back check filler valve installed directly into the container; and

(2) the LP-gas installation is not used to fill an LP-gas transport.

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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Mary Ross McDonald
Managing Director
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For further information, please call: (512) 475-1295

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SUBCHAPTER C. VEHICLES AND VEHICLE DISPENSERS

16 TAC §§9.201 - 9.204, 9.208, 9.211

The Commission adopts the amendments and new rule pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

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16 TAC §9.207

The Commission adopts the repeal pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

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Issued in Austin, Texas, on August 2, 2005.

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 August 2, 2005.

TRD-200503201
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: September 1, 2005
Proposal publication date: March 25, 2005
For further information, please call: (512) 475-1295

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SUBCHAPTER D. ADOPTION BY REFERENCE OF NFPA 54 (NATIONAL FUEL GAS CODE)

16 TAC §§9.303, 9.308, 9.312

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

§9.308. Identification of Piping Installation.

(a) In addition to the requirements of NFPA 54, Part 3, Gas Piping Installation, LP-gas piping shall be installed, altered, repaired, pressure tested, and leakage tested only by persons properly licensed or certified by the Commission.

(b) Upon completion of the installation, alteration, repair, or pressure testing of an LP-gas piping system, the licensee shall attach to the end of the piping nearest the container a decal or tag of metal or other permanent material indicating the following information:

(1) the licensee's name;

(2) the LP-gas license number; and

(3) the year the piping was installed, altered, repaired, or pressure tested.

(c) A single identification decal or tag may be used to satisfy the requirements in §§9.141, 9.206, and 9.307 of this title (relating to Uniform Safety Requirements, Vehicle Identification Labels, and Identification of Converted Appliances, respectively) provided the decal or tag meets all the requirements of those sections.

(d) Licensees are not required to place a decal or tag following the performance of a leakage test on an LP-gas piping system. Licensees shall retain documentation of all leakage tests and shall make that documentation available for Commission inspection upon request.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 2, 2005.

TRD-200503203
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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Proposal publication date: March 25, 2005
For further information, please call: (512) 475-1295

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SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

16 TAC §9.403

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

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 August 2, 2005.

TRD-200503204
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: September 1, 2005
Proposal publication date: March 25, 2005
For further information, please call: (512) 475-1295

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SUBCHAPTER F. ADOPTION BY REFERENCE OF NFPA 51 (STANDARD FOR THE DESIGN AND INSTALLATION OF OXYGEN-FUEL GAS SYSTEMS FOR WELDING, CUTTING, AND ALLIED PROCESSES)

16 TAC §§9.501 - 9.503, 9.506 - 9.508

The Commission adopts the repeals pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which authorizes the Commission to adopt by reference, in whole or in part the published codes of the National Fire Protection Association as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.052.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on August 2, 2005.

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 August 2, 2005.

TRD-200503205
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: September 1, 2005
Proposal publication date: March 25, 2005
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING MASTER TEACHER GRANT PROGRAMS

19 TAC §102.1015

The Texas Education Agency (TEA) adopts new §102.1015, concerning the master science teacher grant program. The amendment is adopted without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1559) and will not be republished. The adopted new §102.1015 establishes implementation and eligibility requirements for the Master Science Teacher Grant Program authorized by the Texas Education Code, §21.413.

House Bill 411, 78th Texas Legislature, 2003, created the new Master Science Teacher Grant Program. Through new 19 TAC §102.1015, the commissioner exercises rulemaking authority to adopt rules for implementation of the grant program to allow for the distribution of grants to school districts with identified high-need campuses for payment of stipends to certified master science teachers designated by the districts.

The adopted new 19 TAC §102.1015 defines terms and sets forth the procedures for school district applications and administration of grants consistent with application instructions and provisions included in 19 TAC §102.1011, Master Reading Teacher Grant Program, and 19 TAC §102.1013, Master Mathematics Teacher Grant Program.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §21.413, which authorizes the commissioner of education to adopt rules as necessary to implement the master science teacher grant program.

The new section implements the Texas Education Code, §21.413.

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 August 19, 2005.

TRD-200503478
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: September 8, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION
SUBCHAPTER G. ADVISORY OPINIONS

22 TAC §131.101

The Texas Board of Professional Engineers adopts an amendment to §131.101, relating to Advisory Opinions, without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3505) and will not be republished.

The adopted amendment is in response to concerns that the existing rules do not meet the interpretation and intent of the statute. The original rule has been reformatted to clarify the rule language and to more accurately reflect the appropriate statutory language.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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 August 19, 2005.

TRD-200503471
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 8, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 440-7723

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22 TAC §131.103

The Texas Board of Professional Engineers adopts an amendment to §131.103, relating to Advisory Opinions, without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3505) and will not be republished.

The adopted amendment is in response to concerns that the existing rules do not meet the interpretation and intent of the statute. The original rule has been clarified to reflect the statutory language.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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 August 19, 2005.

TRD-200503472
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 8, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 440-7723

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CHAPTER 133. LICENSING
SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.11

The Texas Board of Professional Engineers adopts an amendment to §133.11, relating to Types of Licenses, without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3506) and will not be republished.

The adopted amendment eliminates the requirement that an applicant request a temporary license at the time of application.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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 August 19, 2005.

TRD-200503473
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 8, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 440-7723

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SUBCHAPTER G. EXAMINATIONS

22 TAC §133.73

The Texas Board of Professional Engineers adopts an amendment to §133.73, relating to Examination Analysis, without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3506) and will not be republished.

The adopted amendment adds language that will permit examinees to request regrading of the examination on the fundamentals of engineering to match with current NCEES policy and procedures.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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 August 19, 2005.

TRD-200503474
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 8, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 440-7723

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SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §133.87

The Texas Board of Professional Engineers adopts an amendment to §133.87, relating to Final Actions on Applications, without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3507) and will not be republished.

The adopted rule change clarifies the requirements for re-application for licensure for an examinee that has been denied licensure based on failure to pass the principles and practice of engineering examination within the required time period.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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 August 19, 2005.

TRD-200503475
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 8, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 440-7723

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22 TAC §133.99

The Texas Board of Professional Engineers adopts a new rule in Texas Administrative Code, Title 22, Part 6 Texas Board of Professional Engineers, Chapter 133: Licensing. The adopted new rule is: Subchapter H, Review Process of Applications and License Issuance, §133.99. The Board adopts the new rule without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3508) and will not be republished.

The new rule outlines the process the board will use in reviewing applications wherein the applicant has a criminal conviction. The rule directs the board to follow the requirements of Chapter 53 of the Texas Occupations Code in the review of the application and allows the board to deny the license application or examinations if applicable.

No comments were received regarding the board's adoption of the new section.

The new rule is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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 August 19, 2005.

TRD-200503476
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 8, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 440-7723

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CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.5

The Texas Board of Professional Engineers adopts an amendment to §137.5, relating to Notification of Address and Employer Changes, without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3508) and will not be republished.

The adopted amendment clarifies the requirements for license holders to report any criminal convictions to the board.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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 August 19, 2005.

TRD-200503477
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 8, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 440-7723

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.3

The Texas Funeral Service Commission (commission) adopts an amendment to §201.3, concerning Complaints and Investigations without changes to the text as published in the June 3, 2005, issue of the *Texas Register* (30 TexReg 3195) and will not be republished.

The adopted amendment reflects the commission's authority over crematories and cremation transactions under Texas Health and Safety Code, Chapter 716.

The commission received no comments.

The amendment is adopted under the authority of the Texas Occupations Code §651.152 which authorizes the commission to issue such rules and regulations as may be necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2005.

TRD-200503453
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: September 6, 2005
Proposal publication date: June 3, 2005
For further information, please call: (512) 936-2466

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22 TAC §201.11

The Texas Funeral Service Commission (commission) adopts an amendment to §201.11, concerning Disciplinary Guidelines without changes to the text as published in the June 3, 2005, issue of the *Texas Register* (30 TexReg 3196) and will not be republished.

The adopted amendment reflects the commission's authority over crematories and cremation transactions under Health and Safety Code, Chapter 716.

The commission received no comments.

The amendment is adopted under the authority of the Texas Occupations Code §651.152 which authorizes the commission to issue such rules and regulations as may be necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2005.

TRD-200503454
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: September 6, 2005
Proposal publication date: June 3, 2005
For further information, please call: (512) 936-2466

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CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.23

The Texas Funeral Service Commission (commission) adopts amended §203.23 concerning Location of Retained Records. Notice of the proposed amendment was published in the June 3, 2005, issue of the *Texas Register* (30 TexReg 3196). The amended section is adopted without changes to the proposed text and will not be republished.

The adopted amendment vests authority in the executive director to approve or deny requests for exemptions from the records retention rule.

The commission received no comments.

The amended section is adopted under the authority of the Texas Occupations Code §651.152 which authorizes the commission to issue such rules and regulations as may be necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2005.

TRD-200503449
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: September 6, 2005
Proposal publication date: June 3, 2005
For further information, please call: (512) 936-2466

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER D. MISCELLANEOUS

22 TAC §281.80

The Texas State Board of Pharmacy adopts amendments to §281.80, concerning Grounds for Discipline for a Pharmacy Technician. The amendments are adopted without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3513).

The adopted amendments clarify the grounds for discipline of a pharmacy technician registration apply to an individual seeking a registration as a pharmacy technician, as well as making an application to any entity that certifies or registers pharmacy technicians.

No comments were received regarding the proposal.

The amendments are adopted under §§551.002, 554.051, and 568.003 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §568.003(a) as authorizing the agency to adopt rules establishing the grounds for refusal to issue or renew a pharmacy technician registration.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503541
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: September 11, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.26

The Texas State Board of Pharmacy adopts amendments to §291.26, concerning Pharmacies Compounding Sterile Pharmaceuticals. The amendments are adopted without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3514).

The adopted amendments correct an error made to the rule when previously submitted to the Texas Register.

No comments were received regarding the proposal.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.051(b) as authorizing the agency to make a rule concerning the operation of a licensed pharmacy located in this state applicable to a pharmacy licensed by the board that is located in another state, if the board determines the rule is necessary to protect the health and welfare of the citizens of this state

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503542
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: September 11, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-8028

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.73

The Texas State Board of Pharmacy adopts amendments to §291.73, concerning Personnel. The amendments are adopted without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3515).

The adopted amendments clarify that a Pharmacist-in-charge may be in charge of one facility with 101 beds or more and one facility with 100 beds or less provided the total number of beds does not exceed 150 beds.

No comments were received regarding the proposal.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503543
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: September 11, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-8028

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22 TAC §291.74

The Texas State Board of Pharmacy adopts amendments to §291.74, concerning Operational Standards. The amendments are adopted without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3516).

The adopted amendments require Class C pharmacies to be locked by key, combination, mechanical, or electronic means to prohibit access by unauthorized individuals. In addition, the amendments, clarify that an electronic reference library maintained by the pharmacy must be accessible by pharmacy personnel at all times.

No comments were received regarding the proposal.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503544
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: September 11, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-8028

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CHAPTER 297. PHARMACY TECHNICIANS

22 TAC §297.3

The Texas State Board of Pharmacy adopts amendments to §297.3, concerning Registration Requirements. The amendments are adopted without changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3519).

The adopted amendments clarify the length of time that an individual seeking registration as a pharmacy technician may be working to achieve a high school or equivalent diploma.

No comments were received regarding the proposal.

The amendments are adopted under §§551.002, 554.051, and 568.001 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §568.001 as authorizing the agency to establish registration requirements for pharmacy technicians.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503545
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: September 11, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 305-8028

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 539. PROVISIONS OF THE RESIDENTIAL SERVICE COMPANY ACT

SUBCHAPTER D. DEFINITIONS

22 TAC §539.31

The Texas Real Estate Commission (TREC) adopts amendments to §539.31, concerning Residential Service Contract without changes to the proposed text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3808) and will not be republished.

The amendments change the cites to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1303, a nonsubstantive codification of The Residential Service Company Act, and repealed Article 6573b, Texas Civil Statutes effective June 1, 2003. The amendments are also proposed in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning definitions.

The reasoned justification for the amendments is to provide clarification of the underlying statutory authority for the rule.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2005.

TRD-200503479
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: September 8, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 465-3900

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SUBCHAPTER F. AUTHORIZED PERSONNEL

22 TAC §539.51

The Texas Real Estate Commission (TREC) adopts amendments to §539.51, concerning Employee Defined without changes to the proposed text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3808) and will not be republished.

The amendments change the cites to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1303, a nonsubstantive codification of The Residential Service Company Act, and repealed Article 6573b, Texas Civil Statutes effective June 1, 2003. The amendments are also proposed in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning definitions.

The reasoned justification for the amendments is to provide clarification of the underlying statutory authority for the rule.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2005.

TRD-200503480
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: September 8, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 465-3900

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SUBCHAPTER I. FUNDED RESERVES

22 TAC §539.81

The Texas Real Estate Commission (TREC) adopts amendments to §539.81, concerning Funded Reserves without changes to the proposed text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3809) and will not be republished.

The amendments change the cites to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1303, a nonsubstantive codification of The Residential Service Company Act, and repealed Article 6573b, Texas Civil Statutes effective June 1, 2003. The amendments are also proposed in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning definitions.

The reasoned justification for the amendments is to provide clarification of the underlying statutory authority for the rule.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loretta DeHay
General Counsel
Texas Real Estate Commission
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Proposal publication date: July 1, 2005
For further information, please call: (512) 465-3900

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SUBCHAPTER M. EXAMINATIONS

22 TAC §539.121

The Texas Real Estate Commission (TREC) adopts amendments to §539.121, concerning Examinations without changes to the proposed text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3809) and will not be republished.

The amendments change the cites to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1303, a nonsubstantive codification of The Residential Service Company Act, and repealed Article 6573b, Texas Civil Statutes effective June 1, 2003. The amendments are also proposed in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning definitions.

The reasoned justification for the amendments is to provide clarification of the underlying statutory authority for the rule.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2005.

TRD-200503482
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: September 8, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 465-3900

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PART 40. ADVISORY BOARD OF ATHLETIC TRAINERS

CHAPTER 871. ATHLETIC TRAINERS

SUBCHAPTER A. GENERAL GUIDELINES AND REQUIREMENTS

22 TAC §§871.7, 871.9, 871.12

The Advisory Board of Athletic Trainers (board) adopts amendments to §§871.7, 871.9, and 871.12, concerning the licensure and regulation of athletic trainers. Section 871.7 and §871.9 are adopted with changes to the proposed text as published in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3076). Section 871.12 is adopted without changes, and this section will not be republished.

The sections are amended to add a method by which applicants may qualify for licensure with a baccalaureate or post-baccalaureate degree in athletic training from a college or university that is accredited by a nationally recognized accrediting organization that is approved by the board; qualify applicants to take the state examination if they are within two semesters of graduation and currently enrolled in an athletic training program at a college or university that is accredited by a nationally recognized accrediting organization that is approved by the board; and clarify acceptable continuing education activities and the types of documentation that will be accepted by the board as proof of completing continuing education credits.

The following public comments were received during the comment period concerning the proposed amendments from individuals who were generally in favor of the rules as proposed, but expressed concerns and offered suggestions. Following each comment is the board's response to the comment.

Comment: Concerning §§871.7, 871.9, and 871.12, the commenter supported the rules as proposed.

Response: The board agrees and thanks the commenter. No change was made as a result of this comment.

Comment: Concerning §871.9, the commenter does not believe that applicants should be able to sit for the examination two semesters prior to graduation. Additionally, the commenter was concerned that the applicants may be able to gain employment prior to completion of their degrees.

Response: The board disagrees. Under current rules, an applicant may sit for the examination if they are within 30 semester-hours of graduation. This allows applicants to sit for the examination two semesters prior to graduation. The amended section gives students who are in an athletic training program at a college or university that is accredited by a nationally recognized accrediting organization the same option. All applicants must show proof that a degree has been conferred before they are eligible for licensure. No change was made as a result of this comment.

Comment: Concerning the proposed rules. The commenter was in agreement with the proposed rules; however, wanted the board to exempt applicants who have obtained accreditation from the Board of Certification from the examination requirement.

Response: Under current law, the board does not have the authority to exempt any applicants from the examination requirement. No change was made as a result of this comment.

The board made the following changes due to staff comments.

Change: Concerning §871.7(d)(3), second sentence, the word "as" was replaced with the word "at" to correctly identify location rather than a personal affiliation.

Change: Concerning §871.9(c)(3), the word "or" was added at the end of the paragraph to clarify the requirements for examination.

The amendments are adopted under the Occupations Code, §451.103, which authorizes the board to adopt rules necessary for the performance of its duties.

§871.7. Qualifications.

(a) Applicants qualifying under the Act, §451.153(a)(1) shall hold a baccalaureate or post-baccalaureate degree and one of the following:

(1) current licensure, registration, or certification as an athletic trainer issued by another state, jurisdiction, or territory of the United States; or

(2) current national certification as an athletic trainer issued by the National Athletic Trainers Association Board of Certification (NATABOC).

(b) In place of the requirements in subsection (a) of this section, applicants qualifying under the Act, §451.153(a)(1) shall have:

(1) a baccalaureate or post-baccalaureate degree which includes at least 24 hours of combined academic credit from each of the following course areas:

(A) human anatomy;

(B) health, disease, nutrition, fitness, wellness, emergency care, first aid, or drug and alcohol education;

(C) kinesiology or biomechanics;

(D) physiology of exercise;

(E) athletic training, sports medicine, or care and prevention of injuries;

(F) advanced athletic training, advanced sports medicine, or assessment of injury; and

(G) therapeutic exercise or rehabilitation or therapeutic modalities; and

(2) an apprenticeship in athletic training meeting the following requirements:

(A) the program shall be under the direct supervision of and on the same campus as a Texas licensed athletic trainer, or if out-of-state, the college or university's certified or state licensed athletic trainer;

(B) the apprenticeship must be a minimum of 1,800 hours. It must be based on the academic calendar and must be completed during at least five fall and/or spring semesters. Hours in the classroom do not count toward apprenticeship hours;

(C) the hours must be completed in college or university intercollegiate sports programs. A maximum of 600 hours of the 1,800 hours may be accepted from an affiliated setting which the college or university's athletic trainer has approved. No more than 300 hours may be earned at one affiliated setting. These hours must be under the direct supervision of a licensed physician, licensed or certified athletic trainer, or licensed physical therapist;

(D) 1,500 hours of the apprenticeship shall be fulfilled while enrolled as a student at a college or university; and

(E) the apprenticeship must offer work experience in a variety of sports. It shall include instruction by the college or university's athletic trainer in prevention of injuries, emergency care, rehabilitation, and modality usage.

(c) In place of the requirements in subsections (a) and (b) of this section, applicants qualifying under the Act, §451.153(a)(1) shall have a baccalaureate or post-baccalaureate degree in athletic training from a college or university which held accreditation, during the applicants matriculation at the college or university and at the time the degree was conferred, from a nationally recognized accrediting organization that is approved by the Board.

(d) Applicants qualifying under the Act, §451.153(a)(2) or §451.153(a)(3) shall have a baccalaureate or post-baccalaureate degree or a state issued certificate in physical therapy or a baccalaureate or

post-baccalaureate degree in corrective therapy with at least a minor in physical education or health. Applicants who hold such degrees must complete three semester hours of a basic athletic training course from an accredited college or university. An applicant shall also complete an apprenticeship in athletic training meeting the following requirements.

(1) The program shall be a minimum of 720 hours. It must be based on the academic calendar and must be completed during at least three fall and/or spring semesters. The hours must be under the direct supervision of a college or university's Texas licensed athletic trainer or if out-of-state, the college or university's certified or state licensed athletic trainer. The apprenticeship includes a minimum of 360 hours per year. Hours in the classroom do not count toward apprenticeship hours.

(2) Actual working hours shall include a minimum of 20 hours per week during each fall semester. A fall semester includes pre-season practice sessions. The apprenticeship must offer work experience in a variety of sports.

(3) The apprenticeship must be completed in a college or university's intercollegiate sports program. A maximum of 240 hours of the 720 hours may be earned at a collegiate, secondary school, or professional affiliated setting which the college or university's athletic trainer has approved. No more than 120 hours may be earned at one affiliated setting.

(e) Certification required. An applicant must have:

(1) a current adult cardiopulmonary resuscitation certificate; or

(2) current certification for emergency medical services (EMS) with the Department of State Health Services.

(f) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the board.

(g) The board shall not accept courses which an applicant's transcript indicates were not completed with a passing grade for credit.

(h) Documentation of the apprenticeship program must be provided by completion of the proper forms prescribed by the board.

(i) Each applicant must have a baccalaureate or post-baccalaureate degree from a college or university which held accreditation, at the time the degree was conferred, from an accepted regional educational accrediting association reported by the American Association of Collegiate Registrars and Admissions Officers.

§871.9. Examination for Licensure.

(a) The board shall offer examinations at least two times a year at times and places established and announced by the board.

(b) The examination shall consist of written and practical questions and evaluations prescribed by the board.

(c) An applicant may file an application for examination if the applicant:

(1) is within 30 semester hours of graduation;

(2) has completed or is currently pre-registered or enrolled in the courses listed in §871.7 of this title (relating to Qualifications); and

(3) has completed at least 1300 hours of the required 1800 hours and the apprenticeship program is in progress; or

(4) is currently enrolled in, and within two semesters of graduating from, an athletic training program at a college or university which holds accreditation from a nationally recognized accrediting organization that is approved by the board, if the applicant qualifies under the Act, §451.153(a)(1); or

(5) has completed at least 600 hours of the required 720 hours and the apprenticeship program is in progress if the applicant qualifies under the Act, §451.153(a)(2) or §451.153(a)(3).

(d) The program director shall review all applications prior to the examination. An applicant meeting the requirements of subsection (c) of this section or of §871.7 of this title and pays the required examination fee shall be approved to take the examination.

(e) The board shall notify an applicant whose application has been approved for examination at least 30 days prior to the next scheduled examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.

(f) An examination registration form must be completed and returned to the board by the applicant with the required examination fee (unless otherwise instructed by the board) at least 15 days prior to the date of examination. Applications which are received incomplete or late may cause a delay.

(g) Examinations shall be graded by the board's designee.

(h) The board shall notify each applicant by mail of the results of the examination within 30 days of the date of the examination.

(i) The following procedures relate to applicants who fail the examination prescribed by the board.

(1) An applicant who fails the examination may take a subsequent examination after paying the examination fee.

(2) The board will furnish a copy of the board's policy concerning examination review to an applicant who fails an examination. If requested in writing, the board shall furnish an applicant who fails an examination a written analysis of performance.

(3) An applicant who fails an examination three times must take both the written examination and the practical examination on the fourth examination attempt and on every fourth examination attempt thereafter.

(j) Applicants who have passed the examination and do not have a degree will have 90 days from their graduation date to submit all documents and fees necessary to show compliance with this chapter and complete the licensing procedure. If the application process is not completed within 90 days of the graduation date, the applicant shall be required to file a new application and retake the examination successfully in order to qualify for licensure.

(k) An applicant who fails to take the examination within a period of two years after the initial examination approval notice is mailed by the board may have such approval withdrawn.

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 August 19, 2005.

TRD-200503509

Natalie Steadman
Chair
Advisory Board of Athletic Trainers
Effective date: September 8, 2005
Proposal publication date: May 27, 2005
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL
SUBCHAPTER K. GIFTS, GRANTS AND DONATIONS

28 TAC §§34.1101 - 34.1107

The Commissioner of Insurance adopts Subchapter K, §§34.1101 - 34.1107, concerning gifts, grants and donations to the State Fire Marshal's Office. The sections are adopted without changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3976).

The adoption of the rules is necessary to implement legislation enacted by the 78th Legislature Regular Session in House Bill (HB) 2701 which amended Chapter 417, Government Code. HB 2701 required the development of public educational programs which disseminate pertinent information about fire prevention and safety and allows the commissioner of insurance to accept gifts, grants, and donations for this purpose. It is anticipated that the sections will result in an increase in funds or property to use toward developing educational programs as well as generating and disseminating information to the public regarding fire prevention and safety. The adoption of these rules ensures that the state will have created standards for the acceptance of gifts and donations intended to enhance the public welfare.

Section 34.1101 provides the purpose of the subchapter which is to establish the rules for acceptance of gifts, grants and donations for the State Fire Marshal's Office. Section 34.1102 states that the commissioner is authorized by statute to accept gifts, grants and donations for fire prevention and safety educational programs and materials. The definitions for the subchapter are set forth in §34.1103. Section 34.1104 states that gifts to the State Fire Marshal must be accepted by the commissioner and that any goods donated to the State Fire Marshal become state property. Section 34.1105 prohibits the solicitation of any gift, grant or donation by the commissioner, officer or employee of the department, but makes clear that the fire marshal, with the approval of the commissioner, may apply for grants that would develop educational programs or enable the dissemination of materials necessary to educate the public effectively regarding methods of fire prevention and safety. Section 34.1106 sets forth the standards of conduct that govern the relationships between the commissioner and the donor and between employees and donors, respectively. The procedures for accepting gifts, grants and donations are described in Section 34.1107.

No comments were received regarding this proposal.

The amendments are adopted under Government Code §417.005 and §417.0051 and Insurance Code §36.001. Government Code §417.005 allows the Commissioner of Insurance to adopt rules necessary to guide the fire marshal in the performance of other duties for the commissioner. Section 417.0051 of the Government Code provides that the Commissioner of Insurance through the Fire Marshal may accept donations, gifts and grants for the purposes of promoting fire safety and fire prevention education. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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 August 22, 2005.

TRD-200503531
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 11, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER B. COASTAL EROSION PLANNING AND RESPONSE

31 TAC §§15.41, 15.42, 15.44

The Texas General Land Office (GLO) adopts the amendments to Title 31, Part 1, Chapter 15, relating to Coastal Area Planning, §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects, §15.42, relating to Funding Projects From the Coastal Erosion Response Account, and §15.44, relating to Beneficial Use of Dredged Materials. The amendments are adopted without changes to the proposed text as published in the July 15, 2005, issue of the *Texas Register* (30 TexReg 4115) and will not be republished.

The amendments are adopted pursuant to the Coastal Erosion Planning and Response Act (CEPRA), Texas Natural Resources Code, Chapter 33, Subchapter H, §§33.601 - 33.612. The CEPRA requires the GLO to implement a program of coastal erosion avoidance, remediation, and planning. The amendments are necessary to clarify evaluation criteria and procedures for proposed CEPRA projects. These rule amendments have been undertaken as a result of the comprehensive review of the GLO's rules mandated by Texas Government Code §2001.039 and as a result of statutory changes from the 79th Texas Legislature, and will ensure that the rules are clear, necessary, and updated.

The amendment to the first sentence of §15.41 clarifies that the two-stage evaluation process described in §15.41 is intended to apply to those projects that are proposed by potential project partners, rather than those projects that are undertaken solely by the GLO.

The amendment to §15.41(1)(A)(xiii)(VI) adds a category for identification of the type of project proposed by potential project partners. The category includes projects for removal of debris or structures, or relocation of structures from the public beach, with a shared project cost determined by the Commissioner of the GLO. The 79th Legislature, 2005, provided authority for this type of project category in Senate Bill 517, amending Texas Natural Resources Code §33.603, effective September 1, 2005.

The amendment to §15.41(1)(B) changes the order of the list of methods by which the GLO prefers to receive project goal summaries to put email first, because the GLO has determined that email is the quickest and most efficient method of delivery.

The amendment to §15.41(1)(D)(viii) deletes one of the priority criteria for the review of proposed projects during the GLO's initial evaluation of project goal summaries. The criterion regarding "the economic benefits to the state relative to the cost to the state of the project" is unnecessary and does not serve the same purpose as the other criteria in subparagraph (D) because the GLO has determined that it cannot adequately determine the economic benefits to the state relative to the cost to the state for a proposed project. In addition, the criterion proposed for deletion is not one of the required criteria for evaluating proposed projects found in Texas Natural Resources Code §33.605(b). Therefore, the GLO has determined that this criterion serves no useful purpose and should be deleted.

The amendment to §15.41(1)(E)(ii) and (2)(A) and (B) makes it permissive, rather than required, for the GLO to invite a potential project partner to become a qualified project partner by entering into a project cooperation agreement to evaluate alternatives during the second stage of the evaluation process under §15.41(2). Section 15.41(2) currently requires the GLO and a potential project partner to enter into a project cooperation agreement to perform a cooperative evaluation of alternatives for addressing erosion problems. Upon entering into a project cooperation agreement, a potential project partner will become a qualified project partner. Through its experiences since these rules were promulgated, however, the GLO has found that it is sometimes unnecessary to enter into a project cooperation agreement to perform an evaluation of alternatives for every proposed project, because the GLO already has the necessary information through previous evaluations of alternatives for similar projects. In addition, the requirement to enter into a project cooperation agreement to perform an evaluation of alternatives during the second stage of project evaluation can make the evaluation process so lengthy that projects cannot be started in a timely manner, increasing the likelihood that construction will continue into bird and turtle nesting season. The typical CEPRA project is comprised of preliminary engineering, permitting, final engineering design, and construction phases. Many time and resource constraints are encountered during the course of a project, including time required for permitting, bird and turtle nesting windows when construction is not allowed, and securing cost effective sand resources proximal to project locations. Although the CEPRA program continues to improve its processes for project evaluation, selection, and contracting, the minimum time frames for these elements are substantial. The amendment to §15.41(2)(C)(ii) and (D) recognizes that the project partner may be either a potential project partner or a qualified project partner, depending on whether they have entered into a project cooperation agreement.

The amendment to 15.42(a) clarifies that the funding requirements in §15.42 pertain to projects requested by qualified and potential project partners, rather than to projects or studies conducted solely by the GLO. In addition, the adopted amendment recognizes that the GLO and a project partner may or may not have entered into a cooperation agreement under §15.41(2) for the evaluation of alternatives. Section 15.42(a) currently provides that the GLO and a qualified project partner must amend their existing cooperation agreement to provide for funding under §15.42, since they are currently required to enter into a cooperation agreement for the purpose of evaluating erosion response project alternatives under §15.41(2). However, if the GLO and a potential project partner have opted to forego a project cooperation agreement to evaluate alternatives under the adopted changes to §15.41(2), then the adopted changes to §15.42 assure that they will enter into a project cooperation agreement for funding conditions and for management of the project before the GLO can fund the project. The last sentence of §15.42(a) is changed to remove the word "amended" to indicate that the project cooperation agreement may be either new or amended. The adopted amendment of §15.42(b) removes the word "amended" before "project cooperation agreement," so that it is consistent with the adopted changes to §15.42(a).

The amendment to §15.42(c) adds a reference to subsection (h) of Texas Natural Resources Code §33.603 in order to be consistent with the statutory change to Texas Natural Resources Code §33.603 by the 79th Legislature, 2005, in Senate Bill 517, effective September 1, 2005.

The amendment to §15.44(d) updates the citation to the U.S. Army Corps of Engineers (USACE) publication regarding the beneficial use of dredged materials.

The amendment to §15.44(e)(3) updates the citation for the listing of hazardous substances in the Code of Federal Regulations.

No comments were received regarding any of the proposed amendments to §§15.41, 15.42 and 15.44.

The GLO has evaluated the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 15, Subchapter B are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in CEPRA relating to coastal erosion studies or projects undertaken in cooperation with a qualified project partner under an agreement with the Commissioner of the GLO.

The amendments are adopted under Texas Natural Resources Code §33.602(c) which provides the Commissioner of the General Land Office with the authority to adopt rules necessary to implement Chapter 33, Subchapter H, Texas Natural Resources Code, concerning coastal erosion.

The adopted amendments are necessary to implement Texas Natural Resources Code §§33.601 - 33.612.

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 August 22, 2005.

TRD-200503525
Trace Finley
Policy Director
General Land Office
Effective date: September 11, 2005
Proposal publication date: July 15, 2005
For further information, please call: (512) 475-1859

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SUBCHAPTER D. CERTIFICATION OF COASTAL WETLANDS

31 TAC §15.51, §15.52

The General Land Office (GLO) adopts the amendments to Title 31, Part 1, Chapter 15, relating to Coastal Area Planning, §15.51, relating to Policy; Scope of Rules; Definitions, and §15.52, relating to Criteria for Certification; Assignment of Priorities for Acquisition; Revocation of Certification. The amendments are adopted without changes to the proposed text as published in the July 15, 2005, issue of the *Texas Register* (30 TexReg 4118) and will not be republished.

These rule amendments have been undertaken as a result of the comprehensive review of the GLO's rules mandated by Texas Government Code §2001.039. The amendments are non-substantive updates and will ensure that the rules are clear, necessary and updated.

The amendment to §15.51(a) and §15.52(1) updates the citation to the Coastal Wetlands Acquisition Act. Section 15.51(a) and §15.52(1) currently refer to Texas Civil Statutes Article 5415e-3, which has been codified at Texas Natural Resources Code, Chapter 33, Subchapter G, §§33.231 - 33.238.

No comments were received regarding any of the proposed amendments to §15.51 and §15.52.

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

The amendments are adopted under authority granted in Texas Natural Resources Code §31.051, which provides the Commissioner of the GLO the authority to make and enforce suitable rules consistent with the law; and Texas Natural Resources Code §§33.231 - 33.238, which require the General Land Office to certify coastal wetlands which are most essential to the public interest in accordance with criteria developed by the General Land Office.

The adopted amendments are necessary to implement Texas Natural Resources Code §31.051 and the Coastal Wetlands Acquisition Act, Texas Natural Resources Code §§33.231 - 33.238.

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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Trace Finley
Policy Director
General Land Office
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For further information, please call: (512) 475-1859

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PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §155.4

The School Land Board (Board) adopts amendments to §155.4, relating to Permits without changes to the proposed text as published in the June 24, 2005, issue of the *Texas Register* (30 TexReg 3721).

The permits authorize continued use of previously unauthorized structures on coastal public lands in accordance with Texas Natural Resources Code §§33.119 - 33.131. The amendment to subsection (c)(1)(A) of §155.4 conforms the rule to statutory changes to Texas Natural Resources Code §33.124 as amended by the 79th Legislature in House Bill 708 effective May 13, 2005. The amendment to subsection (c)(1)(A) of §155.4 removes language that prohibited the Board from issuance of permits for the continued use of existing structures that came to be located within 1,000 feet of any federal or state wildlife sanctuary or refuge or any government owned park bordering on coastal public lands, with the creation or expansion of such refuges or government owned parks. In addition, the restriction on cabin structures within 1,000 feet of privately owned littoral property is amended to apply only to residential littoral property.

The Board received one comment on the proposed amendment from a representative of the Texas Parks and Wildlife Department. The commenter expressed support for regulation of cabin structures that are adjacent to state or federal preserves and refuges, particularly in regards to sanitary waste. The Board agrees with the comment concerning enforcement of sanitary regulations. The General Land Office (GLO) currently

manages 365 active cabin permits. All 365 active cabin permits are within waste compliance guidelines adopted by the Board. These guidelines include: (1) the permit holder shall comply with all applicable laws, ordinances, rules and regulations of all governing authorities with jurisdiction over the permitted premises; (2) waste systems must be entirely self-contained and portable (can be removed from state land at anytime); (3) under no circumstances may any human waste be disposed of in the water or on state land; and (4) all non-compliant systems must be fully disabled. Photo documentation must be submitted and a field inspection will occur to verify compliance. No changes in the adopted amendment were made based on these comments.

The commenter expressed concern that issuing permits and regulating cabins in place will not resolve the negative effects that cabin structures pose regarding management of natural resources when the structures are located in, or adjacent to preserves and refuges. The Board disagrees with the commenter that the regulation of cabins in place will not contribute to resolution of negative effects of such structures. As previously noted, waste compliance regulations will help to resolve negative impacts on water quality in or near state or federal preserves and refuges. In addition, GLO personnel continue to coordinate with other state and federal agencies to address cabin structures located in or near active bird rookery sites. GLO personnel have worked to address concerns raised by resource agencies. For instance, at the request of the U.S. Fish and Wildlife Services (USFWS), GLO relocated and/or terminated several cabins on sites identified as high priority bird rookeries. Permit holders have also been required to remove walkways that lead from the cabin back to an island that is an active bird rookery. Furthermore, any remaining cabins that are located on high priority bird rookeries contain special conditions stating that if the cabin is damaged in excess of 50% it must be relocated. Finally, Texas Natural Resources Code §33.125 prohibits the renewal of a permit for a structure located within an area that is leased for public purposes, such as the Christmas Bay Coastal Preserve. Accordingly, the adopted rule change will not allow issuance of permits for cabin structures located within such a coastal preserve. No changes in the adopted amendment were made based on these comments.

The commenter further recommended that the cabins that would be regulated under the amended rule be evaluated on a case-by-case basis and the holders of affected cabin permits be encouraged to relocate to another site in less sensitive habitat areas. The Board agrees with the commenter, and recommends that GLO personnel continue to coordinate with state and federal agencies to encourage relocation of permitted structures located in sensitive habitat areas. No changes in the adopted amendment were made based on these comments.

Justification for adoption of the amendment is that the authorization to reissue permits for such structures will enhance the ability of the GLO to enforce compliance of such structures with the Board's regulations related to waste disposal and derelict structures, as well as compliance with applicable policies of the coastal management program in 31 TAC §501.24(a)(6) requiring that such structures be constructed in a manner that: (A) does not significantly interfere with public navigation; (B) does not significantly interfere with the natural coastal processes which supply sediments to shore areas or otherwise exacerbate erosion of shore areas; and (C) avoids and otherwise minimizes shading of critical areas and other adverse effects. In addition, federal and state agencies have expressed interest in acquiring the use of cabin structures in close proximity to wildlife sanctuaries or refuges for law enforcement, research, education, and outreach efforts.

The Board has evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §155.4 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.119 - 33.131 providing that the Board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land if the use is sought by one who is claiming a interest in the structure but is not incident to the ownership of littoral property.

The Board has reviewed the adopted amendments for consistency with the applicable goals and policies Coastal Management Program (CMP) and regulations of the Coastal Coordination Council (Council). Since the requests for renewal of structure cabin permits must meet the same criteria as set forth in subsection (c) of §155.4 for Board approval, as well as the policies of the CMP in 31 TAC §501.24(a)(6), the Board has determined that the adopted action is consistent with applicable CMP goals and policies.

The amendments are adopted under Texas Natural Resources Code, §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Texas Natural Resources Code, Chapter 33.

Texas Natural Resources Code, §§33.119 - 33.131, providing that the Board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land, are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2005.

TRD-200503523
Larry L. Laine
Chief Clerk, General Land Office
School Land Board
Effective date: September 11, 2005
Proposal publication date: June 24, 2005
For further information, please call: (512) 305-8598

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3059

The Comptroller of Public Accounts adopts the repeal of §9.3059, concerning certification of appraisal rolls, without changes to the proposal as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3978).

The comptroller is repealing the existing rule to eliminate obsolete provisions regarding data submission and technology and to require the use of the electronic appraisal roll submission record layout and instructions manual that is updated periodically. A new §9.3059 will be adopted which will have new requirements of each county appraisal district to certify the appraisal roll or a summary of the appraisal roll to the comptroller annually.

No comments were received regarding adoption of the repeal.

This repeal is adopted under and implements Tax Code, §26.01(b).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2005.

TRD-200503411
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 5, 2005
Proposal publication date: July 8, 2005
For further information, please call: (512) 475-0387

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34 TAC §9.3059

The Comptroller of Public Accounts adopts new §9.3059, concerning certification of appraisal rolls, without changes to the proposed text as published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 3978).

The comptroller is repealing the existing rule to eliminate obsolete provisions regarding data submission and technology and to require the use of the electronic appraisal roll submission record layout and instructions manual as revised periodically. Tax Code, §26.01(b) requires the chief appraiser of each county appraisal district to certify the appraisal roll or a summary of the appraisal roll to the comptroller annually in the form and manner prescribed by comptroller rule. The new section will provide new requirements of each county appraisal district to certify the appraisal roll or a summary of the appraisal roll to the comptroller annually. An electronic submission record layout and instructions manual will also be adopted by reference.

No comments were received regarding adoption of the new section.

The new section is adopted under and implements Tax Code, §26.01(b).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2005.

TRD-200503412
Martin Cherry
Chief Deputy General Counsel
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Effective date: September 5, 2005
Proposal publication date: July 8, 2005
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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) adopts new Chapter 802, §§802.1 - 802.4, 802.11 - 802.15, 802.21, 802.22, 802.31, 802.41 and 802.42, relating to the Texas Workforce Commission Local Workforce Development Board Advisory Committee (TWC Advisory Committee). The following sections are adopted without changes to the proposed text as published in the April 15, 2005, issue of the *Texas Register* (30 TexReg 2200):

Subchapter A. General Provisions, §802.1 and §802.3

Subchapter B. Requirements for TWC Advisory Committee Members, §802.13, §802.14, and §802.15

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

The Commission adopts the following new sections to Chapter 802, relating to the TWC Advisory Committee with changes to the proposed text as published in the April 15, 2005, issue of the *Texas Register* (30 TexReg 2200):

Subchapter A. General Provisions, §802.2 and §802.4

Subchapter B. Requirements for TWC Advisory Committee Members, §802.11 and §802.12

Subchapter C. Requirements for TWC Advisory Committee Meetings, §802.21 and §802.22.

PART I. PURPOSE AND BACKGROUND

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART III. COORDINATION ACTIVITIES

PART I. PURPOSE AND BACKGROUND

Purpose

The Commission adopts new Chapter 802 to implement the requirements of §302.013 of the Texas Labor Code relating to the establishment of a Local Workforce Development Board (Board) advisory committee and to meet the requirements in Chapter 2110 of the Texas Government Code relating to state agency advisory committees.

The Commission also adopts new Chapter 802 to establish rules designed to:

- define the roles and responsibilities of the Commission and the TWC Advisory Committee regarding the work of the TWC Advisory Committee;

- promote effective communication between the Commission and the TWC Advisory Committee;

- facilitate policy discussions with the Commission regarding the local workforce delivery system; and

- outline the parameters for the operation of the TWC Advisory Committee to promote an effectively functioning entity.

Background

In May 2002, the Sunset Advisory Commission staff reported that the Commission lacked a formal mechanism for Boards to provide input directly to the Commission on policies that affect the Boards and the local workforce delivery system. The Sunset Advisory Commission staff also stated that even though Boards provide input through a variety of ad hoc mechanisms, such as weekly conference calls between the Boards and Agency staff, several Boards felt excluded from the development of plans, policies, rules, and performance measures that directly affect them.

Based on its staff report, the Sunset Advisory Commission Report to the 78th Texas Legislature (2003) recommended the establishment of an advisory committee. The advisory committee, to be appointed by the Executive Committee of the Workforce Leadership of Texas (WLT) [now the Texas Association of Workforce Boards (TAWB)] would be responsible for providing input, advising the Commission, and commenting on proposed rules and policies that affect the Boards and local operations. The Sunset Commission reported that the purpose of its recommendation was to "improve the state-local partnership for workforce services by ensuring that Boards have formal input on Commission decisions affecting local services."

Based upon the recommendations of the Sunset Advisory Commission, the Legislature enacted Senate Bill 280 (SB 280), which, in part, added §302.013 to the Texas Labor Code. This section establishes a nine-member advisory committee, appointed by the Executive Committee of TAWB, to advise the Commission and Agency staff regarding the programs, policies, and rules of the Commission that affect the operations of the Boards and the local workforce delivery system.

Texas Government Code, Chapter 2110, governs state agency advisory committees that are either created by state or federal law or established by a state agency pursuant to state or federal law. Chapter 2110 requires a state agency with a legislatively established advisory committee to develop rules that state the purpose and tasks of the advisory committee and describe the manner in which the advisory committee will report to the agency.

Additionally, Chapter 2110 establishes minimum requirements for state agency advisory committees regarding the composition of the advisory committee, the selection of a presiding officer, the abolishment date for advisory committees, the reimbursement of members' expenses, the state agency evaluation of the advisory committee's cost and effectiveness, and the state agency report to the Legislative Budget Board regarding the effectiveness of the advisory committee.

Therefore, to incorporate the provisions of Texas Labor Code, §302.013 and Texas Government Code, Chapter 2110, the Commission adopts new Chapter 802.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

SUBCHAPTER A. GENERAL PROVISIONS

§802.1. Requirements for the Texas Workforce Commission Local Workforce Development Board Advisory Committee

Section 802.1 describes the statutory authority for the establishment of the TWC Advisory Committee. The TWC Advisory Committee, established pursuant to Texas Labor Code §302.013, is subject to Texas Government Code, Chapter 2110, and shall be governed by Chapter 802.

§802.2. Purpose and Tasks

Texas Government Code, §2110.005(1) requires state agencies to set forth in rule the purpose and tasks of advisory committees. Section 802.2 of this chapter provides the purpose and tasks of the TWC Advisory Committee, which the Commission based on the Sunset Advisory Commission Report to the 78th Texas Legislature, as well as the language in Texas Labor Code §302.013.

Section 802.2(a)(1) states that a purpose of the TWC Advisory Committee is to ensure that Boards have formal input on Commission policy decisions affecting the operations of Boards and the local workforce delivery system. This language is based on the Sunset Advisory Commission's Report.

Even though the TWC Advisory Committee will be the formal mechanism for Boards to provide input to the Commission regarding policies affecting Board operations and the local workforce delivery system, the Commission will continue to welcome and encourage input from individual Board chairs, Board members, Board executive directors, and the public, as well as TAWB, and TAWB's Policy Committee.

Section 802.2(a)(2) provides that an additional purpose of the TWC Advisory Committee is to advise the Commission regarding the programs, policies, and rules of the Commission that affect the operations of Boards and the local workforce delivery system. This language is based on Texas Labor Code §302.013(e)(3).

Also, 802.2(a)(3) also provides that the purpose of the TWC Advisory Committee is to advise the Commission regarding the strategic direction of workforce services in Texas. The Commission adds this provision to emphasize that the advice and input provided to the Commission must include a strategic, statewide perspective that benefits the state workforce delivery system as a whole.

Section 802.2(b) states that the TWC Advisory Committee shall meet at least quarterly and report to the Commission at least annually. This language mirrors the tasks stipulated in Texas Labor Code, §302.013(e)(1) and §302.013(e)(2).

Further, §802.2(c) specifies the tasks that the TWC Advisory Committee may perform, which include providing a statewide perspective of the workforce system to the Commission; advising the Commission on policy or rule concept papers; recommending to the Commission items for improving the operations of Boards and the local workforce delivery system; and requesting

information from the Commission regarding existing rules, policies, or other topics that the TWC Advisory Committee wants to study.

Comment: One commenter stated that the legislative intent of SB 280 was to establish the TWC Advisory Committee as the Commission's primary point of contact with the Boards on policy issues concerning the operation of the local workforce system. The commenter expressed concern that the current advisory committee-a subcommittee of TAWB- is operating in direct conflict with legislative authority, noting that the TWC Advisory Committee is a legislatively mandated body, with very specific tasks, that reports to the Commission and is therefore not a component of TAWB. The commenter further stated that the role of the TWC Advisory Committee is to assist the Commission in gaining the strategic vision at the local level necessary to create a flexible, demand-driven system responsive to business needs in developing human capital. The commenter fully supported the rules for Chapter 802 as written and published for comment by the Commission.

Response: The Commission appreciates the commenter's support of the rules and agrees with the commenter that the TWC Advisory Committee serves as the formal mechanism by which Boards provide input to the Commission on policy issues concerning the operation of the local workforce system. The Commission also agrees with the commenter's observation that the TWC Advisory Committee is a legislatively mandated advisory committee specifically created to advise the Commission and is a separate entity from TAWB. Furthermore, §302.013(e)(3) of the Texas Labor Code requires the TWC Advisory Committee to report to the Commission. Therefore, because the TWC Advisory Committee meets the definition of an agency-established advisory committee, and because the TWC Advisory Committee is required to report to the Commission, it is a separate entity from TAWB.

The Commission also agrees with the commenter that the TWC Advisory Committee is to provide input to the Commission on policy issues affecting Board operations from a statewide and strategic perspective. To emphasize this point, the Commission modified the proposed rules to add §802.2(a)(3), which states that one purpose of the TWC Advisory Committee is to advise the Commission regarding the strategic direction of workforce services in Texas.

Comment: One commenter voiced concern that the TWC Advisory Committee would replace the TAWB Policy Committee as the primary vehicle for discussions between the Boards and the Commission. The commenter recommended that TAWB be added in the preamble in regard to welcoming and encouraging input to ensure TAWB's continued contribution to the workforce system.

Response: The Commission appreciates the comment and has incorporated references in the preamble to continued input from TAWB and the TAWB Policy Committee. However, in accordance with Texas Labor Code §302.013, the rules also specify that the TWC Advisory Committee is the Commission's formal mechanism by which Board members and executive directors provide input and advise the Commission on programs, policies, and rules affecting Board operations and the local workforce delivery system.

Comment: One commenter expressed concern that the inclusion of §802.2(c) listing the activities that the TWC Advisory Committee "may" perform implies that its activities should be limited to the list of items specified. Moreover, the commenter stated that any restrictions on the activities of the TWC Advisory Committee should be a matter of governance for the TWC Advisory Committee or TAWB, to the extent those activities otherwise comply with applicable law.

Response: The Commission disagrees with this comment that the rule implies that §802.2(c) limits the activities of the TWC Advisory Committee. The Commission includes a list in order to allow the TWC Advisory Committee to conduct activities that, even though not specified in statute, would be beneficial. The Commission's intent in §802.2(c) is not to restrict the topics that the TWC Advisory Committee considers but to provide a framework under which the committee operates.

The Commission also disagrees with the comment that the scope of the activities of the TWC Advisory Committee should be a governance matter reserved for the TWC Advisory Committee or TAWB. The Commission emphasizes that the advisory committee was created pursuant to statute (Texas Labor Code §302.013) to advise the Commission, and is subject to Chapter 2110 of the Texas Government Code. As such, it is governed by the Commission and not by TAWB.

Comment: One commenter asked if providing advice to the Commission includes the ability of the TWC Advisory Committee to recommend actions to the Commission.

Response: The Commission appreciates the comment and clarifies that the provision in §802.2(c)(3) that the TWC Advisory Committee may "make recommendations to the Commission to improve the operations of Boards and the local workforce delivery system" permits the TWC Advisory Committee to recommend action items for the Commission to consider.

§802.3. Duration of the TWC Advisory Committee

Section 802.3 abolishes the TWC Advisory Committee on September 1, 2007, unless the Commission establishes, by rule, a different abolishment date. Texas Government Code §2110.008 provides that unless the state agency designates a different abolishment date, an advisory committee is automatically abolished on the fourth anniversary of the date of its creation. The advisory committee may continue in existence after the abolishment date if the state agency by rule provides for a different date. For advisory committees established by law, the date of creation is the effective date of the law. In the case of the TWC Advisory Committee created by SB 280, the effective date was September 1, 2003. Therefore, unless the Commission by rule establishes a different date, the automatic abolishment date of the TWC Advisory Committee is September 1, 2007.

Comment: One commenter recommended revising the language in §802.3 to reflect that the TWC Advisory Committee shall continue in effect until such time as the Legislature no longer determines a need for the committee. Because the TWC Advisory Committee was created by legislation, the commenter stated that it is appropriate that only the Legislature can abolish the committee. In addition, the commenter also pointed out that the TWC Advisory Committee was created "to advise the commission and commission staff regarding the programs, policies, and rules of the commission that affect the operations of the local workforce development boards and the local workforce delivery system." Therefore, an ongoing need for the committee will exist past September 1, 2007.

Response: The Texas Legislature has established in Texas Government Code, Chapter 2110, a process by which advisory committees are automatically abolished. The Commission's new rules follow that process. Section 2110.008(b) of the Texas Government Code provides that 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, as determined by §2110.008(b) of the Texas Government Code, is September 1, 2007.

The Commission recognizes that there may be an ongoing need for the TWC Advisory Committee after September 1, 2007. Section 2110.008(b) of the Texas Government Code allows agencies to establish, by rule, a different abolishment date, beyond the automatic abolishment date. Additionally, §2110.006 and §2110.007 of the Texas Government Code require state agencies to evaluate annually the work, usefulness, and costs of advisory committees and report to the Legislative Budget Board the results of the annual evaluations in conjunction with the agencies' requests for appropriations. The Commission will, therefore, conduct an annual evaluation of the TWC Advisory Committee to determine whether the committee should continue in existence beyond the statutorily prescribed abolishment date of September 1, 2007. In order to provide sufficient time to propose and adopt any necessary rule amendment regarding continuation of the TWC Advisory Committee prior to the committee's expiration on September 1, 2007, the Commission will make this determination by March 1, 2007.

§802.4. Agency Contact

To facilitate effective and efficient communication, the Commission designates in §802.4 the Agency's executive director, or his or her designee, as the primary point of contact for the TWC Advisory Committee.

Comment: One commenter stated that the Commission should have an open-door communication policy with the entire workforce system. Though the TWC Advisory Committee is a user-friendly concept for the Commission, the commenter stated that there is no system in place to capture all of the things that could affect local workforce area.

Response: The Commission agrees and will continue to have an open communication policy with parties interested in the workforce system. In order to emphasize the Commission's intent that there be open communication, a change is being made to the proposed rule to clarify that the Executive Director is the TWC Advisory Committee's primary point of contact, rather than the single point of contact. It is the Commission's intent that formal communications, advice, reports, recommendations, requests for information or other official business of the TWC Advisory Committee be provided to the Agency's executive director, or his or her designee, as the primary contact.

This provision does not preclude TWC Advisory Committee members from communicating with Commissioners, Commission staff or other Agency staff regarding issues of the TWC Advisory Committee. The Commission continues to encourage and to welcome additional input from Board chairs, Board members, Board executive directors, and the public, as well as TAWB and the TAWB Policy Committee. The Commission also will continue the biweekly conference calls with the Board executive directors to discuss issues relating to Board operations. However, the Commission, based on the statute, maintains that the TWC Advisory Committee serves as the Commission's formal mechanism by which Board chairs, Board members, and Board executive directors provide advice, input, and recommendations to the Commission regarding policy and operational issues affecting Boards. The Commission encourages any parties interested in the workforce system to work closely with the TWC Advisory Committee in providing input to the Commission regarding policies affecting Board operations.

General Comments on Subchapter A

Comment: One commenter recommended that the Commission define "Board" and "TWC Advisory Committee" in the rules.

Response: The Commission appreciates the recommendation. However, new Chapter 802 is an addition to Texas Administrative Code (TAC), Title 40, Part 20. According to 40 TAC §800.2, Definitions, the words and terms in this section, relating to the Texas Workforce Commission, when used in Part 20, will have established meanings, unless the context clearly indicates otherwise. A Local Workforce Development Board is defined in 40 TAC §800.2(3). Therefore, it is not necessary to include or reference that definition in new Chapter 802. Additionally, §302.013(a) of the Texas Labor Code defines TWC Advisory Committee. Therefore, the Commission believes that the terms have been fully defined.

SUBCHAPTER B. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEMBERS

§802.11. Appointment and Composition

Texas Labor Code, §302.013(b), provides that the executive officers of "the organization composed of a member of and the staff director of each local workforce development board" appoint the TWC Advisory Committee members. The statute however, does not specifically identify the organization whose executive officers are required to appoint the TWC Advisory Committee members.

The Commission reviewed the Sunset Advisory Commission's recommendations, as well as the legislative history of SB 280, including legislative bill analyses and committee meeting minutes. Even though the organization described in §302.013(b) was not identified in the text of any version of the bill, the Sunset Advisory Commission Report to the 78th Legislature (2003) specifically recommended that the Executive Committee of the Workforce Leadership of Texas (WLT) [now the Texas Association of Workforce Boards (TAWB)] appoint members to the TWC Advisory Committee. Additionally, every version of the legislative bill analysis-from the introduced version to the enrolled version-stated that the bill requires the executive committee of WLT to appoint the committee members.

Therefore, based on the recommendation of the Sunset Advisory Commission and the legislative bill analyses, the Commission designates in §802.11(a) of this chapter, the TAWB Executive Committee, or its successor organization, as the organization responsible for TWC Advisory Committee member appointments.

Additionally, §802.11(a) of this chapter requires that the TAWB Executive Committee, or its successor organization, provide to the TWC executive director or designee, sufficient notice of the meeting at which appointments to the TWC Advisory Committee will be made so the Agency will be able to provide a seven-day notice of the meeting to the public. The Commission strongly believes that government organizations must operate in the open to be responsive to the public, to foster trust and confidence in government, and to encourage public participation. Therefore, the Commission intends that appointments to the TWC Advisory

Committee be made during a public meeting in order to provide the public access to a full discussion of the appointments.

Texas Labor Code, §302.013, requires that the TWC Advisory Committee be composed of six Board members and three Board executive directors. The Commission rules in §802.11(b) reflect this requirement. Additionally, to align with the charge in Texas Government Code §2308.256(a) that Boards have a majority of their members represent the private sector, the Commission requires in §802.11(b) that the six Board members be private sector employers. Because employers are the workforce network's primary customers, the Commission believes that the TWC Advisory Committee should be composed primarily of private sector employers.

Further, Texas Labor Code, §302.013(d) provides that members of the TWC Advisory Committee shall represent different geographic areas of the state. The Commission rules in §802.11(c) reflect this requirement.

Comment: Two commenters addressed §802.11(c) regarding geographic representation. One commenter suggested defining the term "geographic region," mentioned in §802.11(c), as a single workforce area. Another commenter stated that the Commission might be better served with a demographic (e.g., urban, rural, agricultural, industrial) rather than a geographic distribution. The commenter also suggested the apportionment of "seats" to geographic areas.

Response: The Commission appreciates the suggestions; however, it does not agree that the rule language should be modified to define a geographic region as a workforce area. While "geographic region" is not defined in statute, the Commission believes that simply considering a single workforce area as a separate geographic region could ultimately result in the nine members of the TWC Advisory Committee representing nine workforce areas located primarily in one region of the state while the other regions would have no representation. For example, all nine members could be from workforce areas in the western side of the state. Such a result would contravene legislative intent. Section 302.013(d) of the Texas Labor Code states that members of the advisory committee must represent different geographic areas of the state.

Moreover, the Commission does not agree that the TWC Advisory Committee should have a demographic, rather than geographic, composition as this also would contravene legislative intent that members represent different geographic regions. Further, the Commission disagrees with the idea that the rules should include an apportionment of seats to geographic regions. Such a provision would unduly limit the flexibility of the TAWB Executive Committee in appointing members.

The Commission believes that the legislative intent is clear in the statute that members represent different geographic regions. The Commission recommends that when the TAWB Executive Committee appoints TWC Advisory Committee members in an open meeting, as required in §802.11, there be careful deliberations to ensure that geographical representation is maintained.

Comment: Five commenters expressed concerns regarding the provision in proposed §802.11(d) prohibiting TAWB Executive Committee members from serving on the TWC Advisory Committee.

One commenter suggested including, at a minimum, a TAWB Executive Committee member to be on the TWC Advisory Committee in order to ensure continuity and coordination between the TWC Advisory Committee and the TAWB Executive Committee. The commenter also recommended that §802.11(d) be modified to authorize the TWC Advisory Committee to establish policies and procedures in its bylaws to ensure that the TWC Advisory Committee does not consist entirely of TAWB Executive Committee members.

Another commenter recommended that the prohibition against TAWB Executive Committee members also serving on the TWC Advisory Committee be qualified "to the extent feasible" to allow for greater flexibility. The commenter believed a flexible restriction would help ensure representation of all of the geographical areas on the TWC Advisory Committee, thus accomplishing the Commission's goal to have a variety of members on the TWC Advisory Committee.

Another commenter was concerned with the proposed prohibition against TAWB Executive Committee members from serving on the TWC Advisory Committee, and stated that there is no reason to exclude them from the TWC Advisory Committee.

Two commenters believed that the TWC Advisory Committee composition rules are restrictive and run counter to the intent of the legislation, suggesting that nothing in SB 280 (or other applicable law) prohibits members of the TAWB Executive Committee from serving on the TWC Advisory Committee.

Response: The Commission disagrees with the comment that the proposed rule prohibiting the TAWB Executive Committee from appointing its members to serve on the TWC Advisory Committee contravenes the intent of the statute, as the law is silent on this issue. The Commission recognizes that the Legislature designated the TAWB Executive Committee to appoint members to the TWC Advisory Committee. However, this does not necessarily imply that the Legislature intended to allow the TAWB Executive Committee to appoint its members to the TWC Advisory Committee. If that were the case, the Legislature would have stipulated that the TAWB Executive Committee serve as the TWC Advisory Committee. The Legislature did not take this action.

Although the Commission believes that the proposed prohibition does not contravene the intent of the statute, the Commission appreciates the comments and has changed the proposed rule language to remove the prohibition against the TAWB Executive Committee from appointing its members to serve on the TWC Advisory Committee. The Commission removes this prohibition in order to provide the TAWB Executive Committee with the flexibility to appoint the most appropriate representatives to accomplish the TWC Advisory Committee's purpose and tasks. It remains the Commission's desire that TWC Advisory Committee members bring innovative and strategic ideas for system-wide improvements from a wide variety of perspectives.

The Commission proposed this prohibition to facilitate the inclusion of a variety of TAWB members in policy discussions. Although the Commission removes the proposed prohibition, the Commission nevertheless believes that including a diverse group of Board members and executive directors on the TWC Advisory Committee is in the best interest of the state and the workforce system in order to promote a demand-driven system responsive to the needs of all employers in Texas. The Commission remains steadfast in its desire that the TAWB Executive Committee consider the entire TAWB membership when appointing members to the TWC Advisory Committee.

Comment: Two commenters expressed concern regarding the time commitments that the rules may place on TWC Advisory

Committee members. One commenter pointed out that members of the TAWB Executive Committee have committed four to six years to serve as officers of the association and that the Boards have agreed to commit funds for their participation. In addition, one commenter was concerned about the effect of the proposed rules on the ability and willingness of volunteers to serve on the TWC Advisory Committee. The commenter stated that the proposed rule would require a level of time and commitment of service on the TWC Advisory Committee that would make it difficult for business volunteers to serve, given the amount of time already expended in serving as local Board officers, participation in local Board committees, TAWB meetings, and related committees and activities.

Response: The Commission appreciates and applauds the amount of time volunteered by all individuals serving as Board members, as well as those members accepting an appointment to the TWC Advisory Committee. These are voluntary positions and members have the discretion to serve. But the Commission is concerned about the commenter's objectives in having TAWB Executive Committee members make a four- to six-year time commitment. Such a commitment may be unrealistic and burdensome for volunteer business leaders serving on the Board and the TAWB Executive Committee. The Commission does not wish to place such a time burden on TWC Advisory Committee members. Therefore, to ensure that the broadest array of individuals has the chance to serve the State of Texas and provide input to the Commission on the local workforce delivery system the Commission encourages the TAWB Executive Committee to consider the current obligations of Board members and TAWB Executive Committee members when appointing individuals to the TWC Advisory Committee.

§802.12. Vacancies

Section 802.12(a), establishes that if a vacancy occurs, the TAWB Executive Committee, or its successor organization, shall have 90 days following the date on which the vacancy occurred to appoint a person to serve the unexpired portion of that term. Section 802.12(a) further requires that the TAWB Executive Committee, or its successor organization, provide due notice to the Agency executive director, or designee, of meetings at which vacancies on the TWC Advisory Committee will be filled so that the Agency can provide a seven-day public notice of the meeting. This requirement ensures that public access to open meetings conducted for the appointment of TWC Advisory Committee members will also be provided for meetings conducted to make appointments to fill vacancies. As stated previously, this requirement also ensures that appointments to the TWC Advisory Committee are made during a public meeting to provide the public access to a full discussion of the appointments.

Additionally, §802.12(b) states that a vacancy shall occur if, during the member's term, the TWC Advisory Committee member is no longer serving in the same role with the Board as when the person was initially appointed to the TWC Advisory Committee. This provision supports the geographical representation as required by Texas Labor Code, §302.013(d) and provided in §802.11(c). For example, the geographical representation of the TWC Advisory Committee membership could change should an executive director of a Board located in one region of the state be appointed to the TWC Advisory Committee and during that member's term resigns that position to become the executive director of a Board in a different region of the state. In such a case, §802.12(b) would require the Board's executive director to resign from the TWC Advisory Committee and the TAWB Executive Committee would have 90 days to fill the vacancy. When appointing new members to fill vacancies, the TAWB Executive Committee must adhere to the geographical requirements in §802.11(c).

Comment: One commenter stated that the rationale for §802.12(b) is clear from the preamble. The commenter suggested inserting the rationale provided in the preamble into the actual rule language.

Response: The Commission appreciates the comment and has modified the proposed rule language to clarify that a vacancy occurs if, during the member's term, the TWC Advisory Committee member is no longer serving in the same role with the Board as when the person was initially appointed to the TWC Advisory Committee. However, the Commission makes this change in order to clarify that maintaining geographic representation is not the only reason for this provision. The Commission also includes this provision to ensure that the proper number of Board members and executive directors is maintained when a member's role changes. For example, if a TWC Advisory Committee member who is also a Board member resigns from that Board to become the Board's executive director, the TWC Advisory Committee will no longer be composed of the appropriate number of Board members.

§802.13. Terms of Office

Section 802.13(a) specifies that the term of a TWC Advisory Committee member shall be two years. Because it is important to have experienced TWC Advisory Committee members, as well as to allow for new perspectives through rotation of membership, §802.13(b) provides that a member may serve multiple terms, but shall serve no more than two consecutive terms. The ability to have TWC Advisory Committee members serve multiple terms allows for experienced members to continue to participate on the TWC Advisory Committee. However, the provision also requires a break in membership after two consecutive terms to afford new and fresh perspectives.

TWC Advisory Committee members shall serve staggered terms. It is important that the terms of office allow for new TWC Advisory Committee members to serve with experienced members. It is also important to avoid simultaneous expiration of all terms, which would require complete reconstitution of the entire TWC Advisory Committee every two years. Section 802.13(c) provides that in order to establish the staggered terms, TAWB shall initially appoint three Board members and one executive director for a one-year term and three Board members and two executive directors for a two-year term. The four members appointed for a one-year term will fulfill a one-time, one-year appointment that will occur during the first year the TWC Advisory Committee is in existence. Following the expiration of the initial four members' one-year term, TAWB shall appoint four members to two-year terms. Subsequent appointments for all members shall be for two-year terms. In this manner, at most, only five TWC Advisory Committee members' terms will expire every year. Four terms will expire in one year, then five terms will expire the next year.

Comment: One commenter stated that there is no good reason or rational basis to require term limits or staggered terms on the TWC Advisory Committee; the commenter further stated that such a term restriction served as an impediment to the functioning of the TWC Advisory Committee.

Response: The Commission disagrees with the comment that there is no good reason or rational basis for term limits or staggered terms. The Commission believes that this provision will result in a balance on the TWC Advisory Committee of both experienced members and those with new perspectives who may serve on the TWC Advisory Committee. Additionally, term limits recognize that private sector employers have a primary commitment to their business, and prevent those who volunteer to serve on the TWC Advisory Committee from having to make an overly burdensome long-term commitment.

Comment: One commenter questioned if the initial four members' terms counted as full two-year terms or rather one-year terms that could possibly be followed up by two, two-year terms.

Response: The Commission appreciates the comment and responds that the initial four members' one-year terms will count as one term, and, therefore, the members may be reappointed to one additional two-year term, for a total service limited to three consecutive years. The intent of the staggered terms is to avoid a complete turnover of membership and to maintain at least four members from the previous year's committee. However, the initial four members may not be appointed to more than the two consecutive terms as required by §802.13(b).

§802.14. Selection and Role of a Presiding Officer

Texas Government Code, §2110.003 states that an advisory committee shall elect a presiding officer from among its members. The Commission mirrors this language in §802.14. The Commission specifies that the presiding officer be a Board member in order to emphasize the importance of the private sector perspective in the work of the TWC Advisory Committee in promoting an employer-driven workforce system. The Commission also designates the presiding officer to report to the Commission, as required in §2110.003(b) of the Texas Government Code.

§802.15. Legislative Activity

Texas Government Code, Chapter 556, regarding the use of state appropriations for political activities, also applies to Board officers and employees. By extension, Chapter 556 covers the TWC Advisory Committee members. Therefore, the Commission includes in §802.15(a) coverage of TWC Advisory Committee members in the lobbying provisions of Texas Government Code, Chapter 556. Additionally, §802.15(b) provides that individual TWC Advisory Committee members are not prohibited from representing themselves, their Boards, their businesses, or any other entities to the Texas Legislature, subject to state law restrictions on lobbying; nevertheless, TWC Advisory Committee members may not use state appropriations for political activities for TWC Advisory Committee purposes.

General Comments on Subchapter B

Comment: Two commenters suggested that the TWC Advisory Committee should be allowed to set procedures and policies related to appointments, composition, vacancies, terms of office, and selection and roles of the presiding officer. Further, the commenters stated that allowing the TWC Advisory Committee to establish its own rules for vacancies, terms of office, and role of the presiding officer would clearly give the TWC Advisory Committee a sense of being independent.

One commenter contended that the TWC Advisory Committee is self-governing and should be allowed to establish its own guidelines. The commenter would support a rule requiring the establishment of bylaws and a review and comment period prior to approval of such bylaws in an open meeting of the TWC Advisory Committee.

Response: Although the Commission appreciates the suggestions, it disagrees with the comments. The commenters proposed allowing the TWC Advisory Committee the independence to develop certain procedures and policies, some of which are regulated by statute. For example, §302.013 of the Texas Labor Code outlines the required composition of the TWC Advisory Committee, while Texas Government Code §2110.003 guides selection and roles of the presiding officer. Though not covered in statute, the Commission has provided rules regarding appointments, vacancies, and terms of office to ensure open selection of members and new perspectives through rotation of membership. The Commission believes that these rules serve the public's interest and the interests of the workforce system. The TWC Advisory Committee is welcome to develop additional procedures and policies within the parameters set forth by the Commission.

The Commission notes that other advisory committees for state agencies-for example, advisory committees under the Texas Health and Human Services Commission-also include requirements on appointments, vacancies, and terms of office. Some state agency rules have even more prescriptive requirements. For instance, the Texas Department of State Health Services' rules for the State Preventative Health Advisory Committee include procedures for who is responsible for calling meetings, as well as attendance requirements. The rules also require that the committee follow *Roberts Rules of Order Newly Revised* as a basis for parliamentary decisions. The Commission believes the TWC Advisory Committee should not be required to follow such strict procedural requirements.

SUBCHAPTER C. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEETINGS

§802.21. Open Meetings

The TWC Advisory Committee is not a "governmental body" as defined in the Open Meetings Act in Texas Government Code, Chapter 551. However, research on various advisory committees in Texas shows that other governmental entities require their advisory committees-e.g., the Texas Water Well Drillers Advisory Council-to conduct meetings in accordance with the Texas Open Meetings Act. In order to promote public participation, the Commission in §802.21(a) establishes that meetings of the TWC Advisory Committee shall be conducted in accordance with the Open Meetings Act requirements in Texas Government Code, Chapter 551.

To assist the TWC Advisory Committee in meeting the requirements of the Open Meetings Act, §802.21(b) states that the Agency's executive director, or designee, as the central point of contact for the TWC Advisory Committee, shall be responsible for posting the meetings in accordance with §551.044 of the Texas Government Code, which requires a seven-day posting for meetings with statewide jurisdiction. The Commission expects that the TWC Advisory Committee will notify the Agency's executive director, or designee, of its meetings and agendas in a timely manner so that statewide Open Meetings Act requirements are met.

Section 802.21(c) requires the Agency's executive director, or designee, to prepare and keep the meeting minutes, as set forth in Chapter 551, Subchapter B, of the Texas Government Code, which requires that minutes or a tape recording of each open meeting be kept and available to the public upon request. To implement this requirement, the Agency will tape record each

meeting. The Agency believes that this is the most efficient and cost-effective mechanism to maintain an accurate record of the discussions on issues impacting the workforce delivery system.

The Commission establishes in §802.21(d) that a quorum shall be present for TWC Advisory Committee meetings. According to §551.001(6) of the Texas Government Code, "quorum," means a majority of a government body, unless defined differently by applicable law or rule or the charter of the governmental body. In keeping with these requirements, a quorum for the purposes of this chapter is defined as six members of the TWC Advisory Committee.

In §802.21(e), the Commission states that the approval of five members of the TWC Advisory Committee be required on any advice, recommendations, or reports. The Commission includes the provisions in §802.21(d) and §802.21(e) to emphasize the importance of soliciting input and achieving consensus from a majority of the members of the TWC Advisory Committee.

Comment: One commenter noted that advice, recommendations, or reports must be approved by five members of the committee. The commenter questioned what mechanism was in place for this, and asked whether approval would be required at a meeting or could other methods be used. Further, the commenter stated that because under this rule approval must be given by a simple majority of the members as a whole, rather than by a majority of those present and voting, it seems reasonable that other methods should be considered.

Response: The Open Meetings Act requires that members be present to vote and does not allow the use of voting by proxy or other methods.

Comment: Two commenters were concerned about the open meetings requirements and designating the Agency as the entity responsible for maintaining the minutes of the meetings. One commenter stated that the Commission recognized in the preamble that the TWC Advisory Committee is not a "governmental body" and is therefore not subject by law to open meetings requirements. The commenter further suggested that these rules require the TWC Advisory Committee to comply with the open meetings requirements under the theory of "promoting public participation." The commenter believed that the TWC Advisory Committee would not do anything different, whether the meetings were open or closed to the public, and argued that the Commission did not articulate a reasonable basis for the added burden of cost.

The second commenter expressed concern that the open meetings requirement may discourage participation of members of the TWC Advisory Committee as envisioned by the Texas Legislature. Further, the commenter was concerned about burdening the Commission with criticisms or issues that make it into the minutes or recordings of these meetings, but not into formal TWC Advisory Committee recommendations, and was not sure that the Commission fully considered the potential impact of this rule.

Response: The Commission strongly believes that the goal of open government and promoting public participation in government processes is a reasonable basis for requiring the TWC Advisory Committee to conduct business in an open meeting. The Commission encourages and welcomes free and open discussion and does not believe that open meetings will discourage committee members from having candid discussions of issues. Furthermore, through the Open Meetings Act, the State of Texas directs that public business be conducted openly and in public view, the principle under which the Commission intends that the business of the TWC Advisory Committee operate.

As for the issue of the added burden of cost, it is the intent of the Commission to pay for the costs associated with maintaining the minutes required by the Open Meetings Act by tape recording the TWC Advisory Committee meetings. The Commission will provide support, as stipulated in §802.21(c) of this chapter, to assist the TWC Advisory Committee in fulfilling the requirements of the Texas Government Code, while not burdening the committee with the extra responsibility of summarizing the meetings.

Comment: One commenter asked if subcommittees will be subject to the Open Meetings Act.

Response: Although subcommittees of TWC Advisory Committee are not subject to Open Meetings Act requirements, the Commission intends that any recommendation made by a subcommittee and brought to the TWC Advisory Committee will be discussed fully in an open meeting of the TWC Advisory Committee before a decision adopting or rejecting any recommendation is made.

§802.22. Open Records

Although the TWC Advisory Committee is not a "governmental body" for purposes of the Open Meetings Act, the TWC Advisory Committee does meet the definition of a governmental body in §552.003 of the Public Information Act. Therefore, the Commission states in §802.22(a) that TWC Advisory Committee records are subject to the Public Information Act, Texas Government Code, Chapter 552.

In order to assist the TWC Advisory Committee in meeting the requirements of the Public Information Act, the Commission establishes in §802.22(b) that the Agency's executive director, or designee, is responsible for responding to requests for information filed under the Public Information Act, Texas Government Code, Chapter 552.

SUBCHAPTER D. REPORTING TO THE COMMISSION

§802.31. Annual Report

Texas Government Code, §2110.005(2) requires state agencies with advisory committees to adopt rules that "describe the manner in which the committee will report to the agency." Texas Labor Code, §302.013(e)(2) states that the TWC Advisory Committee shall "report to the commission at least annually."

In §802.31(a), the Commission stipulates that the presiding officer of the TWC Advisory Committee submit an annual report to the Commission on or before July 1 of each year so that the Agency can complete its annual evaluation of the TWC Advisory Committee, as required by Texas Government Code, §2110.006, by the end of a fiscal year. The Commission requires in §802.31(b) that the annual report delineate the TWC Advisory Committee's activities over the previous 12 months, specifically from June 1 of the previous year to May 31 of the reporting year, and include, at a minimum:

(1) a description of how the TWC Advisory Committee has accomplished its purpose and tasks;

(2) a brief description of advice, recommendations, and reports made by the TWC Advisory Committee;

(3) the costs related to the TWC Advisory Committee's existence and the source of funds used to support its activities;

(4) a list of the meeting dates, including subcommittee meetings;

(5) the attendance records of its members; and

(6) the TWC Advisory Committee bylaws.

SUBCHAPTER E. AGENCY EVALUATION OF THE TWC ADVISORY COMMITTEE AND REPORT TO THE LEGISLATIVE BUDGET BOARD

§802.41. Agency Annual Evaluation

Texas Government Code, §2110.006 provides that a state agency that has established an advisory committee shall evaluate annually the advisory committee's work and usefulness, and the costs related to the advisory committee's existence, including the cost of agency staff time spent in support of the committee's activities. The Commission mirrors this language in §802.41.

§802.42. Commission Report to the Legislative Budget Board

Texas Government Code, §2110.007 requires that the Commission report to the Legislative Budget Board the information developed in the evaluation required by Texas Government Code, §2110.006 and file the report biennially in connection with the Commission's request for appropriations. The Commission provides language in §802.42 to fulfill this requirement.

Comments Regarding Costs Associated with the TWC Advisory Committee

Comment: Three commenters raised concerns regarding the costs associated with the work of the TWC Advisory Committee.

The first commenter stated that there is no mention in the proposed rules of funding the activities of the TWC Advisory Committee. The impact statement reported that there would be no additional costs to state or local governments. However, the impact statement did not include the impact on the Boards, and the commenter contended there would be a cost impact on the Boards. The commenter stated that because the Commission was establishing rules for composition, appointment method, meeting rules, duration of terms, and the purpose and tasks of the TWC Advisory Committee, the Commission should be willing to fund the expenses of the TWC Advisory Committee.

Another commenter stated that to the extent the TWC Advisory Committee is funded, it is funded by TAWB, which is in turn funded by its member Boards.

Additionally, one commenter questioned whether the costs associated with the TWC Advisory Committee meetings will be absorbed by the Boards.

Response: With regard to the operational costs of the TWC Advisory Committee, the Commission does not expect TAWB or the Boards to absorb such costs. The Commission fully intends to provide appropriate staff support for the work of the TWC Advisory Committee. While the Commission does not have appropriation authority to pay for TWC Advisory Committee members' expenses (including travel and per diem) in the FY'06-'07 biennium, Boards are authorized to pay for travel costs for Board members or executive directors to attend TWC Advisory Committee meetings from allocated funds available for administrative costs.

Comment: Another commenter contended that there would be an economic impact to persons required to comply as a result of these rules. Further, the commenter stated that there is no benefit to the public from these rules.

Response: It is important to note that the rules do not require Boards to pay for any expense a TWC Advisory Committee member may incur. The individual who agrees to serve on the TWC Advisory Committee may have to pay out-of-pocket travel costs, but does so upon his or her own initiative. Membership is completely voluntary; participation is not mandatory for either the Board or the individual. Furthermore, the rules do not require TWC Advisory Committee members to pay any costs in order to be a member of the committee.

Finally, the Commission also disagrees with the comment that there is no public benefit to these rules. The Commission adopts these rules to implement statute, which states that the purpose of the advisory committee is to ensure Boards have formal input on issues affecting the operations of Boards and the local workforce delivery system. These rules will allow for greater public involvement in policy discussions related to the workforce system.

PART III. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' twenty-eight Boards and the Texas Association of Workforce Boards (TAWB). The Commission provided a policy concept paper on December 2, 2004, to the Boards and TAWB for consideration and review pursuant to Texas Labor Code, §302.064. The Commission also conducted a conference call with Board executive directors regarding the policy concept on December 10, 2004. During the development of these proposed rules, the Commission considered the information gathered in order to develop rules that provide clear and concise direction to the parties involved.

The Commission received public comments from:

James Belk, Chair, Texas Association of Workforce Boards (TAWB) and TAWB Advisory Committee

Sam Vale, Chair, Lower Rio Grande Valley Workforce Development Board

Kay O'Dell, Executive Director, North East Texas Workforce Development Board

Mary Ross, Executive Director, West Central Texas Workforce Development Board

Mona Williams Statser, Executive Director, North Texas Workforce Development Board

Willie Taylor, The Texas Executive Directors Council

Angie Nelson-Wernli, Texas Health and Human Services Commission

Mark C. Guthrie, Attorney

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§802.1 - 802.4

The new rules are adopted 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 new rules affect 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.

§802.2. Purpose and Tasks.

(a) The purpose of the TWC Advisory Committee is to:

(1) advise the Commission regarding the strategic direction of workforce services in Texas;

(2) advise the Commission regarding the programs, policies, and rules of the Commission that affect the operations of Boards and the local workforce delivery system; and

(3) ensure that Local Workforce Development Boards (Boards) have formal input on Commission policy decisions affecting the operations of Boards and the local workforce delivery system.

(b) The TWC Advisory Committee shall:

(1) meet at least quarterly; and

(2) report to the Commission at least annually.

(c) The TWC Advisory Committee may:

(1) provide a statewide perspective of the workforce system;

(2) advise the Commission on policy or rule concept papers that affect the operations of Boards and the local workforce delivery system;

(3) make recommendations to the Commission to improve the operations of Boards and the local workforce delivery system; and

(4) request information from the Commission regarding existing rules or policies, or other topics the TWC Advisory Committee wants to study.

§802.4. Agency Contact.

The Agency's executive director, or designee, shall serve as the primary point of contact for the TWC Advisory Committee.

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 August 18, 2005.

TRD-200503464
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Effective date: September 7, 2005
Proposal publication date: April 15, 2005
For further information, please call: (512) 475-0829

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SUBCHAPTER B. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEMBERS

40 TAC §§802.11 - 802.15

The new rules are adopted 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 new rules affect 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.

(a) The executive committee of the Texas Association of Workforce Boards (TAWB), or its successor organization, shall appoint members of the TWC Advisory Committee in a meeting for which notice is given to the Agency's executive director, or designee, in time for a seven-day public meeting notification.

(b) The TWC Advisory Committee shall be composed of:

(1) six Board members who are private sector employers that serve as members of the organization described in subsection (a) of this section; and

(2) three Board executive directors who serve as members of the organization described in subsection (a) of this section.

(c) The TWC Advisory Committee members shall represent different geographic areas of the state.

§802.12. Vacancies.

(a) In 90 days or less following the date on which a vacancy occurs, the executive committee of the organization, as described in §802.11(a) of this subchapter, shall, in a meeting for which notice is given to the Agency's executive director, or designee, in time for a seven-day public meeting notification, appoint a person to serve the unexpired portion of that member's term.

(b) A vacancy shall occur if during the member's term, the TWC Advisory Committee member is no longer serving in the same role with the Board as when the person was initially appointed to the TWC Advisory Committee.

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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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER C. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEETINGS

40 TAC §802.21, §802.22

The new rules are adopted 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 new rules affect 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.

(a) TWC Advisory Committee meetings shall be conducted in accordance with open meetings requirements pursuant to Texas Government Code, Chapter 551.

(b) The responsibility for posting the meetings pursuant to the open meetings requirements of Texas Government Code, §551.044, will be carried out by the Agency's executive director, or designee.

(c) The responsibility for preparing and keeping the minutes pursuant to the open meetings requirements of Texas Government Code, Chapter 551, Subchapter B, will be carried out by the Agency's executive director, or designee.

(d) Six members of the TWC Advisory Committee shall be present to constitute a quorum for the purpose of conducting business.

(e) Any advice, recommendations, or reports made by the TWC Advisory Committee must be approved by five members of the TWC Advisory Committee.

§802.22. Open Records.

(a) TWC Advisory Committee records are subject to the Public Information Act, Texas Government Code, Chapter 552.

(b) The responsibility for responding to requests for information under the Public Information Act, Texas Government Code, Chapter 552, will be carried out by the Agency's executive director, or designee.

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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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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SUBCHAPTER D. REPORTING TO THE COMMISSION

40 TAC §802.31

The new rule is adopted pursuant to Texas Labor Code §301.0015 and §302.002(d), which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rule 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.

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 E. AGENCY EVALUATION OF THE TWC ADVISORY COMMITTEE AND REPORT TO THE LEGISLATIVE BUDGET BOARD

40 TAC §802.41, §802.42

The new rules are adopted 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 new rules affect 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.

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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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2623 on October 18, 2005, at 10:00 a.m., in Room 100 of the William P. Hobby Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance (TDI) proposing the adoption of revised Texas Workers' Compensation Classification Relativities (classification relativities) to replace those adopted in Commissioner's Order No. 04-1001 dated October 14, 2004; and the adoption of a revised table to amend the Texas Basic Manual of Rules, Classification, and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Basic Manual) concerning the Expected Loss Rates and Discount Ratios used in experience rating. Staff's petition (Ref. No. W-0805-09-I) was filed on August 23, 2005.

In its petition, the staff requests consideration of a schedule of revised classification relativities and tables amending the Basic Manual. The revised classification relativities schedule is proposed to replace the classification relativities schedule adopted in Commissioner's Order 04-1001 effective January 1, 2005. The tables amending the Basic Manual concern the Expected Loss Rates and Discount Ratios.

The staff requests that the proposed revised classification relativities be available for adoption by insurers immediately, but that their use be mandatory for all policies with an effective date on or after January 1, 2006. The staff further requests that the revised tables amending the Basic Manual be made effective for workers' compensation experience modifiers with an effective date on or after January 1, 2006.

Article 5.60 (a) of the Texas Insurance Code authorizes the Commissioner to determine hazards by classes and fix classification relativities applicable to the payroll in each class for workers' compensation insurance. Article 5.60 (d) provides that the Commissioner revise the classification system at least once every five years.

The classification relativities currently in effect were based on experience data reflecting workers' compensation experience from policies with effective dates in 1997 through 2001. The proposed classification relativities are based on the analysis of experience data from policies with effective dates in 1998 through 2002. The staff's proposed classification relativities reflect changes in experience that occur over time, due to such things as technological advances and improvements in safety programs. The indicated resulting relativities were balanced to the level of the current relativities through the application of off-balance factors. This provides for a revenue neutral set of relativities in relation to the current relativities. The staff proposes to limit changes in the classification relativities to +25% and -25%. These limited relativities have been balanced overall to the level of the current relativities. This would help to minimize possible rate shock due to large indicated changes in the relativities.

Modifications to the classification relativities require concurrent changes in the Table II of the Basic Manual concerning the Expected Loss Rates and Discount Ratios. The current Table II, which became effective on January 1, 2005, contains expected loss rates that were based on the level of losses used to experience rate the average policy that would be subject to the new expected loss rates. Such a policy would be effective on July 1, 2005 and would reflect the current classification relativities. Staff proposes an adjustment to make the expected loss rates more reflective of the level of losses that would be used to experience rate policies that would be effective in 2006, and reflect the proposed classification relativities. Staff also proposes to cap changes in the expected loss rates to +25% and -25%.

Copies of the full text of the staff petition and the proposed revised schedule and table are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed revised schedule and table, please contact Angie Arizpe at (512) 322-4147 (refer to Ref. No. W-0805-09-I).

Comments on the proposed changes may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of Chief Clerk, P. O. Box 149104, MC 113-2A, Austin, Texas, 78714-9104. An additional copy of the comment should be submitted to Philip Presley, Chief Property and Casualty Actuary, P. O. Box 149104, MC 105-5F, Austin, Texas, 78714-9104.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Ch. 2001).

TRD-200503652
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 24, 2005

♦ ♦ ♦

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 Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission (TREC) proposes to review Chapter 539 in accordance with the Texas Government Code, §2001.039, and the General Appropriations Act of 1999, Article IX, Section 167.

Review of the rules under these chapters will determine whether the reasons for adoption of the rules continue to exist. During the review process, TREC may also determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations, whether the rules reflect current TREC procedures, that no changes to a rule as currently in effect are necessary, or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

TREC invites comments during the review process for 30 days following the publication of this notice in the *Texas Register*. Any questions or comments pertaining to this notice of intention to review should be directed to Loretta R. DeHay, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to general.counsel@trec.state.tx.us within 30 days of publication.

TRD-200503458
Loretta DeHay
General Counsel
Texas Real Estate Commission
Filed: August 17, 2005

♦ ♦ ♦

Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board (board) files this notice of intent to review 31 TAC, Part 10, Chapter 356, Groundwater Management, in accordance with the Texas Government Code, §2001.039. The board finds that the reason for adopting the chapter continues to exist. The board proposes to rename Subchapter A to Groundwater Management Plan Approval; and concurrently proposes amendments to §356.1 through §356.10 and new §356.11 through §356.13 in response to Senate Bill 2, 79th Legislature, Regular Session, 2005.

As required by §2001.039 of the Texas Government Code, the board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 356 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Ron Pigott, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to ron.pigott@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200503444
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: August 17, 2005

♦ ♦ ♦

Adopted Rule Review

Texas Workers' Compensation Commission

Title 28, Part 2

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 3040), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of these rules continues to exist. Therefore, the Commission readopts Chapter 166. If the Commission determines that the rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

CHAPTER 166 - WORKERS' HEALTH AND SAFETY - ACCIDENT PREVENTION SERVICES

§166.1. Definitions of Terms.

§166.2. Initial Writing and Resumption of Writing of Workers' Compensation Insurance.

§166.3. Annual Report to the Commission.

§166.4. Required Accident Prevention Services.

§166.5. Required Periodic Inspections of Accident Prevention Services and Site of Inspection.

§166.6. Exchange of Information for the Inspection.

§166.7. Inspection of Accident Prevention Services: Conducting and Reporting.

§166.8. Qualification of Field Safety Representatives.

§166.9. Approval of Occupational Health and Safety Education Programs.

TRD-200503499
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: August 19, 2005

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: 7 TAC §1.1253(a)(2)

NOTIFICACION DE CREDITO AL CONSUMIDOR
(Préstamo a Plazos)

"ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL	"FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO	"Amount Financed" -- Cantidad Financiada	"Total of Payments" -- Total de Pagos
"The cost of my credit as a yearly rate" -- El costo de mi crédito expresado como tasa anual _____%	"The dollar amount the credit will cost me" -- La cantidad en dólares que me costara el crédito $_____	"The amount of credit provided to me or on my behalf" -- La cantidad de crédito otorgada a mi o en mi nombre $_____	"The amount I will have paid after I have made all payments as scheduled" -- La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan $_____

ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization. ☐ I do not want an itemization.

DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

☐ Deseo el detalle. ☐ No deseo el detalle.

My Payment Schedule will be -- Mi Plan de Pagos será		
Number of Payments -- Número de Pagos	Amount of Payments -- Cantidad de Cada Pago	When Payments are Due -- Cuando se Vence Cada Pago

Credit life insurance, credit disability insurance, involuntary unemployment insurance, and the gap waiver agreement are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.
-- Seguro de vida para el deudor, seguro de incapacidad para el deudor, seguro de desempleo involuntario, y acuerdo de seguro gap no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional.

Type -- Tipo	Premium -- Prima	Signature -- Firma
Credit Life -- Seguro de Vida para el Deudor	$_____	I want Credit Life Insurance -- Deseo Seguro de Vida para el deudor _____ Signature -- Firma
Credit Disability -- Seguro de Discapacidad para el Deudor	$_____	I want Credit Disability Insurance -- Deseo Seguro de Discapacidad para el deudor _____ Signature -- Firma
Involuntary Unemployment Insurance -- Seguro de Desempleo Involuntario	$_____	I want Involuntary Unemployment Insurance -- Deseo Seguro de Desempleo Involuntario _____ Signature -- Firma
Gap Waiver Agreement -- Acuerdo de Abandono de Seguro Gap	$_____	I want Gap Waiver Agreement -- Deseo Acuerdo de Abandono de Seguro Gap _____ Signature -- Firma

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay $_____ for the term of _____.

Puedo obtener seguro de propiedad de quien yo desee si es aceptable para ti. Si obtengo el seguro de ti, pagare $_____ por un plazo de _____.

Security: You will have a security interest in the following described collateral _____.

Garantía: Como garantía Usted tendrá parte (participación) en el siguiente colateral aquí descrito _____.

Filing Fees $_____ Non-filing insurance $_____

Coutas por Inscripción $_____ Seguro de no-inscripción $_____

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Cargos por Retrasos: Si cualquier parte de un pago queda sin pagar por 10 días después de vencerse, a mi se me puede cobrar el 5% de la cantidad del pago.

Prepayment: If I payoff early, I

☐ may ☐ will not have to pay a penalty.

☐ may ☐ will not be entitled to a refund of part of the Finance Charge.

Prepago: Si pago por adelantado,

☐ podría ☐ no tendré que pagar un cargo de penalización.

☐ tendría ☐ no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por prepago.

Figure: 7 TAC §1.1253(a)(3)(A)

NOTIFICACION DE CREDITO AL CONSUMIDOR
(Préstamo)

"ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL	"FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO	"Amount Financed" -- Cantidad Financiada	"Total of Payments" -- Total de Pagos
_____%	$_____	$_____	$_____

My Payment Schedule will be -- Mi Plan de Pagos será		
Number of Payments -- Número de Pagos	Amount of Payments -- Cantidad de Cada Pago	When Payments are Due -- Cuando se Vence Cada Pago

Security: You will have a security interest in the following described collateral _____.

Garantía: Como garantía Usted tendrá parte (participación) en el siguiente colateral aquí descrito _____.

Late Charge Option 1

Late Charge: If I don't pay an entire payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

Cargos por Retrasos: Si no doy un pago completo dentro de 10 días después de vencerse, me puedes cobrar un cargo por retraso. El cargo por retraso será el 5% de la cantidad del pago.

Late Charge Option 2

Late Charge: For a loan that has an amount financed of less than $100, the late charge for a payment that is unpaid for 10 days after it is due is 5% of the amount of the installment. For a loan that has an amount financed of $100 or more, the late charge for a payment that is unpaid for 10 days after it is due is the greater of $10 or 5% of the amount of the installment.

Cargos por Retrasos: Para un préstamo en el cual la cantidad financiada es menor de $100, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es 5% de la cantidad del pago. Para un préstamo en el cual la cantidad financiada es de $100 o más, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es de $10 o 5% de la cantidad del pago atrasado, lo que sea mayor.

Figure: 7 TAC §1.1253(a)(3)(B)

CONCEPTOS FINANCIEROS

ITEMIZATION OF THE FINANCE CHARGE -- DETALLE DEL CARGO POR FINANCIAMIENTO	
Acquisition Charge --	Cargo por Adquisición
Installment Account Handling Charge --	Cargo por Manejo de Cuenta

ITEMIZATION OF THE AMOUNT FINANCED -- DETALLE DE LA CANTIDAD FINANCIADA	
Previous Account --	Cuenta Anterior
Late Charge on Previous Account --	Cargo por Retrasos en la Cuenta Anterior
Previous Balance --	Saldo Anterior
Less Refund --	Menos Reembolso
Net Balance Renewed --	Saldo Neto Renovado
Cash to Me --	Efectivo entregado a mi
Amount Financed --	Cantidad Financiada

"ANNUAL PERCENTAGE RATE" (TASA PORCENTUAL ANNUAL)	--	"The cost of my credit as a yearly rate" (El costo de mi crédito expresado como tasa anual)
"FINANCE CHARGE" (CARGO POR FINANCIAMIENTO)	--	"The dollar amount the credit will cost me" (La cantidad en dólares que me costara el crédito)
"Amount Financed" (Cantidad Financiada)	--	"The amount of credit provided to me or on my behalf" (La cantidad de crédito otorgada a mi o en mi nombre)
"Total of Payments" (Total de Pagos)	--	"The amount I will have paid after I have made all payments as scheduled" (La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan)

Figure: 7 TAC §1.1253(a)(4)

NOTIFICACION DE CREDITO AL CONSUMIDOR
(Préstamo de Segunda Hipoteca)

"ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL	"FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO	"Amount Financed" -- Cantidad Financiada	"Total of Payments" -- Total de Pagos
"The cost of my credit as a yearly rate" -- El costo de mi crédito expresado como tasa anual	"The dollar amount the credit will cost me" -- La cantidad en dólares que me costara el crédito	"The amount of credit provided to me or on my behalf" -- La cantidad de crédito otorgada a mi o en mi nombre	"The amount I will have paid after I have made all payments as scheduled" -- La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan
_____%	$_____	$_____	$_____

ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization. ☐ I do not want an itemization.

DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

☐ Deseo el detalle. ☐ No deseo el detalle.

My Payment Schedule will be -- Mi Plan de Pagos será		
Number of Payments -- Número de Pagos	Amount of Payments -- Cantidad de Cada Pago	When Payments are Due -- Cuando se Vence Cada Pago

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Seguro de vida para el deudor y seguro de discapacidad para el deudor no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional

Type -- Tipo	Premium -- Prima	Signature -- Firma
Credit Life -- Seguro de Vida para el Deudor	$_____	I want Credit Life Insurance -- Deseo Seguro de Vida para el deudor _____ Signature -- Firma
Credit Disability -- Seguro de Discapacidad para el Deudor	$_____	I want Credit Disability Insurance -- Deseo Seguro de Discapacidad para el deudor _____ Signature -- Firma

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay $_____ for the term of _____.

Puedo obtener seguro de propiedad de quien yo desee si es aceptable para ti. Si obtengo el seguro de ti, pagaré $_____ por un plazo de _____.

Security: You will have a security interest in my homestead.

Garantía: Como garantía Usted tendrá parte (participación) en mi residencia.

Filing Fees $_____

Coutas por Inscripción $_____

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Cargos por Retrasos: Si cualquier parte de un pago queda sin pagar por 10 días después de vencerse, a mi se me puede cobrar el 5% de la cantidad del pago.

Prepayment: If I payoff early, I

☐ may ☐ will not have to pay a penalty.

☐ may ☐ will not be entitled to a refund of part of the Finance Charge.

Prepago: Si pago por adelantado,

☐ podría ☐ no tendré que pagar un cargo de penalización.

☐ tendría ☐ no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Assumption: Someone buying your house may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

Apropiación: Alguien que compre su propiedad puede, sujeto a ciertas condiciones, asumir el saldo de la hipoteca bajo los términos originales.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por prepago.

Figure: 7 TAC §1.1253(a)(5)

NOTIFICACION DE CREDITO AL CONSUMIDOR
(Contrato de Menudeo a Plazos para Vehículo Automotor)

"ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL	"FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO	"Amount Financed" -- Cantidad Financiada	"Total of Payments" -- Total de Pagos	"Total Sale Price" -- Precio de Venta Total
"The cost of my credit as a yearly rate" -- El costo de mi crédito expresado como tasa anual	"The dollar amount the credit will cost me" -- La cantidad en dólares que me costara el crédito	"The amount of credit provided to me or on my behalf" -- La cantidad de crédito otorgada a mi o en mi nombre	"The amount I will have paid after I have made all payments as scheduled" -- La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan	"The total cost of my purchase on credit, including down payment of" -- El costo total de mi compra a crédito, incluyendo un enganche de
_____%	$_____	$_____	$_____	$_____

ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization. ☐ I do not want an itemization.

DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

☐ Deseo el detalle. ☐ No deseo el detalle.

My Payment Schedule will be -- Mi Plan de Pagos será		
Number of Payments -- Número de Pagos	Amount of Payments -- Cantidad de Cada Pago	When Payments are Due -- Cuando se Vence Cada Pago

Credit life insurance, credit disability insurance, and the gap insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Seguro de vida para el deudor, seguro de incapacidad para el deudor, y acuerdo de seguro gap no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional.

Type -- Tipo	Premium -- Prima	Signature -- Firma
Credit Life -- Seguro de Vida para el Deudor	$_____	I want Credit Life Insurance -- Deseo Seguro de Vida para el deudor _____ Signature -- Firma
Credit Disability -- Seguro de Discapacidad para el Deudor	$_____	I want Credit Disability Insurance -- Deseo Seguro de Discapacidad para el deudor _____ Signature -- Firma
Gap Insurance -- Seguro Gap	$_____	I want Gap Insurance -- Deseo Seguro Gap _____ Signature -- Firma

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay $_____ for the term of _____.

Puedo obtener seguro de propiedad de quien yo desee si es aceptable para ti. Si obtengo el seguro de ti, pagaré $_____ por un plazo de _____.

Security: You will have a security interest in the motor vehicle being purchased.

Garantía: Como garantía usted tendrá parte (participación) en el vehículo automotor que está comprando.

Filing Fees $_____

Coutas por Inscripción $_____

Late Charge: [**True daily earnings:**] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

Cargo por Retraso: [**Ganancia Diaria Real:**] (Opción A:) Si no recibes mi pago completo dentro de 15 días después de vencerse (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso con tasa del _____% anual sobre la cantidad del pago atrasado. El cargo por retraso sobre la cantidad del pago atrasado se calculara desde la fecha de vencimiento del pago hasta la fecha en que se realice el pago. (Opción B:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso de _____% anual del pago programado.

[**Scheduled Installment Earnings Method or sum of the periodic balances:**] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

[**Método de Ganancia de Pagos Programados o suma de los saldos periódicos:**] (Opción A:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo sobre la cantidad del pago atrasado basado en la tasa del contrato. (Opción B:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso con tasa del _____% anual sobre la cantidad atrasada. (Opción C:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso de _____% de la cantidad del pago programado.

Prepayment: If I payoff early, I

☐ may ☐ will not have to pay a penalty.

☐ may ☐ will not be entitled to a refund of part of the Finance Charge.

Prepago: Si pago por adelantado,

☐ podría ☐ no tendré que pagar un cargo de penalización.

☐ tendría ☐ no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por prepago.

Figure: 7 TAC §1.1308(1)(A)

"(Optional: DATE _____)
BUYER _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____

SELLER/CREDITOR _____
ADDRESS _____
CITY _____ TX ZIP _____
PHONE _____

(Optional Co-Buyer Identification)
CO-BUYER _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____"

Figure: 7 TAC §1.1308(5)

MOTOR VEHICLE IDENTIFICATION

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	☐ New ☐ Demonstrator ☐ Factory Official/Executive ☐ Used	USE FOR WHICH PURCHASED ☐ PERSONAL, FAMILY OR HOUSEHOLD ☐ BUSINESS OR COMMERCIAL ☐ AGRICULTURAL

Figure: 7 TAC §1.1308(11)

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for Creditors who finance physical damage insurance. Creditors who do not routinely finance Physical Damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this Figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	___	☐ $_____
Comprehensive	___	☐ $_____
Fire, Theft, and Combined Additional Coverage	___	☐ $_____
Other	___	☐ $_____

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. ***[Note: alternatively, these optional coverages may be disclosed as part of Figure 1: 7 TAC 1.1308(12).]***

☐ $_____ Towing and Labor Costs Reimbursement ☐ $_____ Rental Reimbursement

☐ $_____ Other:_____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

Figure: 7 TAC §1.1308(12)

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES

Optional insurance coverages. The insurance described below is not required to obtain credit. It will not be provided unless I sign and agree to pay the extra cost. [***At Creditor's Option, the following may be added:***] My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

Coverage	Term in Months	Premium
GAP*	_____	☐ $_____
Invol. Unemployment	_____	☐ $_____
_____	_____	☐ $_____
Liability Insurance	_____	☐ $_____

$_____ per person $_____ property damage
$_____ per accident

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner.

I want the optional coverages for which premiums are included above.

Buyer's Signature: _____ Date: _____

[***Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.***]

Figure: 7 TAC §1.1308(13)

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. [***At Creditor's Option, the following may be added:***] My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐ Credit Life, one buyer $_____ ☐ Credit Life, both buyers $_____ Term _____
☐ Credit Disability, one buyer $_____ ☐ Credit Disability, both buyers $_____ Term _____

[***Optional additional sentence for balloon payment contracts:***] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first ____ payments and does not cover the last scheduled payment. [***Optional additional language for true daily earnings method contracts:***] Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.
If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.

Buyer's Signature: _____ Date: _____

Co-Buyer's Signature: _____ Date: _____

[***Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.***]

Figure: 7 TAC §80.9(b)

(Insert name of Mortgage Broker or Loan Officer) IS LICENSED UNDER THE LAWS OF THE STATE OF TEXAS AND BY STATE LAW IS SUBJECT TO REGULATORY OVERSIGHT BY THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING [~~TEXAS SAVINGS AND LOAN DEPARTMENT~~]. ANY CONSUMER WISHING TO FILE A COMPLAINT AGAINST (insert name of Mortgage Broker or Loan Officer) SHOULD COMPLETE, SIGN, AND SEND A COMPLAINT FORM TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING [~~TEXAS SAVINGS AND LOAN DEPARTMENT~~], 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE DOWNLOADED AND PRINTED FROM THE DEPARTMENT'S WEB SITE LOCATED AT http://www.sml.state.tx.us [~~http://www.tsld.state.tx.us/~~] OR OBTAINED FROM THE DEPARTMENT UPON REQUEST BY MAIL AT THE ADDRESS ABOVE, BY TELEPHONE AT ITS TOLL-FREE CONSUMER HOTLINE AT 1-877-276-5550, BY FAX AT (512) 475-1360, OR BY E-MAIL AT SMLinfo@SML.STATE.TX.US. [~~TSLD@TSLD.STATE.TX.US~~].

THE DEPARTMENT MAINTAINS THE MORTGAGE BROKER RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN TYPES OF JUDGMENTS AGAINST A MORTGAGE BROKER OR LOAN OFFICER. NOT ALL CLAIMS ARE COMPENSABLE AND A COURT MUST ORDER THE PAYMENT OF A CLAIM FROM THE RECOVERY FUND BEFORE THE DEPARTMENT MAY PAY A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT SUBCHAPTER F OF THE MORTGAGE BROKER LICENSE ACT ON THE DEPARTMENT'S WEB SITE REFERENCED ABOVE.

Figure: 7 TAC §80.9(c)(4)

MORTGAGE BROKER/LOAN OFFICER DISCLOSURE

Mortgage Broker or Loan Officer:_____

License Number:_____

The information in this disclosure is provided to clarify the nature of our relationship, my duties to you, and how I am to be compensated as a Mortgage Broker or Loan Officer. This disclosure is a requirement of the Texas Mortgage Broker License Act.

Since I may be working for a company, references to "we or "us" refer to me and any company for which I am working.

Check ALL that apply

Duties and Nature of Relationship

You, the applicant(s), have applied with us for a residential mortgage loan.

☐ We will submit your loan application to a participating lender which we may from time to time contract upon such terms as you may request or a lender may require. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent. We will enter into separate independent contractor agreements with various lenders. While we will seek to assist you in meeting your financial needs, we do not distribute the products of all lenders or investors in the market and cannot guarantee the lowest or best terms available in the market.

☐ In connection with this mortgage loan, we are acting as an independent contractor and not as your agent. We will make your loan ourselves. We may either sell the loan to an investor or retain it. (You will receive a separate disclosure as to how we will handle servicing rights on any such loan.) We have a number of established independent contractor relationships with various investors to whom we sell closed loans. We are not an agent for any such investor in connection with the sale of a loan. While we will seek to assist you in meeting your financial needs, we cannot guarantee the lowest or best terms available in the market.

☐ We will be acting as follows:

How we will be compensated

☐ The retail price we offer you – your interest rate, total points, and fees – will include our compensation. In some cases we may be paid all or part of our compensation by you or by the lender or investor. Alternatively, we may be paid a portion of our compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay higher up-front points and fees. Also, in some cases, if you would rather pay less up-front, you may be able to pay a higher rate, in which case some or all of my compensation will be paid by the lender. We also may be paid by the lender based on other goods, services, or facilities performed or provided by us to the lender.

☐ Our pricing for your loan is based upon current wholesale options available to us in the secondary market where closed loans are sold. Fees charged directly to you by us may vary depending on the type of loan for which you have applied.

At the time of this disclosure, we are receiving $_____ in fees. The services which these fees are being charged include the following:

☐ Application fee $_____

☐ Processing fee $_____

☐ Appraisal fee $_____

☐ Credit report fee $_____

☐ Automated underwriting fee $_____

Other (list):
_____ $_____
_____ $_____

Of this amount, $_____ is not refundable under any conditions unless the amount is required to be refunded under applicable state or federal law upon the exercise of a right of rescission (such as the Truth in Lending Act, 15 U.S.C. §1600, et seq. and Regulation Z , 12 C.F.R. Part 226 or the provisions of the Home Equity provisions of the Texas Constitution, Article XVI, Section 50).

The remainder of this amount will not be subject to refund at any time after we have ordered or obtained the services for which such fees are being collected.

The estimated fees which we will charge will be as shown on the good faith estimate which we are providing to you now or which we will provide you within three (3) days in accordance with the requirements of the Real Estate Settlement Procedures Act and its implementing regulations.

_____ IS LICENSED UNDER THE LAWS OF THE STATE OF TEXAS AND BY STATE LAW IS SUBJECT TO REGULATORY OVERSIGHT BY THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING [~~TEXAS SAVINGS AND LOAN DEPARTMENT~~]. ANY CONSUMER WISHING TO FILE A COMPLAINT AGAINST _____ SHOULD COMPLETE, SIGN, AND SEND A COMPLAINT FORM TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING [~~TEXAS SAVINGS AND LOAN DEPARTMENT~~], 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE DOWNLOADED AND PRINTED FROM THE DEPARTMENT'S WEB SITE LOCATED AT http://www.sml.state.tx.us [~~http://www.tsld.state.tx.us/~~] OR OBTAINED FROM THE DEPARTMENT UPON REQUEST BY MAIL AT THE ADDRESS ABOVE, BY TELEPHONE AT ITS TOLL-FREE CONSUMER HOTLINE AT 1-877-276-5550, BY FAX AT (512) 475-1360, OR BY E-MAIL AT SMLinfo@SML.STATE.TX.US [~~TSLD@TSLD.STATE.TX.US~~].

THE DEPARTMENT MAINTAINS THE MORTGAGE BROKER RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN TYPES OF JUDGMENTS AGAINST A MORTGAGE BROKER OR LOAN OFFICER. NOT ALL CLAIMS ARE COMPENSABLE AND A COURT MUST ORDER THE PAYMENT OF A CLAIM FROM THE RECOVERY FUND BEFORE THE DEPARTMENT MAY PAY A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT SUBCHAPTER F OF THE MORTGAGE BROKER LICENSE ACT ON THE DEPARTMENT'S WEB SITE REFERENCED ABOVE.

Applicant(s)	Mortgage Broker/Loan Officer
Signed:_____	Signed:_____
Name:_____	Name:_____
Date:_____	Date:_____
Signed:_____	
Name:_____	
Date: _____	

Figure: 7 TAC §80.22(a)

Form A
Conditional Qualification Letter

Date:

Prospective Applicant:

Mortgage Broker or Loan Officer:

License Number _____

Address _____

Phone # _____

Loan (describe as follows):

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage Broker ☐ has ☐ has not received a signed application for the Loan from the Prospective Applicant

Mortgage Broker ☐ has ☐ has not reviewed the Prospective Applicant's credit report

Mortgage Broker ☐ has ☐ has not reviewed the Prospective Applicant's credit score

Mortgage Broker has reviewed the following additional items (list):

The Prospective Applicant has provided the Mortgage Broker ☐ verbally ☐ in writing with information about the Prospective Applicant: [~~Applicant's income, available cash for a down payment and payment of closing costs, debts, and other assets.~~]

Income	Yes	No	Not Applicable
Available cash for down payment and payment of closing costs	Yes	No	Not Applicable
Debts	Yes	No	Not Applicable
Assets	Yes	No	Not Applicable

Based on the information that the Prospective Applicant has provided to the Mortgage Broker, as described above, the Mortgage Broker has determined that the Prospective Applicant is eligible and qualified to meet the financial requirements of the Loan.

This is not an approval for the Loan. Approval of the Loan requires: (1) the Mortgage Broker to verify the information that the Prospective Applicant has provided; (2) the Prospective Applicant's financial status and credit report to remain substantially the same until the Loan closes; (3) the collateral for the Loan (the subject property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance); (4) the Loan, as described, to remain available in the market; (5) the Prospective Applicant to execute loan documents the lender requires, and (6) the following additional items (list):

_____

Mortgage Broker or Loan Officer

Figure: 7 TAC §80.22(b)

Form B
Conditional Approval Letter

Date:

Applicant:

Mortgage Broker or Loan Officer:

License Number _____

Address _____

Phone # _____

Loan (describe as follows):

Loan Amount:

Interest Rate:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

Secondary financing terms (if applicable):

Optional Information: *Points:*
Origination: _____
Discount: _____
Commitment: _____
Other (describe): _____

Subject Property:

Mortgage Broker has received a signed application from the Applicant.

Mortgage Broker has: [~~reviewed Applicant's credit report and credit score and has verified Applicant's income, available cash for a down payment and closing costs, debts, and other assets.~~]

Reviewed applicant's credit report and credit score	____Yes	____Not Applicable
Verified applicant's income	____Yes	____Not Applicable
Verified applicant's available cash for down payment and closing costs	____Yes	____Not Applicable
Reviewed applicant's debts and other assets	____Yes	____Not Applicable

Applicant is approved for the Loan provided that the Applicant's creditworthiness and financial position do not materially change prior to closing and provided that:

1. The Subject Property is appraised for an amount not less than $_____;
2. The Lender does not object to encumbrances to title shown in the title commitment or survey;
3. The Subject Property's condition meets Lender's requirements;
4. The Subject Property is insured in accordance with Lender's requirements;
5. The Applicant executes the loan documents Lender requires; and
6. The following additional conditions are complied with (list):

This Conditional Approval expires on _____.

_____

Mortgage Broker or Loan Officer

Figure 1: 7 TAC §85.405(a)(1)(A)

PLEDGOR'S NAME (Last Name First)		LOAN #	ORIGINAL LOAN #	(SEQUENTIAL TICKET NO. HERE)
PLEDGOR'S ADDRESS (Residence)	CITY	STATE	ZIP	DATE MADE
IDENTIFICATION TYPE AND NUMBER	HEIGHT	SEX	D.O.B.	DATE DUE
EMP. IN	(NAME, ADDRESS, AND TELEPHONE NUMBER OF PAWNSHOP HERE)	EMP. OUT	AMOUNT FINANCED. The amount of cash advanced or credit extended to you.	$
			FINANCE CHARGE. The dollar amount the credit will cost you.	$
YOU ARE GIVING A SECURITY INTEREST IN THE FOLLOWING PLEDGED GOODS:			TOTAL OF PAYMENTS. Amount required to redeem pledged goods on date due.	$
			ANNUAL PERCENTAGE RATE. The cost of your credit as a yearly rate.	%
			PAYMENT SCHEDULE: Total of Payments is due on Date Due shown above.	
			PREPAYMENT: If you pay off early, you may be entitled to a refund of part of the finance charge if it exceeds $15.	
			ADDITIONAL CHARGE PAID ON REDEMPTION	$
			DATE PAID	AMOUNT PAID $
SEE OTHER SIDE FOR INFORMATION ABOUT NON-PAYMENT, AND PREPAYMENT REFUNDS.			LAST DAY OF GRACE:	
ITEMIZATION OF THE AMOUNT FINANCED: ☐GIVEN TO YOU DIRECTLY ☐PAID TO US TO RENEW A PRIOR LOAN			I AM THE OWNER OF THE PLEDGED GOODS AND / OR HAVE THE RIGHT TO POSSESS THEM. PLEDGED GOODS ARE FREE AND CLEAR OF ANY ENCUMBRANCE, LIEN OR CLAIM.	
This loan may be renewed or extended unless this box is marked. ☐ This loan may not be renewed or extended.				
REDEMPTION USE ONLY REDEMPTION SIGNATURE (IF PERSON REDEEMING IS NOT THE ORIGINAL PLEDGOR, THEN FILL IN INFORMATION ON REVERSE)			X PLEDGOR'S SIGNATURE	NOTICE: SEE REVERSE SIDE

Figure 2: 7 TAC §85.405(a)(1)(A)

We have made you a loan of the Amount Financed that is secured by the pledged goods you have deposited with us as listed on the front of this ticket. You do not have to pay this loan. If you want to recover the pledged goods you must pay us the Amount Financed plus the Finance Charges we have earned. If the Finance Charge shown on the front is $15 or less we earn all the Finance Charge when the loan is made. If the Finance Charge is greater than $15 and you pay the loan in full or renew it before the Date Due, we will reduce the Finance Charge by 1/30th for each day from the day you pay or renew the loan to the Date Due, but the Finance Charge will never be reduced below $15. The Total of Payments is the amount you owe on the Date Due. If you pay the loan after the Date Due, we will add 1/30th of the Finance Charge for each day from the Date Due until the date you pay. If you do not pay the loan on or before the Last Day of Grace your pledged goods may become our property if we so choose. If your pledged goods become our property we may sell it to you or any other person at a price determined by us and the buyer must pay sales tax. IF YOU NEED ADDITIONAL TIME TO PAY YOUR LOAN, YOU MUST GET OUR AGREEMENT IN WRITING. VERBAL AGREEMENTS FOR ADDITIONAL TIME ARE NOT BINDING. You have certain rights to extend or pay this loan by mail. If you redeem by mail, you must pay us the amount due on the loan plus reasonable and necessary expenses of packaging and shipping and the expense of insuring the goods in an amount specified by you. Payment for mail transactions may be required to be made by cashier's or certified check or money order.

If you pay the loan we will return the property to you in the same condition we received it. If we lose your property or if it is damaged while in our possession, we will replace it with identical or similar property of the same kind and quality or have your property restored to its condition at the time you deposited it with us. All replacements are subject to approval by the Consumer Credit Commissioner. Any person who possesses this pawn ticket may pay us the amount due and we must give that person the pledged goods if we have not been notified in writing that this ticket has been lost or stolen. IF THIS TICKET IS LOST OR STOLEN, YOU MUST NOTIFY US IN WRITING TO PROTECT YOUR PLEDGED GOODS. Fee for lost ticket and statement: $1.00.

I authorize _____, ID type and number_____,
to renew or extend this loan in my name.

TEXAS PAWNBROKERS ARE LICENSED AND REGULATED BY THE TEXAS CONSUMER CREDIT COMMISSIONER.
FOR INFORMATION OR ASSISTANCE WITH ANY PAWN OR OTHER CREDIT PROBLEM CALL 1-800-538-1579.
NOTICE: SEE REVERSE SIDE

NO GOODS SENT C.O.D. [-] NO GOODS SHOWN FOR REDEMPTION UNTIL PAID	If redeeming by person other than ~~[and-]~~original pledgor. Name _____ ID type and number _____	NO PERSONAL CHECKS OR CREDIT CARDS ACCEPTED FOR PAYMENT

Figure: 7 TAC §85.405(a)(1)(B)

CASH RECEIVED				EXTENSIONS	
DATE	Amount Financed	Finance Charges	Other Charges	Date Due	Amount Due

LOST PAWN TICKET STATEMENT--FEE $1.00 Date _____

I have verified ID and description as on other side. My ticket was lost, destroyed, stolen. *(Circle proper word)*

Employee/PS _____ Pledgor **X** _____

PICKED UP		FORFEITED	
	ID Type and Number _____		Date Pulled _____
	X _____ Signature on Redemption		By _____

Figure: 16 TAC §9.10(b)

§9.10. Employee Level Examination Requirements for Licenses by Category *(Revised September 2005)*
Table 1

License Categories	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Employee Level Exams Offered:																
1. Bobtail Exam (includes Transport Driver, DOT Cylinder Filling, and Motor/Mobile Fuel exams) (covers leak check, lighting of appliances, regulator change-out, and thermocouple changing)					*											
2. Transport Driver Exam			*		*											
3. Engine Fuel Exam					*							*				
4. DOT Portable Cylinder Filling Exam					*	*			*	*						
5. Recreational Vehicle Technician Exam					*								*			
6. Service and Installation Exam (covers activities for the LP-gas system, plus containers and appliances)				*	*						*			*		
7. Appliance Service and Installation Exam (covers appliance activities from the appliance gas stop through the venting system)				*	*									*		
8. Motor/Mobile Fuel (Fuel Dispenser) Exam					*		*		*	*						

Figure: 16 TAC §9.140(g)

§9.140. Uniform Protection Standards -- Table 1 *(Revised September 2005)*

Requirements	Automatic Dispenser Area	Storage Racks for DOT Portable or Forklift Containers	Licensee or Non-Licensee ASME 4001+ Gal. A.W.C.	Any Licensee Installation (DOT Container Filling and/or Service Station Only)
1. Red letters at least 2" high (or at least 1 1/4" high for storage racks for DOT portable or forklift cylinders) on white or aluminum background: NO SMOKING	*	*	*	*
2. Red letters at least 4" high on white or aluminum background: WARNING FLAMMABLE GAS			*	
3. Black letters at least 4" high: NO TRESPASSING AUTHORIZED PERSONNEL ONLY			*	
4. Letters at least 1/2" high: EXTINGUISH ALL PILOT LIGHTS AND OPEN FLAMES; VEHICLE MUST BE VACATED DURING FILLING PROCESS; TURN OFF ENGINE	*			*
5. Letters at least 2" high on each operating side of the dispenser: PROPANE	*			
6. Block letters at least 2" high on a background of contrasting color to the letters, including instructions on activation and visible from the point of transfer: PROPANE (or LP-GAS) EMERGENCY SHUTOFF	*		*	*
7. Letters at least 4" high on container or 1 1/4" high on cylinder exchange **or storage** rack indicating contents: LP-GAS or BUTANE or PROPANE and FLAMMABLE		*	*	*
8. Letters at least 4" high on a background of contrasting color to the letters, marked on both sides or both ends of any container holding unodorized gas: NOT ODORIZED			*	*
9. Letters at least 4" high: Name of Licensee (not required for non-licensee installations)			*	*
10. Letters at least 2" high on operating end of container: WORKING PRESSURE ____ PSIG or WORK PRESS. ____			*	*
11. If more than one container, letters at least 2" high on operating end of each container: CONTAINER NO. ____ or TANK NO. ____			*	*

Figure: 16 TAC §401.305(e)(1)

Matching Combinations	Prize Category (One Play)	Odds of Winning
All six matching numbers in one play	First Prize (Jackpot)	1:25,827,165
Any five but not six matching numbers in one play	Second Prize	1:89,678
Any four but not five or six matching numbers in one play	Third Prize	1:1,526
Any three but not four, five or six matching numbers in one play	Fourth Prize	1:75

Figure: 22 TAC §741.103(1)

Octave Band Interval	Ears Covered	Insert Earphones
250 Hz	25 dB	53 dB
500 Hz	21 dB	50 dB
1000 Hz	26 dB	47 dB
2000 Hz	34 dB	47 dB
4000 Hz	37 dB	50 dB
8000 Hz	37 dB	56 dB

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.

Department of Aging and Disability Services

Public Notice Announcing Pre-application Orientation for Enrollment of Medicaid Waiver Program Providers

The Department of Aging and Disability Services (DADS) will hold a Pre-Application Orientation (PAO) for persons seeking to participate as a program provider in the Home and Community-Based Services (HCS) Program.

The PAO will be held at 8:30 a.m., Monday, December 5, 2005, in Austin, Texas at the J. J. Pickle Center. Persons wanting to attend the PAO must request a registration form by mail or by fax. Mailed requests must be addressed to Art G. Gonzales, Contract Specialist, Community Services, Provider Services Division, DADS, P.O. Box 149030 MC W-517, Austin, Texas 78714-9030. Faxed requests must be made to (512) 438-5522.

Note: All written requests must include first and last name along with complete mailing address and a phone number.

Upon an applicant's written request, DADS will provide the applicant with information regarding the provider application and enrollment processes and a registration form for the PAO. To attend the PAO, an applicant must submit a completed registration form to DADS in a timely manner. DADS considers a completed registration form submitted in a timely manner only under the following conditions: (1) if mailed via the US Postal Service, the completed registration form bears a postmark date no later than November 7, 2005; (2) if sent via a common or contract carrier, a receipt by the carrier shows that it was placed in the hands of the carrier no later than November 7, 2005; or (3) if hand delivered, it is delivered directly to the Provider Services Division, DADS, 701 W. 51st Street, MC W-517, Austin, Texas, no later than November 7, 2005.

Persons requiring an interpreter for the deaf or hearing impaired or other accommodation must contact Art G. Gonzales at (512) 438-5737 or the TTY phone number of Texas Relay at 1-800-735-2988 at least 72 hours before the PAO. Art G. Gonzales may also be contacted for any other information concerning the PAO.

TRD-200503517
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Filed: August 22, 2005

♦ ♦ ♦

Texas Department of Agriculture

Request for Proposals: Surplus Agricultural Products Grant Program

Statement of Purpose. Pursuant to the Texas Agriculture Code, Chapter 21, and Title 4, Texas Administrative Code, Chapter 1, Subchapter M, the Texas Department of Agriculture (TDA) hereby requests proposals for projects, for the period October 1, 2005 through August 31, 2007, that collect and distribute surplus Texas agricultural products to food banks and other charitable organizations that serve needy or low-income individuals.

Eligibility. Grant proposals will be accepted from non-profit organizations that have a 501(c)(3) IRS designation. These organizations must be established and operate under religious, charitable or educational purposes and not financial gain. Additionally, these organizations must not distribute any of their income to their members, directors or officers. Organizations must have at least 5 years of experience coordinating a statewide network of food banks and charitable organizations that serve each of the 254 counties of this state.

Funding Limitations. Proposals are limited to $250,000 per year for a total biennial budget of $500,000. Funding is limited to the operation of a program that coordinates the collection and transportation of surplus Texas agricultural products to a statewide network of food banks that provide food to the needy or low-income individuals.

Matching Requirements. There are no matching requirements for this grant program.

Eligible Expenses. Generally, expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible; however, these expenses must be properly documented with sufficient backup detail, including copies of paid invoices. Examples of eligible expenditures are:

1. Personnel costs--both salary and benefits;

2. Travel--in-state only and incurred by grant personnel on official grant-related business;

3. Equipment--nonexpendable, tangible, personal property having a useful life of more than one year and costing $5,000 or more;

4. Supplies and direct operating expenses--equipment that costs less than $5,000, office supplies, postage, telecommunications, printing, fidelity bond, packaging, collection, transportation, etc.; and

5. Indirect costs--no more than 10%.

Ineligible Expenses. Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

1. Alcoholic beverages;

2. Entertainment;

3. Contributions--charitable or political;

4. Fundraising;

5. Expenses falling outside of the contract period;

6. Expenses for expenditures not specifically listed in the project budget; and

7. Expenses that are not adequately documented.

Submission Requirements. Each proposal may not exceed six pages and must include the following criteria:

1. Cover sheet with project title, name, title, address, telephone and fax numbers, and e-mail address of the individual designated as the point of contact;

2. Project summary, not to exceed one page;

3. Identification of the key personnel to be involved in the project, including information on their experience;

4. Measurable goals--a description of realistic goals that are measurable and potentially attainable;

5. Evaluation plan--a description of the method(s) to be used to determine the success of the project;

6. Work plan--a description of how the collection and distribution of surplus agriculture products will be accomplished; and

7. Project budget--must be detailed with year 1 and year 2 expenditures and include justification for proposed line item expenditures.

Reporting Requirements. Upon award, the following reports will be required of the Grantee:

1. Narrative reports on a quarterly basis from one to three pages in length detailing accomplishments of project objectives for the time periods specified in the award document;

2. A final compliance narrative report which shall be due either upon completion of the project or 30 days after the termination of the grant project, whichever occurs first. The final report shall contain:

(a) a project summary--history of the project, objectives, importance, effort, and results;

(b) details pertaining to the measured goals and project evaluation;

(c) a description of the successes, challenges, and any limitations; and

(d) a description of future plans--include how the project will continue after the grant is expended and how additional funding may address expansion efforts; and

3. Budget reports on a quarterly basis, for the time periods specified in the award document, that detail the grant award funds spent to date.

General Compliance Information.

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

2. Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

3. Awarded grant projects must remain in full compliance or be subject to termination at the discretion of TDA.

4. Upon grant award, TDA and the State Auditor shall have access to and the right to examine all books, accounts, records, files and other papers or property belonging to or in use by the grantee and pertaining to the grant award. Additionally, these records must remain available and accessible no less than three years after the termination of the grant project.

5. Audit requirements will be in accordance with the State of Texas Single Audit Circular Section 200. In any year in which a financial audit is conducted, a copy must be submitted to TDA within 30 days upon receipt, including the audit transmittal letter, management letter, and any schedules in which the grantee's funds are included.

6. In accordance with Texas Government Code Annotated §783.007, grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). Upon grant award, grantees will be provided a copy or it may be downloaded from www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc

7. Grantees must adhere to the state and federal regulations pertaining to the movement of Texas agriculture products.

Deadline and Submission Information. Proposals should be submitted to Catherine Wright, Grants and Special Projects Coordinator, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701.

Proposals must be received no later than 5:00 p.m., September 16, 2005. Fax copies will not be accepted.

Please contact Catherine Wright at (512) 463-7700 or by e-mail at catherine.wright@agr.state.tx.us with any questions you may have.

Evaluation and Award Information. All proposals will be subject to evaluation by a committee based on the criteria set forth in this Request for Proposals (RFP). TDA shall not pay for any costs incurred by any entity in responding to this RFP. Additionally, TDA reserves the right to accept or reject any or all proposals submitted and is under no legal or other obligation to award a grant on the basis of this RFP or any other RFP. All final funding decisions will be made by TDA.

TRD-200503636
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: August 24, 2005

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Texas Cancer Council

Request for Applications (RFA) #2006-01

Texas Community Coalitions for Cancer Survivorship Program

Colorectal Cancer in North East and North West Texas

Notice of Invitation: The Texas Cancer Council announces the availability of state funds to be awarded to support the goals of the *Texas Cancer Plan* in two targeted communities: North East Texas including Harrison, Gregg, Smith and surrounding counties and North West Texas including Lubbock and surrounding counties. Funds will be awarded to the selected applicants (entities or individuals) that can provide a program that will unite community cancer control stakeholders for the purpose of planning and implementing a colorectal cancer screening awareness campaign and assessing the local needs of colorectal cancer survivors. Initial funding will be awarded from **November 2005 through June 30, 2006** with a maximum funding amount of **$38,000**. Successful programs may be funded for an additional year. It is anticipated that two projects, one in each geographic area, will be selected under this initiative to receive Council funding.

Introduction: The Texas Cancer Council is the state agency dedicated to reducing the human and economic impact of cancer on Texans through the promotion and support of collaborative, innovative, and effective programs and policies for cancer prevention and control. The Council's initiatives are guided by the philosophy that a cooperative and unified effort by public, private, and volunteer sector agencies and individuals increases the ability of limited resources to serve more people and minimizes duplication of effort. All funded programs of the Texas Cancer Council will support implementation of the *Texas Cancer Plan*.

Background: As available health care dollars become more scarce and community health care needs become more apparent, it will be critical

for communities to work through local coalitions of cancer stakeholders to provide better coordinated and well integrated cancer services. Although the Centers for Disease Control and Prevention's (CDC) National Comprehensive Cancer Control Program stresses the need to approach cancer control in a comprehensive manner, available dollars continue to be categorical. Colorectal cancer is the third most common type of cancer among men and women and the second leading cause of cancer death in Texas. The majority of colorectal cancers can be prevented through wider use of screening tests and application of current medical knowledge. Behavioral Risk Factor Surveillance Survey (BRFSS) data from 2002 demonstrate that fewer than half of Texas adults over fifty are receiving adequate screening. Screening rates are lowest for low-income individuals, some minority groups, and those with limited access to cancer prevention services. The Texas Comprehensive Cancer Control Program at the Department of State Health Services (DSHS) has been awarded CDC funds to provide two colorectal cancer screening awareness programs in Texas. The Texas Cancer Council has been contracted by DSHS to fund and manage these programs.

Purpose: The Texas Cancer Council is seeking to fund two programs that will work through existing or create new community coalitions to plan and implement a community wide colorectal cancer screening awareness campaign and conduct a community wide needs assessment of the issues facing those diagnosed with cancer of the colon or rectum. Applicants are expected to provide a part time coordinator that will lead community efforts. Selected communities will become part of a larger program, funded by the Texas Cancer Council in partnership with the Lance Armstrong Foundation called Texas Community Coalitions for Cancer Survivorship Program (TC3SP). TC3SP programs will work with the Texas Cancer Council, the Texas Comprehensive Cancer Control Coalition, the Lance Armstrong Foundation, and the Department of State Health Services to develop community capacity for planning, implementing, and securing funds for cancer programs.

Eligibility Requirements: Applicants must reside in or have a strong connection to either of two specific geographic areas of Texas: the North East Texas area consisting of Harrison, Gregg, Smith, and surrounding counties or the North West area consisting of Lubbock and surrounding counties. To be considered for funding, an application must be submitted by an entity or individual that will serve as the fiscal agent and legal contractor for the project. The lead entity may be a governmental agency, educational institution, a nonprofit organization, a for-profit organization or an individual applicant.

Applicant Qualifications: The applicant will:

* Be able to document existing support from community stakeholders

* Demonstrate history of fiscal and programmatic leadership of work done through a local coalition(s)

* Demonstrate experience with cancer related programs

* Demonstrate a basic understanding of program evaluation for public health programs

* Demonstrate a commitment to the development of sustainable relationships with cancer stakeholders and to work, through these relationships, to implement enduring cancer programs

* Be able to document the burden of colorectal cancer incidence and mortality in their community

* Be able to provide, at minimum, a part time coordinator to serve as the community point of contact that possesses the following skills and experiences:

* Coordinating and facilitating work groups

* Public speaking and/or training small groups

* Program evaluation

* Excellent communication skills

* Able to travel locally

* Excellent writing skills

* Familiarity with grant writing and/or fundraising

* Self directed, able to work without direct supervision

* Familiarity with epidemiological data

* Culturally sensitive with experience working with diverse groups

* Familiarity with health care issues in small-moderate sized communities

* Experience with cancer control and cancer survivorship issues

* Experience with strategic planning

Program Requirements:

By June 2006, the local coordinator will have established or expanded a community coalition focusing on colorectal screening and survivorship issues and will have held a minimum of three meetings. By January 31, 2006, funded communities will have begun implementation of evidence based or promising practice activities to increase the awareness of colorectal cancer and the importance of screening. Communities are encouraged to utilize *Colorectal Cancer in Texas: A Guide to Community Outreach* (available from TCC) and the CDC's *Screen For Life* campaign in the their efforts. A community needs assessment will be conducted by June 2006 to identify areas of need for patients diagnosed with colorectal cancer. Future year activities will include prioritizing and working to address survivorship needs. Reaching underserved individuals will be a program priority using culturally relevant messages and implementation strategies. TCC legislative performance measures will be used to document program output. During the first month of the program, measurable outcome objectives will be developed in collaboration with program evaluation experts designated by DSHS and the Lance Armstrong Foundation. Community programs will contribute to the development of a community cancer survivorship model that will be available for dissemination/replication in other communities, both in Texas and nationally.

The project coordinator will be responsible for the following:

* Working with community cancer stakeholders to establish a local coalition of people interested in cancer control

* Facilitating local meetings and providing training about the *Texas Cancer Plan* and the elements in the *Cancer Control Toolkit.* (The *Cancer Control Toolkit* is in development and will be made available when the program is funded. The toolkit contains tools for planning meetings, communicating cancer messages, finding resources, seeking funds, program evaluation, serving special populations, locating and utilizing date, and influencing public policy.)

* Conducting program evaluation in consultation with TCC, DSHS, and LAF (plan, implement, report)

* Providing technical assistance to communities (referrals, networking, connection to available resources, seeking expert advise as needed)

* Meeting TCC requirements for monitoring and reporting as outlined in the TCC Project Guide

* Implementing a colorectal screening awareness campaign

* Conducting a colorectal cancer survivor community needs assessment and developing a plan of action of addressing priority needs

Application requirements: An original application **and five copies** are due at the Council office by 5:00 p.m. on Wednesday, October 5, 2005. Applications must be submitted according to the Council's application instructions and utilizing TCC Application forms. **Applications sent by facsimile machine or electronically will not be accepted.** Application instructions provide information about disallowable expenses, reimbursement policies, legislative performance measures, and reporting requirements. Application materials and forms can be found on the TCC website at www.tcc.state.tx.us under Funding Opportunities, Project Proposal: Guide for FY2006 Funding Requests or can be obtained by calling TCC at (512) 463-3190.

It is strongly recommended that applicants review both the TCC *Project Guide* and the *Texas Cancer Plan* prior to completing an application. The *Project Guide* provides a greater level of detail about fiscal and programmatic policies and requirements for funded programs. A copy of the *Project Guide* and a copy of the *Texas Cancer Plan* can be obtained by calling (512) 463-3190, can be obtained in person at 211 East 7th Street, Suite 710, Austin, Texas or can be found on the web at www.tcc.state.tx.us.htm.

Funding Awards: TCC staff will review applications for completeness and technical merit. The Council will make final funding decisions on or about November 11, 2005. Written notification of approval will be sent on or about November 14, 2005. All applicants will receive written notification of the Council's decisions regarding their applications.

The Council's funding decision will be based on:

* Applicant's qualifications to successfully accomplish the program

* Reasonableness of budgeted amounts and appropriateness of budget justifications

* Evidence of a sound and effective program

* Completeness and clarity of the application

All Council projects are funded via a cost reimbursement basis. Reimbursement requests may be submitted monthly or quarterly, as preferred by the project.

Council funding is based on the merit of the application received and the availability of funding. The Council has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of an application.

Use of funds: Funds may not be used for indirect costs, remodeling of buildings or reduction of deficits from pre-existing operations. Further, funds may not be used to supplant existing funds or services, or to duplicate existing resources or services.

Additional information: For additional information about this funding announcement, contact Jane Osmond, Program Manager, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190, extension 107, josmond@tcc.state.tx.us.

TRD-200503659
Sandra K. Balderrama
Executive Director
Texas Cancer Council
Filed: August 24, 2005

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Request for Applications (RFA) #2006-02

Texas Community Coalitions for Cancer Survivorship Program

Building Community Capacity to Address Cancer Survivor Needs

Notice of Invitation: The Texas Cancer Council announces the availability of state funds to be awarded to support the goals of the *Texas Cancer Plan* in two Texas communities. Funds will be awarded to the selected applicants (entities or individuals) that can provide a program that will unite community cancer control stakeholders for the purpose of assessing the local needs of cancer survivors and developing a plan to address those needs. Initial funding will be awarded from **November 2005 through August 31, 2006** with a maximum funding amount of **$38,000**. Successful programs may be funded for an additional year. It is anticipated that two projects will be selected under this initiative to receive Council funding.

Introduction: The Texas Cancer Council is the state agency dedicated to reducing the human and economic impact of cancer on Texans through the promotion and support of collaborative, innovative, and effective programs and policies for cancer prevention and control. The Council's initiatives are guided by the philosophy that a cooperative and unified effort by public, private, and volunteer sector agencies and individuals increases the ability of limited resources to serve more people and minimizes duplication of effort. All funded programs of the Texas Cancer Council will support implementation of the *Texas Cancer Plan*.

Background: Cancer is the second leading cause of death among adults in Texas and the United States. The good news is that more individuals are surviving cancer than ever before. According to the American Cancer Society (*2005 Cancer Facts and Figures*), 64% of people diagnosed with cancer have a five-year survival rate. The *National Action Plan for Cancer Survivorship* has redefined cancer survivor to include not only the person with a cancer diagnosis, but family members, friends, and caregivers, all of whom are impacted by the disease. In the 2005 *Texas Cancer Plan*, Survivorship has been added as a 5th Goal. The achievement of this goal will increase knowledge of survivorship issues for the general public, cancer survivors, health care professionals, and policymakers; will increase availability of effective programs and policies addressing cancer survivorship; and will increase access to quality care and services for cancer survivors. As available health care dollars become more scarce and cancer survivor needs become more apparent, it will be critical for communities to work through local coalitions of cancer stakeholders to provide better coordinated and well integrated cancer services.

Purpose: The Texas Cancer Council is seeking to fund two programs that will work through existing or create new community coalitions to conduct a community wide needs assessment of the issues facing cancer survivors and to plan and implement a community wide campaign addressing priority survivorship issues. Applicants are expected to provide a part time coordinator that will lead community efforts. Selected communities will become part of a larger program, funded by the Texas Cancer Council in partnership with the Lance Armstrong Foundation called Texas Community Coalitions for Cancer Survivorship Program (TC3SP). TC3SP programs will work with the Texas Cancer Council, the Texas Comprehensive Cancer Control Coalition, the Lance Armstrong Foundation, and the Department of State Health Services to develop community capacity for planning, implementing, and securing funds for cancer programs.

Eligibility Requirements: To be considered for funding, an application must be submitted by an entity or individual that will serve as the fiscal agent and legal contractor for the project. The lead entity may be a governmental agency, educational institution, a nonprofit organization, a for-profit organization or an individual applicant.

Applicant Qualifications: The applicant will:

* Be able to document existing support from community stakeholders

* Demonstrate history of fiscal and programmatic leadership of work done through a local coalition(s)

* Demonstrate experience with cancer related programs

* Demonstrate a basic understanding of program evaluation for public health programs

* Demonstrate a commitment to the development of sustainable relationships with cancer stakeholders and to work, through these relationships, to implement enduring cancer programs

* Be able to document the burden of cancer incidence and mortality in their community

* Be able to provide, at minimum, a part time coordinator to serve as the community point of contact that possesses the following skills and experiences:

* Coordinating and facilitating work groups

* Public speaking and/or training small groups

* Program evaluation

* Excellent communication skills

* Able to travel locally

* Excellent writing skills

* Familiarity with grant writing and/or fundraising

* Self directed, able to work without direct supervision

* Familiarity with epidemiological data

* Culturally sensitive with experience working with diverse groups

* Familiarity with health care issues in small-moderate sized communities

* Experience with cancer control and cancer survivorship issues

* Experience with strategic planning

Program Requirements: By August 31, 2006, the local coordinator will have established or expanded a community coalition focusing on cancer survivorship issues and will have held a minimum of three meetings. By January 31, 2006, funded communities will have conducted a community needs assessment to identify areas of need for cancer survivors. Using Goal V of the *Texas Cancer Plan* as a guide, funded communities will plan and begin implementation of a program addressing priority needs. Reaching underserved individuals will be a program priority using culturally relevant messages and implementation strategies. TCC legislative performance measures will be used to document program output. During the program planning stages, measurable outcome objectives will be developed in collaboration with program evaluation experts designated by the Texas Cancer Council and the Lance Armstrong Foundation. Community programs will contribute to the development of a community cancer survivorship model that will be available for dissemination/replication in other communities, both in Texas and nationally. Funded communities will have access to a newly developed *Cancer Control Toolkit* that will provide guidance and tools to help communities succeed at planning, communicating, locating resources, using data, understanding program evaluation, and seeking and securing funds for program activities.

The project coordinator will be responsible for the following:

* Working with community cancer stakeholders to establish a local coalition of people interested in cancer control

* Facilitating local meetings and providing training about the *Texas Cancer Plan* and the elements in the *Cancer Control Toolkit*. (The *Cancer Control Toolkit* is in development and will be made available when the program is funded. The toolkit contains tools for planning meetings, communicating cancer messages, finding resources, seeking funds, program evaluation, serving special populations, locating and utilizing date, and influencing public policy.)

* Conducting program evaluation in consultation with TCC and LAF (plan, implement, report)

* Providing technical assistance to communities (referrals, networking, connection to available resources, seeking expert advise as needed)

* Meeting TCC requirements for monitoring and reporting as outlined in the TCC *Project Guide*

* Conducting a needs assessment, prioritizing community needs, and beginning a plan of action for addressing priority needs

Application requirements: An original application **and five copies** are due at the Council office by 5:00 p.m. on Wednesday, October 5, 2005. Applications must be submitted according to the Council's application instructions and utilizing TCC Application forms. **Applications sent by facsimile machine or electronically will not be accepted.** Application instructions provide information about disallowable expenses, reimbursement policies, legislative performance measures, and reporting requirements. Application materials and forms can be found on the TCC website at www.tcc.state.tx.us under Funding Opportunities, Project Proposal: Guide for FY2006 Funding Requests or can be obtained by calling TCC at (512) 463-3190.

It is strongly recommended that applicants review both the TCC *Project Guide* and the *Texas Cancer Plan* prior to completing an application. The *Project Guide* provides a greater level of detail about fiscal and programmatic policies and requirements for funded programs. A copy of the *Project Guide* and a copy of the *Texas Cancer Plan* can be obtained by calling (512) 463-3190, can be obtained in person at 211 East 7th Street, Suite 710, Austin, Texas or can be found on the web at www.tcc.state.tx.us.htm.

All applicants are expected to provide a **10% in-kind** contribution to the program. In-kind contributions can include indirect expenses not reimbursed with Council funds.

Funding Awards: TCC staff will review applications for completeness and technical merit. The Council will make final funding decisions on or about November 11, 2005. Written notification of approval will be sent on or about November 14, 2005. All applicants will receive written notification of the Council's decisions regarding their applications.

The Council's funding decision will be based on:

* Applicant's qualifications to successfully accomplish the program

* Reasonableness of budgeted amounts and appropriateness of budget justifications

* Evidence of a sound and effective program

* Completeness and clarity of the application

The Board may also consider the geographic location of programs in making its final funding decisions. Applications from communities in greatest need and with a demonstrated high level of readiness for working through a coalition of interested stakeholders will be given strong consideration.

All Council projects are funded via a cost reimbursement basis. Reimbursement requests may be submitted monthly or quarterly, as preferred by the project.

Council funding is based on the merit of the application received and the availability of funding. The Council has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of an application. Incomplete applications and applications received after the deadline will not be accepted.

Use of funds: Funds may not be used for indirect costs, remodeling of buildings or reduction of deficits from pre-existing operations. Further, funds may not be used to supplant existing funds or services, or to duplicate existing resources or services.

Additional information: For additional information about this funding announcement, contact Jane Osmond, Program Manager, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190, extension 107, josmond@tcc.state.tx.us.

TRD-200503660
Sandra K. Balderrama
Executive Director
Texas Cancer Council
Filed: August 24, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 12, 2005, through August 18, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on August 24, 2005. The public comment period for these projects will close at 5:00 p.m. on September 23, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Erskine Energy, LLC; Location: The project site is located within Galveston Bay, in State Tract (ST) 5-8A, approximately 12 miles easterly of Baytown, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 327502; Northing: 3174467. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production activities for the proposed ST 5-8A Wells No. 1 and 2. Such activities include installation of typical marine barges and keyways, and production structures with attendant facilities. CCC Project No.: 05-0400-F1; Type of Application: U.S.A.C.E. permit application #23871 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Erskine Energy, LLC.; Location: The project site is located within Galveston Bay, in State Tract (ST) 6-7A, approximately 12 miles easterly of Baytown, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 326948; Northing: 3286059. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production activities for the proposed ST 6-7A Well No. 1. Such activities include installation of typical marine barges and keyways, and production structures with attendant facilities. CCC Project No.: 05-0401-F1; Type of Application: U.S.A.C.E. permit application #23872 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Texas Gulf & Harbor Ltd.; Location: The project is located at in uplands and wetlands adjacent to Corpus Christi Bay, 2 miles south of Port Aransas on the west side of State Highway (SH) 361, 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: 687358, Northing: 3076258. Project Description: The proposed project is referred to as Newport Landing, and consists of the construction of a residential canal development inclusive of a marina and access channels that connect to the existing Island Moorings Subdivision to the north, and a proposed development named Newport Marina to the south (application 23357). Approximately 2,365,000 cubic yards will be dredged, of which approximately one-half will be retained onsite and the balance offsite on the east Gulf side of SH 361. CCC Project No.: 05-0404-F1; Type of Application: U.S.A.C.E. permit application #23764 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Texas Gulf & Harbor Ltd.; Location: The project is located adjacent to Corpus Christi Bay and State Highway 361, approximately 3 miles south of 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: 684538 (POB) & 686904 (POE); Northing: 3071258 (POB) & 3074676 (POE). Project Description: This notice represents the second public notice for this project, the first which was dated 13 October 2004. The applicant proposes to develop an approximate 835-acre tract of land for a destination resort complex known as Newport Marina that will include residential housing, retail establishments, a marina, channels and a golf course. The proposed work will result in the filling of 0.9 acres of jurisdictional areas, maintenance dredging of an entrance channel, and the excavation of 40 acres of jurisdictional areas, and the conversion of 85 acres of uplands into manmade canals, channels and expansion of the existing basin. The previous public notice called for the filling of 16.9 acres, excavation of 46.3 acres of jurisdictional areas, and the conversion of 78.7 acres of uplands to canal and marina basin. The proposed mitigation plan consists of the creation of 23 acres of new jurisdictional area, 14 acres which are onsite and 9 acres which are offsite. An additional 320 acres are to be preserved, of which 264 acres are onsite and 56 are offsite. CCC Project No.: 05-0405-F1; Type of Application: U.S.A.C.E. permit application #23357 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Michael Gonzales; Location: The project is located in wetlands adjacent to Laguna Madre, Lot 24, at 218 Huisache Street, South Padre Island, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone14; Easting: 682768; Northing: 2889213. Project Description: The applicant proposes to construct a pile-supported single-family residence over 1,575

square feet of a tidal slough that includes a mangrove fringe wetland, and over an additional 675 square feet of mudflat/saltwater coastal flat wetland. Only the work over the 1,575 square feet of tidal slough area is considered jurisdictional. No fill in jurisdictional areas is proposed. CCC Project No.: 05-0411-F1; Type of Application: U.S.A.C.E. permit application #23822 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: BOSS Exploration & Production Corporation; Location: The project is located in State Tract (ST) 346 of Corpus Christi Bay, approximately 3.8 miles southeast of Port Ingleside, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 683584; Northing: 3077376. Project Description: The applicant proposes to drill the ST 346 Well No. 1, install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, and a well head protector. CCC Project No.: 05-0415-F1; Type of Application: U.S.A.C.E. permit application #23798 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Swift Group, LLC; Location: The project is located on the Gulf Intracoastal Waterway (GIWW), east of the Freeport Entrance Channel and East Union Bayou, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 275845; Northing: 3204806. Project Description: The applicant proposes to deepen to minus 25 feet mean low tide (MLT) a 2,700-linear-foot length of the GIWW. The current depth averages approximately 16 feet along the stretch proposed for dredging. The existing side slopes of the GIWW and bottom width of 90 feet would be maintained. The applicant also proposes to deepen 700 linear feet of a private channel and slip to a depth of minus 25 feet mean low tide. The channels would be hydraulically dredged and the dredged material would be placed on uplands. A portion of land fronting the East Union Bayou would be mechanically excavated and the material would be used as levee construction material. The placement area that was originally authorized encompassed 12 acres of uplands. The applicant proposes to enlarge the placement area to include an additional 13 acres of uplands. Existing sheetpile on the southeast side of the slip would be removed. The existing moorings on the southeast side of the slip would be relocated to the slips new shoreline. The interior 250 feet along the inside of the slip was originally authorized for a minus 30 foot MLT depth and would be maintained at that depth. The channel and slip would be maintained to minus 25 feet MLT if necessary. The applicant proposes to extend the time to conduct work on the project for another 5 years and to extend the maintenance dredging for another 10 years. CCC Project No.: 05-0418-F1; Type of Application: U.S.A.C.E. permit application #15551(04) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Franklin Jones III; Location: The project is located along West Galveston Bay, Mensell Bayou and the Spanish Grant Channel, at 12540 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 UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 313507; Northing: 3235388. Project Description: The applicant proposes to amend an existing Department of the Army (DA) permit by widening Camino Real Road by 25 feet; revising the entrance to a portion of the development by removing its connection to Spanish Grant Channel and instead constructing a new entrance canal within Mensell Bayou; converting an upland house lot along the Spanish Grant Channel to a boat basin; relocating a small inland pond; constructing three piers that extend into Mensell Bayou; replacing the type and location of bridges to be constructed within the development; filling an additional 1.04 acres of wetland along the northern project boundary for roadway work and modifying the previously authorized mitigation plan to include compensation for such impacts. Minor design changes in the footprint of the development have also occurred since issuance of the original permit. CCC Project No.: 05-0423-F1; Type of Application: U.S.A.C.E. permit application #22590(03) 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.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, 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-200503664
Larry L. Laine
Chief Clerk/Deputy Commissioner, General Land Office
Coastal Coordination Council
Filed: August 24, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/29/05 - 09/04/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/29/05 - 09/04/05 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-200503620
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 23, 2005

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Deep East Texas Local Workforce Development Board

Request for Proposals

#05-187 - Managing Director

Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions - Deep East Texas is seeking proposals for a Managing Director to provide management as an independent contractor for the

workforce center system in the Deep East Texas region, effective December 1, 2005. The workforce centers use the One-Stop concept to bring together a variety of State programs. The Board's intent by this solicitation is to obtain a management entity that will provide on-site leadership of the workforce center system in a timely manner that will enhance the performance of the workforce center system as well as improve the quality of customer service.

The Deep East Texas Local Workforce Development Board plans, oversees, and evaluates employment and training services to Angelina, Jasper, Newton, Nacogdoches, Houston, Trinity, Shelby, Polk, San Augustine, San Jacinto, Sabine, and Tyler Counties.

RFP Release Date: Monday, August 15, 2005

Bidder's Conference: 1:00 p.m., September 7, 2005 in the Board Conference Room at 539 S. Chestnut, Suite 300, Lufkin, Texas. Attendance at the Bidder's Conference is not mandatory but is highly recommended. Bidders will have an opportunity to ask questions concerning the procurement.

Deadline for submitting proposals: 3:00 p.m., September 30, 2005

Request for a copy of the RFP can be made to:

Chris Gaston

Procurement/Contract Manager

Workforce Solutions - Deep East Texas

539 S. Chestnut, Suite 300

Lufkin, TX 75901

Phone: 936-639-8898

Fax: 936-633-7491

Email: chris.gaston@twc.state.tx.us

OR

The RFP can be accessed at www.detwork.org

TRD-200503460
Chris Gaston
Procurement/Contract Manager
Deep East Texas Local Workforce Development Board
Filed: August 18, 2005

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Texas Commission on Environmental Quality

Correction of Error

The Texas Commission on Environmental Quality submitted a miscellaneous item entitled "Notice of Public Meeting and a Proposed General Permit Authorizing the Discharge of Storm Water and Certain Non-Storm Water from Small Municipal Separate Storm Sewer Systems" for publication in the August 26, 2005, issue of the *Texas Register* (30 TexReg 5049). Due to an error in the agency's submission, the day of the week in the meeting information is stated as "Monday" instead of "Thursday". On page 5049, second column, the second paragraph under the heading "PUBLIC COMMENTS/PUBLIC MEETING" should read as follows:

"The TCEQ will hold a public meeting on this general permit at 7:00 p.m., Thursday, September 29, 2005, at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building F, Room 2210, Austin, Texas."

TRD-200503602

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Enforcement Orders

An order was entered regarding Coastal Transport Company, Inc., Docket No. 2003-1205-PST-E on 08/11/2005 assessing $23,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at 713/422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company Formerly Known As Phillips Petroleum Company, Docket No. 2002-0351-AIR-E on 08/15/2005 assessing $427,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney at 512/239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Salim Hussain dba Kirby Food 1, Docket No. 2002-0077-PST-E on 08/15/2005 assessing $34,500 in administrative penalties with $6,900 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 Brownsville Navigation District, Docket No. 2003-1227-SLG-E on 08/15/2005 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at 512/239-1899, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Russell Bros. Cattle Co. dba Ville D'Alsace Water Supply Company, Docket No. 2003-1254-PWS-E on 08/15/2005 assessing $1,296 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gary R. Reeves, Docket No. 2003-1432-OSI-E on 08/16/2005.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney at 512/239-0575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ticona Polymers, Inc., Docket No. 2003-1265-MLM-E on 08/15/2005 assessing $20,687 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Nash Petty, Staff Attorney at 512/239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Heel Rite of Texas, Inc., Docket No. 2004-0034-AIR-E on 08/15/2005 assessing $25,000 in administrative penalties with $23,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff Attorney at 512/239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pampa, Docket No. 2003-1312-AIR-E on 08/15/2005 assessing $1,500 in administrative penalties with $300 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 Knox Oil of Texas, Inc., Docket No. 2003-0114-MWD-E on 08/15/2005 assessing $6,400 in administrative penalties with $1,280 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 Manzoor Enterprises, Inc. dba M & M Food Mart, Docket No. 2003-1170-PST-E on 08/15/2005 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at 512/239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF Corporation, Docket No. 2003-0157-MLM-E on 08/15/2005 assessing $12,772 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney at 512/239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2003-1370-MWD-E on 08/15/2005 assessing $3,140 in administrative penalties with $628 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tecon Water Company, L.P., Docket No. 2004-0117-MLM-E on 08/15/2005 assessing $21,371 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines (NE Texas) L.P., Docket No. 2004-0227-AIR-E on 08/15/2005 assessing $42,500 in administrative penalties with $8,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel 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 Evans Houston Corporation dba Sheldon Road Drumming Plant, Docket No. 2004-0359-IHW-E on 08/15/2005 assessing $2,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Julie Nguyen dba M & J Market, Docket No. 2004-0567-PST-E on 08/15/2005 assessing $6,800 in administrative penalties with $1,360 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at 512/239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Criminal Justice, Docket No. 2004-0569-PWS-E on 08/15/2005 assessing $525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432/570-1359, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Raul Perez dba RP Trucking Fuel Station, Docket No. 2004-0712-MLM-E on 08/15/2005 assessing $7,875 in administrative penalties.

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 Wang Hun Chong dba The New C Store, Docket No. 2004-0723-PST-E on 08/15/2005 assessing $31,360 in administrative penalties with $27,760 deferred.

Information concerning any aspect of this order may be obtained by contacting Courtney St. Julian, Staff Attorney at 512/239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2004-0867-IHW-E on 08/15/2005 assessing $16,950 in administrative penalties with $3,390 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Duke Pendergraft dba Pendergraft Stone, Docket No. 2004-0938-WQ-E on 08/15/2005 assessing $39,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff Attorney at 512/239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Raymondville, Docket No. 2004-1013-PWS-E on 08/15/2005 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Weirich Bros., Inc., Docket No. 2004-1072-WQ-E on 08/15/2005 assessing $1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at 512/239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Qazi Trading Corporation dba Dollar Saver Food Mart 12, Docket No. 2004-1280-PST-E on 08/15/2005 assessing $7,000 in administrative penalties with $1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at 512/239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Ulm Water Supply Corporation, Docket No. 2004-1394-MWD-E on 08/15/2005 assessing $2,780 in administrative penalties with $556 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at 512/239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Greif, Inc. dba Greif Brothers, Docket No. 2004-1412-AIR-E on 08/15/2005 assessing $4,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rolando Dela Cruz dba Manila Food Plaza, Docket No. 2004-1498-PST-E on 08/15/2005 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at 817/588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HCFM, Inc. dba Hill Country Food Mart, Docket No. 2004-1500-PST-E on 08/15/2005 assessing $9,450 in administrative penalties with $1,890 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512/239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KVN Oil & Gas, Inc. dba Story Fina, Docket No. 2004-1516-PST-E on 08/15/2005 assessing $2,910 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, 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 Red Creek Municipal Utility District, Docket No. 2004-1550-PWS-E on 08/15/2005 assessing $188 in administrative penalties with $38 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at 512/239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Domingo Pina, Jr. dba Sonny's Place, Docket No. 2004-1559-PWS-E on 08/15/2005 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MG Building Materials, Ltd., Docket No. 2004-1598-MLM-E on 08/15/2005 assessing $14,950 in administrative penalties with $2,990 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at 210/403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AQA Retails, Inc. dba Stop-N-Drive 1, Docket No. 2004-1601-PST-E on 08/15/2005 assessing $1,640 in administrative penalties.

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 Estrella Freight Service, L.L.C., Docket No. 2004-1621-PST-E on 08/15/2005 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at 512/239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dahisar Busniss, Inc. dba Honey Stop 2, Docket No. 2004-1641-PST-E on 08/15/2005 assessing $4,200 in administrative penalties with $840 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 Highway Travel Centers, Inc. dba Roadrunner Travel Center, Docket No. 2004-1707-PST-E on 08/15/2005 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361/825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Degussa Engineered Carbons, L.P., Docket No. 2004-1724-AIR-E on 08/15/2005 assessing $6,450 in administrative penalties with $1,290 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rafia Sattar dba Junction Conoco, Docket No. 2004-1740-PST-E on 08/15/2005 assessing $6,750 in administrative penalties with $1,350 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 Permian Real Estate Inc. dba Southland Homes, Docket No. 2004-1741-WQ-E on 08/15/2005 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jarral's International, Inc. dba Express Lane Mobil Mart, Docket No. 2004-1778-PST-E on 08/15/2005 assessing $820 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at 512/239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Green Ribbon Enterprises, Inc. dba Kwik Serve, Docket No. 2004-1797-PST-E on 08/15/2005 assessing $1,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Saidul Kabir dba Super Stop 3, Docket No. 2004-1832-PST-E on 08/15/2005 assessing $5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at 512/239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W W Cattle Feeds, Inc. dba W W Cattle Feeds, Docket No. 2004-1848-MLM-E on 08/15/2005 assessing $5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at 956/430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hung Phung dba H & H Discount, Docket No. 2004-1909-PST-E on 08/15/2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at 512/239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petro Stopping Centers, L.P. dba Petro Stopping Center 50, Docket No. 2004-1947-AIR-E on 08/15/2005 assessing $1,020 in administrative penalties with $204 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandra Anaya, Enforcement Coordinator at 512/239-0572, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lucky Lady Oil Company dba Super Lucky Lady 3, Docket No. 2004-1951-PST-E on 08/15/2005 assessing $7,005 in administrative penalties.

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 2000 IIG Inc. dba Diamond Smart 2, Docket No. 2004-2000-PST-E on 08/15/2005 assessing $2,910 in administrative penalties.

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 Waterside Corporation dba Bayview Marina, Docket No. 2004-2012-PST-E on 08/15/2005 assessing $7,650 in administrative penalties with $1,530 deferred.

Information concerning any aspect of this order may be obtained by contacting Sunday Udoetok, Enforcement Coordinator at 512/239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lattimore Materials Company, L.P. dba Coppell Ready Mix, Docket No. 2004-2020-WQ-E on 08/15/2005 assessing $2,600 in administrative penalties with $520 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at 512/239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Davis Net Lease No. 1, L.P., Docket No. 2004-2024-EAQ-E on 08/15/2005 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at 210/403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jerry D. Womack dba J & H, Docket No. 2004-2059-PST-E on 08/15/2005 assessing $1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at 512/239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zulfiqar Ali Mehar dba Brookeland Country Mart, Docket No. 2004-2063-PST-E on 08/15/2005 assessing $2,400 in administrative penalties.

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 Amanda R. Lowe, Docket No. 2004-2068-OSI-E on 08/15/2005 assessing $250 in administrative penalties with $50 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 Hamshire Community Water Supply Corporation, Docket No. 2004-2069-PWS-E on 08/15/2005 assessing $107 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brownfield Independent School District, Docket No. 2004-2070-PST-E on 08/15/2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at 512/239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Currey Enterprises, Inc. dba Budget Rentals, Docket No. 2004-2095-PST-E on 08/15/2005 assessing $1,875 in administrative penalties with $375 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 Henry Allen Norris, Jr., Docket No. 2005-0009-OSI-E on 08/15/2005 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shank C&E Investments, L.L.C., Docket No. 2005-0024-PST-E on 08/15/2005 assessing $510 in administrative penalties with $102 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Wiesner, Inc., Docket No. 2005-0030-PST-E on 08/15/2005 assessing $950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2005-0054-AIR-E on 08/15/2005 assessing $3,950 in administrative penalties with $790 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gobu Inc. dba Mobil Deluxe Mart, Docket No. 2005-0058-PST-E on 08/15/2005 assessing $1,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at 512/239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hank's Roll-Off & Waste Services, Inc., Docket No. 2005-0100-MSW-E on 08/15/2005 assessing $1,125 in administrative penalties with $225 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 King's Crossing Golf & Country Club, Inc., Docket No. 2005-0189-PST-E on 08/15/2005 assessing $2,500 in administrative penalties with $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 Stephen Mathews, Docket No. 2005-0208-OSI-E on 08/15/2005 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at 512/239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joseph T. Gonzalez dba J & E Food Store, Docket No. 2005-0216-PST-E on 08/15/2005 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Newell Recycling Company of El Paso, L.P., Docket No. 2005-0242-PST-E on 08/15/2005 assessing $840 in administrative penalties with $168 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill McNew, Enforcement Coordinator at 512/239-0560, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Allanco Corporation dba KP Food Mart 3, Docket No. 2005-0263-PST-E on 08/15/2005 assessing $1,900 in administrative penalties with $380 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 Ollie J. Hilliard dba Jamie's House Charter School Water System, Docket No. 2005-0302-PWS-E on 08/15/2005 assessing $158 in administrative penalties with $32 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carl Wachsmann dba Wachsmann Store, Docket No. 2005-0397-PST-E on 08/15/2005 assessing $2,850 in administrative penalties with $570 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.

TRD-200503656
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 24, 2005

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Notice of District Petition

Notices mailed August 18, 2005

TCEQ Internal Control No. 06292005-D03; Mischer Investments, L.P. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 433(District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is no lien holder on the property to be included in the proposed District; (3) the proposed District will contain approximately 485.07 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-586 , effective May 17, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $37,850,000.

TCEQ Internal Control No. 07282005-D01; 523 Venture, LTD. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 434(District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Hibernia National Bank, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 523.997 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-290 , effective March 30, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $25,040,000.

TCEQ Internal Control No. 06292005-D06; Mischer Investments, L.P. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 435(District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is no lien holder on the property to be included in the proposed District; (3) the proposed District will contain approximately 312.14 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-587 , effective May 17, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $23,800,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200503655

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 24, 2005

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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. 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 **October 3, 2005**. 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 a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or 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. 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 October 3, 2005**. 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, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Jose Garcia dba Neighborhood Trucks & Auto Repair; DOCKET NUMBER: 2004-1998-AIR-E; TCEQ ID NUMBER: RN103009098; LOCATION: 7900 Mendez Street, Houston, Harris County, Texas; TYPE OF FACILITY: automotive repair business; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain a permit prior to constructing and operating a facility with surface coating operations and by failing to satisfy the conditions for exempt facilities; 30 TAC §115.422(1)(A) and THSC, §382.085(b), by failing to wash, rinse, and drain parts used in surface coating operations in an enclosed system or in a non-enclosed system with a solvent vapor pressure less than 100 millimeters of mercury at 68 degrees Fahrenheit and a drain leading to an enclosed reservoir; 30 TAC §115.421(a)(8)(B)(i), (iv), and (ix) and THSC, §382.085(b), by failing to comply with the volatile organic compound emission limits for primer, single stage topcoats, and wipe-down solutions used in vehicle refinishing; and 30 TAC §115.426(1)(B) and THSC, §382.05(b), by failing to maintain records of the quantity and type of each coating and solvent used at the site; PENALTY: $11,550; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200503623
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 23, 2005

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 3, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 3, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Magna-Flow International, Inc. dba Magna-Flow Environmental; DOCKET NUMBER: 2003-0623-SLG-E; TCEQ ID NUMBERS: 710789 (Now Number 730083), 710840, and 21484; LOCATIONS: on the northeast side of County Road 4, approximately 1,175 feet southeast of its intersection with County Road 772, 5.5 miles south of the City of Damon and on County Road 208, approximately 2.5 miles northwest of its intersection with Farm-to-Market Road 2004 near Danbury, Brazoria County, Texas; TYPE OF FACILITIES: sludge beneficial use sites; RULES VIOLATED: 30 TAC §312.50(c), by failing to land apply sewage sludge within seven days of staging on-site; 30 TAC §312.48(1) and Sludge Registration Number 710789, Standard Provision, Section IV.C., by failing to submit an annual report documenting the use of a sludge land application site; 30 TAC §312.44(c)(1) and Sludge Registration Number 710789, Standard Provision, Section IV.D.3.d., by failing to maintain set back requirements for Class B sludge; 30 TAC §312.12(b)(2) and Sludge Registration Number 710789, Standard Provision, Section V.A.7., by failing to immediately provide written notice to the executive director of any additional information concerning changes in the source of sewage sludge; 30 TAC §312.44(i)(1) and (3), and §312.50(c), and Sludge Registration Number 710840, Standard Provision, Section IV.D.6.a.,

by failing to land apply sludge according to the rule and registration requirements by applying sewage sludge during periods in which the surface soils were water-saturated, not applying sludge uniformly over the surface of the land, and/or not applying sewage within seven days of staging on-site; 30 TAC §312.48(1) and Sludge Registration Number 710840, Standard Provision, Section IV.C., by failing to submit an annual report documenting the use of a sludge land application site; 30 TAC §312.12(b)(2) and Sludge Registration Number 710840, Standard Provision, Section V.A.7., by failing to immediately provide written notice to the executive director of any additional information concerning changes in the source of sewage sludge; and 30 TAC §312.145(b)(2), by failing to provide waste manifests upon request for sludge delivered; PENALTY: $12,320; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Maricela Trevino dba Guerrero's Grocery; DOCKET NUMBER: 2005-0259-PST-E; TCEQ ID NUMBERS: 45826 and RN102716297; LOCATION: 1621 North Cesar Chavez Road, San Juan, Hidalgo County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 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 underground storage tanks; PENALTY: $2,100; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Shaheen Retail Company, Inc. dba Capital Food Mart 2; DOCKET NUMBER: 2003-1021-PST-E; TCEQ ID NUMBERS: 0004057 and RN101499283; LOCATION: 11005 Burnet Road, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.89(c)(4) and (c)(5)(A)(i) and TWC, §26.346(a), by failing to renew a previously issued underground storage tank delivery certificate; and 30 TAC §334.49(e)(2)(B)(i) and TWC, §26.3475(d), by failing to record and maintain the results of all tests and inspections of any impressed current cathodic protection system conducted; PENALTY: $1,300; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200503622
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 23, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of August 15, 2005 through August 23, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CANYON REGIONAL WATER AUTHORITY has applied for a renewal of Permit No. 14126-001, which authorizes the disposal of treated filter backwash water at a daily average flow not to exceed 64,000 gallons per day via surface irrigation of 45.1 acres of non-public access land. The permit also authorizes the disposal of water treatment plant sludge on 40 acres of land located at the plant site at an application rate not to exceed 2.1 tons per acre per year. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site and water treatment plant sludge application site are located on the south bank of the Guadalupe River, approximately 1,000 feet southwest of the dam for Lake Dunlap at Dittmar Falls, and approximately 3,000 feet northeast of the Town of Schumansville in Guadalupe County, Texas.

CITY OF JARELL has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014594001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility will be located south of Farm-to-Market Road 487, approximately 1,900 feet east of the intersection of Farm-to-Market Road 487 and County Road 304, Williamson County, Texas.

CITY OF PERRYTON has applied for a major amendment to Permit No. 10248-001, to authorize a reduced monitoring frequency for BOD5 and pH. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,400,000 gallons per day via surface irrigation of 570 acres of non-public access agricultural land. The facility and disposal site are located approximately 0.50 mile south of Perryton City Limits on U.S. Highway 83 and thence east 1.25 miles to the plant site in Ochiltree County, Texas.

RITA LAURA REDOW KARBALAI has applied for a major amendment to TPDES Permit No. 12399-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 25,000 gallons per day to a daily average flow not to exceed 50,000 gallons per day. The facility is located at 12117 Aldine-Westfield Road, 4000 feet south of the intersection of Aldine-Westfield Road and Aldine Mail Road; 3.5 miles east of the intersection of Interstate Highway 45 and Farm-to-Market Road 149 in Harris County, Texas

THE SIGNORELLI COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014597001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located approximately 4,400 feet west of the crossing of U.S. Highway 59 over White Oak Creek in Montgomery County, Texas.

SOUTHERN CLAY PRODUCTS, INC. which operates the Elm Grove Clay Mine, a bentonite clay mine, has applied for a renewal of Permit No. WQ0003405000, which authorizes the disposal of groundwater seepage and storm water at an annual irrigation rate not to exceed 3.8 acre-feet per acre per year via irrigation of 37 acres This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located on Brown Road approximately two miles southwest of the Community of Colony (located on State Highway 95) and approximately two and one-quarter miles east of the Community of Elm Grove (located on Farm-to-Market Road 1115), Fayette County, Texas.

TRD-200503654
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 24, 2005

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 15, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. JNS & Samir Corporation; SOAH Docket No. 582-05-1529; TCEQ Docket No. 2004-0241-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against JNS & Samir Corporation on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200503657
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 24, 2005

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 22, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Sam Lakhani dba SLR Grocery; SOAH Docket No. 582-05-5036; TCEQ Docket No. 2004-0806-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Sam Lakhani dba SLR Grocery on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200503658
LaDonna Castañuela
Chief Clerk
Texas Commission of Environmental Quality
Filed: August 24, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 3, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 3, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Alexander Moulding Mill Company; DOCKET NUMBER: 2005-0762-PWS-E; IDENTIFIER: Regulated Entity Number (RN) 100828805; LOCATION: Hamilton, Hamilton County, Texas; TYPE OF FACILITY: moulding manufacturing with a public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) and (3)(B), (K), and (L), by failing to provide a sanitary control easement, by failing to provide a well casing 18 inches above the ground surface, by failing to seal the wellhead, and by failing to ensure that the well blowoff line terminates in a downward direction; 30 TAC §290.46(f)(2) and (h), by failing to keep on file, and make available for review, monthly reports of water works operations and by failing to have available a supply of calcium hypochlorite disinfectant; 30 TAC §290.45(d)(2)(A)(ii) and THSC, §341.0315(c), by failing to meet the agency required minimum pressure tank capacity requirements; 30 TAC §290.42(j), by failing to use American National Standards Institute/National Sanitation Foundation Standard 60 approved chemicals; and 30 TAC §290.44(d), by failing to operate a water distribution system so as to provide at all times a minimum operating pressure of 35 pounds per square inch throughout the distribution system; PENALTY: $1,360; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Ashland, Inc.; DOCKET NUMBER: 2005-0817-AIR-E; IDENTIFIER: RN102069267; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: chemical distribution; RULE VIOLATED: 30 TAC §116.110(a)(1) and §116.315(a) and THSC, §382.085(b), by failing to submit an application for permit renewal and by failing to secure authorization before continuing to operate the facility; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Brownfield; DOCKET NUMBER: 2005-0921-PST-E; IDENTIFIER: RN101382182; LOCATION: Brownfield, Terry County, Texas; TYPE OF FACILITY: police station with an active underground storage tank (UST) for an emergency generator; RULE VIOLATED: 30 TAC §334.51(b)(2)(B) and the Code, §26.3475(c)(2), by failing to provide proper spill containment equipment; 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(iii) and (B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a completed UST registration and self-certification form and by failing to post the previously issued delivery certificate in a location clearly visible at all times; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(4) COMPANY: CSA Materials, Inc.; DOCKET NUMBER: 2005-0524-WQ-E; IDENTIFIER: RN104506001; LOCATION: Robert Lee, Coke County, Texas; TYPE OF FACILITY: sand mine; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain a Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit for storm water; PENALTY: $2,130; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(5) COMPANY: Crown Cork & Seal USA, Inc.; DOCKET NUMBER: 2005-0675-AIR-E; IDENTIFIER: Air Account Number MQ0117B, RN100711118; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: aluminum can manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and §116.315(a) and THSC, §382.085(b), by failing to obtain authorization to operate; PENALTY: $11,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Hooda Corporation, Inc. dba Esters Chevron; DOCKET NUMBER: 2005-0617-PST-E; IDENTIFIER: RN101566909; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.242(3)(A) and (9) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) and by failing to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all tanks are monitored in a manner that will detect a release; and 30 TAC §334.8(c)(5)(C), by failing to permanently tag or label each UST fill tube; PENALTY: $6,080; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: J H & Son Inc. dba Holton Oil Company; DOCKET NUMBER: 2005-0787-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 27598, RN102060688; LOCATION: Wellington, Collingsworth County, Texas; TYPE OF FACILITY: wholesale and retail sales of gasoline and diesel; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,520; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: Kinder Morgan Production Company LP; DOCKET NUMBER: 2005-0037-AIR-E; IDENTIFIER: Air Account Number SG0006O, RN100226455; LOCATION: Snyder, Scurry County, Texas; TYPE OF FACILITY: carbon dioxide treatment plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to report emissions events; and 30 TAC §116.110(a), Air Permit Number 55512, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: $1,090; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(9) COMPANY: Kirby & Kirby Oil Company, Inc. dba Front Street Shamrock; DOCKET NUMBER: 2005-0663-PST-E; IDENTIFIER: PST Facility Identification Number 24648, RN102008570; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,360; ENFORCEMENT COORDINATOR: Sandra Anaya, (512) 239-0572; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: Akber Berani dba Kwik Stop Conoco; DOCKET NUMBER: 2005-0760-PST-E; IDENTIFIER: RN102482213; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), (B)(ii), and (C), and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate, by failing to ensure that a delivery certificate is renewed by timely and proper submission of a new UST registration and self-certification form, and by failing to ensure that a legible tag, label, or marking is permanently applied or affixed to either the top of the fill tube or to a nonremovable point near the fill tube; 30 TAC §334.7(d)(3), by failing to notify the agency of a change in registration information; and 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all installed spill and overfill prevention devices are maintained in good operating condition; PENALTY: $8,976; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Lexicon Inc.; DOCKET NUMBER: 2005-0637-WQ-E; IDENTIFIER: RN104467402; LOCATION: Montgomery, Montgomery County, Texas; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain a TPDES construction general permit prior to initiating construction; and the Code, §26.121(c), by failing to prevent the unauthorized discharge of sediment; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: City of Marshall; DOCKET NUMBER: 2005-0799-PWS-E; IDENTIFIER: Public Water Supply Number 1020002, RN101388700; LOCATION: Marshall, Harrison County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.109(f)(1)(A) and (3) and THSC, §341.0315(c), by failing to maintain levels below the acute maximum contaminant level (MCL) and by failing to maintain levels below the MCL; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Sandra Anaya, (512) 239-0572; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(13) COMPANY: City of Mission; DOCKET NUMBER: 2005-0851-PWS-E; IDENTIFIER: RN101394153; LOCATION: Mission, Hidalgo County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(2)(G) and THSC, §341.0315(a)(1) and (c), by failing to provide an elevated storage capacity of 100 gallons per connection; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Sandra Anaya, (512) 239-0572; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: Pappy's Sand & Gravel, Inc.; DOCKET NUMBER: 2005-0945-WQ-E; IDENTIFIER: RN1007866798; LOCATION: Scurry, Kaufman County, Texas; TYPE OF FACILITY: sand washing; RULE VIOLATED: 30 TAC §285.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: R. D. Wallace Oil Company, Inc. dba Petro Products Corporation dba Keeling Card System; DOCKET NUMBER: 2004-1514-PST-E; IDENTIFIER: PST Facility Identification Number 30393, RN101783777; LOCATION: Levelland, Hockley County,

Texas; TYPE OF FACILITY: gas station with retail card sales; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and the Code, §26.3467(a), by failing to ensure that the UST registration and self-certification form is submitted in a timely manner and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $800; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(16) COMPANY: Amirali Ladhani and Fatima Ladhani dba Rick's Drive In; DOCKET NUMBER: 2005-0618-PST-E; IDENTIFIER: RN101907780; LOCATION: Leming, Atascosa County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $840; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Rock Solid Crushed Stone, Inc.; DOCKET NUMBER: 2005-0724-WQ-E; IDENTIFIER: RN102482874; LOCATION: near Celeste, Kaufman County, Texas; TYPE OF FACILITY: rock quarry; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Sandy Van Cleave, (512) 239-0667; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2005-0734-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(1), (2)(F), and (c), Permit Numbers 3173 and 3219/PSD-TX-974, and THSC, §382.085(b), by failing to control the ammonia concentration, by failing to comply with the maximum allowable emission rates for carbon monoxide, volatile organic compounds, and nitrogen oxides, by failing to maintain the ratio of hydrogen to acetylene in the converter, by failing to maintain steam pressure, by failing to prevent the lifting of relief valve RV3033B, and by failing to prevent a power outage; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit initial notification of a reportable emissions event; PENALTY: $49,080; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: City of South Houston; DOCKET NUMBER: 2004-0722-MWD-E; IDENTIFIER: TPDES Permit Number 10287-001; LOCATION: South Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10287-001, and the Code, §26.121(a), by failing to meet permit effluent criteria for ceriodaphnia dubia, seven-day chronic toxicity test; PENALTY: $20,000; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Stewart Builders, Limited dba Keystone Concrete; DOCKET NUMBER: 2005-0728-EAQ-E; IDENTIFIER: RN103952677; LOCATION: Georgetown, Williamson County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1) and (j)(2) and Edwards Aquifer Protection Plan (EAPP) Identification Number 03090504, by failing to adhere to the approved EAPP and by failing to obtain authorization for modification to the water pollution abatement plan; PENALTY: $3,360; ENFORCEMENT COORDINATOR Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(21) COMPANY: Romeo Garza dba TS Lonesome Dove Saloon; DOCKET NUMBER: 2005-0854-PWS-E; IDENTIFIER: RN101196145; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect routine bacteriological monitoring samples; 30 TAC §290.122(c)(2)(B), by failing to post public notices for routine monitoring violations; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay outstanding public health service fees and associated late fees; PENALTY: $1,520; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Texas Barge & Boat, Inc.; DOCKET NUMBER: 2004-1477-AIR-E; IDENTIFIER: Air Account Number BL0423N, RN102037959; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: barge cleaning and repair terminal; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: $2,080; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Texas Parks and Wildlife Department; DOCKET NUMBER: 2005-0885-PWS-E; IDENTIFIER: RN101218329; LOCATION: near San Antonio, Comal County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(6)(A) and THSC, §341.033(a), by failing to employ at least one operator who holds a Class B or higher surface water license; PENALTY: $960; ENFORCEMENT COORDINATOR: Sandra Anaya, (512) 239-0572; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: Texas United Capital, Inc. dba J C Market Deli; DOCKET NUMBER: 2005-0669-PST-E; IDENTIFIER: PST Facility Identification Number 69920, RN101862621; LOCATION: Jacinto City, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to provide and maintain the Stage II VRS; 30 TAC §334.51(a)(6) and (b)(2)(C) and the Code, §26.3475(c)(2), by failing to assure that all installed spill and overfill devices are maintained in good operating conditions and by failing to provide proper overfill prevention equipment; PENALTY: $5,400; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200503621
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 23, 2005

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Department of Family and Protective Services

Correction of Error

The Texas Health and Human Services Commission proposed, on behalf of the Department of Family and Protective Services, new rule 40 TAC §745.4151 in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4803). Due to a *Texas Register* error, a portion of the text of §745.4151(a) was omitted.

Subsection (a) should read as follows:

"(a) The Department of Family and Protective Services is required to adopt a model drug testing policy for residential child-care operations under the Human Resources Code, §42.057. Your residential child-care operation must either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy. Although this policy only covers drugs, coverage of alcohol may be included. The department recommends that an operation obtain legal advice before adopting and implementing any drug testing policy."

TRD-200503603

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General Land Office

Notice of Award for Consulting Services - TCOON

In Accordance with Chapter 2254 of the TEXAS GOVERNMENT CODE, the TEXAS GENERAL LAND OFFICE (GLO) files this notice of a consultant contract award. The Invitation for Consultant Services was published in the June 17, 2005 issue of the *Texas Register* (30 TexReg 3662).

The GLO is a participant in the development and implementation of a comprehensive tide monitoring and gauging system known as the Texas Coastal Ocean Observation Network (TCOON). Other participants include the National Ocean Services (NOS), the Conrad Blucher Institute (CBI) of Texas A&M University at Corpus Christi (TAMU-CC), and the U.S. Army Corps of Engineers (COE).

The project is funded and administered through a cooperative effort by NOS, GLO, and COE. In previous years, the GLO contracted TAMU-CC for installation and monitoring of the system and with CBI to obtain professional and technical assistance necessary to review and analyze data received from the operation of the TCOON.

The GLO has selected Briah Connor, Jr., 9676 Fleetwood Ct. Frederick, MD 27101-7608 to assist with the review and analysis of tide and water level data received from TCOON during the period beginning September 1, 2005 through August 31, 2007. Mr. Connor will be responsible for the coordination of all gauge installation, leveling, and operational reporting with the other participants in this project. These activities will be the subject of regular reports that will be submitted to the GLO on a quarterly basis. Mr. Connor will also be responsible for continuation of the process of automating the data collection, analysis, leveling, station stability monitoring, and data computation as coordinated with CBI. The payment for services is $55,000 for FY 2005 and $55,000 for FY 2006.

Further information about the project may be obtained from LaNell Aston at (512) 936-1921

TRD-200503665
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: August 24, 2005

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Texas Health and Human Services Commission

Public Notice - Private Duty Nursing

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number TX 05-016, Amendment Number 713, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

This proposed amendment adds language to provide a continuum of care in the home and a continuum in the types of providers that are needed in order for Medicaid recipients under the age of 21 years to obtain all medical necessary services to which they are entitled. In addition, the amendment provides for the option to delegate skilled nursing services by a registered nurse (RN) to a qualified aide.

The proposed amendment is to be effective September 1, 2005. The proposed amendment is estimated to result in increased annual aggregate expenditures of $15,386,855, with increased federal matching funds of $9,336,743.61 for SFY2006 and decreased annual aggregate expenditures of ($8,240,392), with decreased federal matching funds of ($4,982,965.04) for SFY2007.

To obtain copies of the proposed amendment, interested parties may contact Arnulfo Gomez by telephone at (512) 491-1166 or by e-mail at arnulfo.gomez@hhsc.state.tx.us.

TRD-200503601
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: August 22, 2005

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Department of State Health Services

Notice of Maximum Fees Allowed for Providing Health Care Information Effective September 2, 2005

The Department of State Health Services licenses general and special hospitals in accordance with the Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended the law to address the release and confidentiality of health care information. In accordance with Health and Safety Code, §241.154(e), the fee for providing a patient's health care information has been adjusted 3.3% to reflect the most recent changes to the consumer price index, as published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor. The BLS measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers.

Applicable Provisions of Health and Safety Code, §241.154:

(b) Except as provided by subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed $38.31; and

(A) a charge for each page of:

(i) $1.28 for the 11th through the 60th page of provided copies;

(ii) $.64 for the 61st through the 400th page of provided copies;

(iii) $.33 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(2) if the requested records are stored on any microform or other electronic medium, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $57.48; and

(A) $1.28 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Civil Practice and Remedies Code, §22.004; and

(2) written responses to a written set of questions, not to exceed $12.77 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under Subsection (b) to the extent the fee is prohibited under Chapter 161, Subchapter M;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payor, except as provided under §311.002(f); or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Labor Code, Chapter 408.

This notice is published only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that any fees charged for health care information are in accordance with the Health and Safety Code, Chapter 241.

STATUTORY REFERENCE LOCATIONS

§22.004, Civil Practice and Remedies Code go to: http://www.capitol.state.tx.us/statutes/docs/CP/content/htm/cp.002.00.000022.00.htm;

Chapter 161, Subchapter M, go to http://www.capitol.state.tx.us/statutes/hs.toc.htm;

§311.002; and Labor Code, Chapter 408 go to http://www.capitol.state.tx.us/statutes/la.toc.htm Chapter 408.

CONTACT INFORMATION

Should you have any questions, please contact the Department of State Health Services, Facility Licensing Group, 1100 West 49th Street, Austin, Texas, telephone (512) 834-6648.

TRD-200503635
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 24, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Mobile Health Testing, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Mobile Health Testing, Inc. (registrant--R20178-000) of Pearland. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200503609
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 23, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Radiology Associates of McAllen, P.A.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Radiology Associates of McAllen, P.A. (registrant--R02298-001) of Edinburg. A total penalty of $4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200503610
Cathy Campbell
General Counsel
Department of State Health Services
Filed: August 23, 2005

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Texas Department of Housing and Community Affairs

Announcement of the 2005 State of Texas Public Hearing Schedule on Affordable Housing, Community Services, and Community Development Activities

The Texas Department of Housing and Community Affairs (TDHCA), Office of Rural Community Affairs (ORCA), and the Texas State Affordable Housing Corporation (TSAHC) announce the hearing schedule for thirteen public hearings to gather public comment on the following topics:

2006 State of Texas Low Income Housing Plan and Annual Report

2006 State of Texas Consolidated Plan One Year Action Plan

2006 - 2007 Colonia Action Plan

TDHCA Compliance Monitoring Policies and Procedures

HOME Investment Partnerships Program Rules

General Comment on the Community Services Block Grant, Community Food and Nutrition Program, and Emergency Shelter Grants Program

HOME, HTC, and HTF Affordable Housing Needs Score

HOME, HTC, and HTF Regional Allocation Formula

Housing Tax Credit (HTC) Qualified Allocation Plan and Rules (QAP)

Housing Trust Fund (HTF) Program Rules

2006 TSAHC Action Plan

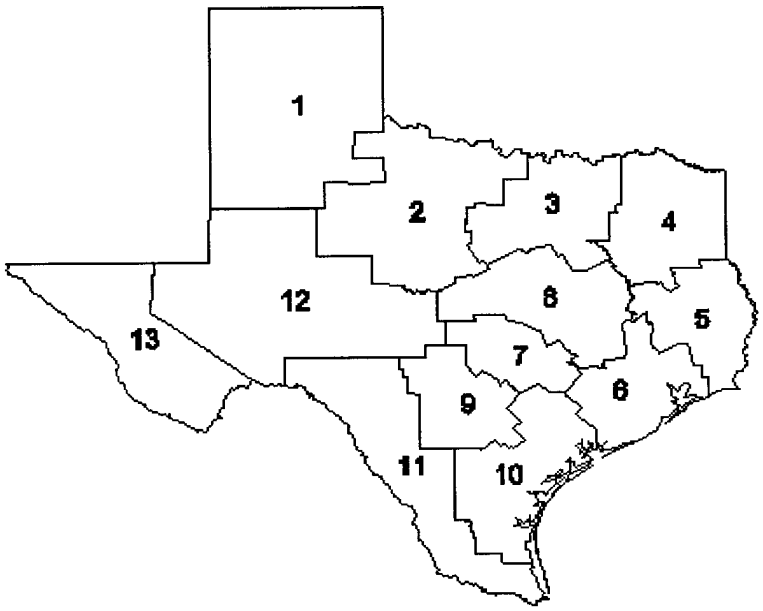
TDHCA Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines

With the exception of the QAP, the comment period for all items is September 19 through October 18. The QAP comment period is September 2 through October 7. Documents related to the hearings will be available at www.tdhca.state.tx.us at the beginning of the public comment period.

Public comment on TDHCA activities may also be provided in writing via: [MAIL] TDHCA DPPA, P.O. Box 13941, Austin, Texas 78711-3941 or [FAX] (512) 475-3746 or [E-MAIL] info@tdhca.state.tx.us. Comment on ORCA or TSAHC activities should be provided directly to those organizations.

As listed below, a hearing will be held in each of the regions shown in Figure 1.

Figure 1



Region 1: South Plains Association of Governments

1323 58th, Lubbock

Time: October 4, 2005, 11:00 a.m.

Facility Contact: (806) 762-8721

Region 2: West Central Texas Council of Governments

851 N. Judge Ely, Abilene

Time: October 3, 2005, 4:30 p.m.

Facility Contact: (325) 672-8544

Region 3: City Council Chambers, 1st Floor

101 W. Abram Street, Arlington

Time: September 28, 2005, 4:30 p.m.

Facility Contact: (817) 459-6101

Region 4: City Hall Council Chambers

501 N. Madison, Mt. Pleasant

Time: September, 29, 2005, 11:00 a.m.

Facility Contact: (903) 575-4000

Region 5: South East Texas Regional Planning Commission

2210 Eastex Freeway, Beaumont

Time: September 27, 2005, 11:00 a.m.

Facility Contact: (409) 899-8444

Region 6: City Hall Annex Chambers, Public Level

900 Bagby, Houston

Time: September 27, 2005, 4:30 p.m.

Facility Contact: (713) 247-1840

Region 7: TDHCA Headquarters, 4th Floor

507 Sabine, Austin

Time: September 26, 2005, 11:00 a.m.

Facility Contact: (512) 475-3976

Region 8: Poage Federal Building, Room 142

1015 S. Main, Temple

October 4, 2005, 1:00 p.m.

Facility Contact: (254) 742-9765

Region 9: City Council Chambers

114 W. Commerce, San Antonio

Time: September 30, 2005, 11:00 a.m.

Facility Contact: (210) 207-6991

Region 10: Coastal Bend COG

2910 Leopard Street, Corpus Christi

Time: September 28, 2005, 11:00 a.m.

Facility Contact: (361) 883-5743

Region 11: City Council Chambers, 3rd Floor City Commission Room

1300 Houston Avenue, McAllen

Time: September 28, 2005, 1:00 p.m.

Facility Contact: (956) 972-7120

Region 12: Permian Basin Regional Planning Commission

2910 LaForce Boulevard, Midland

Time: October 3, 2005, 11:00 a.m.

Facility Contact: (432) 563-1061

Region 13: City Council Chambers, 2nd Floor

2 Civic Center Plaza, El Paso

Time: September 29, 2005, 4:30 p.m.

Facility Contact: (915) 541-4005

For more information on the hearings, contact the TDHCA Division of Policy and Public Affairs at (512) 475-3976.

Individuals who require a language interpreter for the hearing should contact Michael Lyttle at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados. Individuals who require auxiliary aids or services should contact Gina Esteves, ADA-Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days prior to the scheduled hearing so that appropriate arrangements can be made.

TRD-200503644
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 24, 2005

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by TRADERS INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Kansas City, MO.

Application for a new organization applying for a certificate of authority in the State of Texas by THE CONTINENTAL INSURANCE COMPANY OF TEXAS, a domestic Fire and/or Casualty company. The home office is in Dallas, TX.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200503649
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 24, 2005

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C-H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Scott & White Health Plan

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division-Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Scott & White Health Plan to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200503648
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 24, 2005

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of PMC VENTURES, P.A., a domestic third party administrator. The home office is HOUSTON, TEXAS.

Application for incorporation in Texas of METHODIST TRANSPLANT PHYSICIANS, a domestic third party administrator. The home office is DALLAS, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200503646
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 24, 2005

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Texas Lottery Commission

Instant Game Number 610 "Jacks in the Box"

1.0 Name and Style of Game.

A. The name of Instant Game No. 610 is "JACKS IN THE BOX". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 610 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 610.

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: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, $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. 610 - 1.2D

PLAY SYMBOL	CAPTION
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$60.00	SIXTY
$200	TWO HUND
$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 610 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FOR	$4.00
FIV	$5.00
SIX	$6.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $5.00, 6.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00 or $100.

I. High-Tier Prize - A prize of $200 or $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (610), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 610-0000001-001.

L. Pack - A pack of "JACKS IN THE BOX" Instant Game tickets contains 250 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 246 to 250 will be on the last page with backs exposed. Tickets 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JACKS IN THE BOX" Instant Game No. 610 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 "JACKS IN THE BOX" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player reveals a jack ("J") play symbol in the play area the player wins prize shown below 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 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. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "JACKS IN THE BOX" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.0, $60.00, $100 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $60.00, $100 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JACKS IN THE BOX" 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 "JACKS IN THE BOX" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas 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 "JACKS IN THE BOX" 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 "JACKS IN THE BOX" 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 13,200,000 tickets in the Instant Game No. 610. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 610 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,108,800	11.90
$2	1,320,000	10.00
$3	105,600	125.00
$4	79,200	166.67
$5	66,000	200.00
$6	39,600	333.33
$10	52,800	250.00
$20	39,600	333.33
$30	12,100	1,090.91
$60	8,800	1,500.00
$100	1,650	8,000.00
$200	1,485	8,888.89
$1,000	296	44,594.59

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.65. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 610 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. 610, 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-200503462

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 18, 2005

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Public Hearing to Receive Public Comments on §401.305

A public hearing to receive public comments regarding proposed amendments to 16 TAC §401.305 relating to "Lotto Texas" on-line game will be held on Friday, September 9, 2005, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200503494
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 19, 2005

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North Central Texas Council of Governments

Request for Proposals to Develop an Internet-based Commuter Registration and Participation Tracking Application for the Employee Trip Reduction Program

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The NCTCOG is requesting written proposals from consultant firm(s) to develop an Internet-based Commuter Registration and Participation Tracking Application for the Employee Trip Reduction Program. This software will measure the benefits of employee trip reductions from using alternatives to single-occupant vehicle transportation and/or trip elimination strategies. The Internet-based commuter registration and participation tracking application will provide a web interface for employees in the Dallas-Fort Worth region to log alternate commutes made for work purposes. The software should include an initial registration form, a secure log-in for users and/or administrators, a mileage log for non-single occupant vehicle commute miles, and calculators to tabulate and display statistics. Engineering services are not anticipated for this effort.

Due Date

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, September 30, 2005, to Natalie Bettger, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200503634
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 24, 2005

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Texas Board of Professional Engineers

Policy Advisory Opinion Regarding Comprehensive Building Design

The Texas Board of Professional Engineers is given authority to issue Advisory Opinions under Chapter 1001, Subchapter M of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days. Pursuant to that requirement, the Board hereby presents the following final Policy Advisory Opinion regarding Comprehensive Building Design. The Board, upon a written request to issue a Policy Advisory regarding the engineering aspects of comprehensive building design, has developed a stakeholder process to gather information from professional engineers, architects and consultants. The Texas Board of Professional Engineers approved the "Policy Advisory Opinion Regarding Comprehensive Building Design" on August 11, 2005 in a public meeting.

Executive Summary: The Texas Board of Professional Engineers (Board) has been asked to determine if the practice of engineering includes comprehensive and complete design of buildings by a competent engineer without the services of an architect. The Board has determined pursuant to the Advisory Opinion process outlined in Texas Administrative Code, Title 22, Part 6, Chapter 131, Subchapter M, based on the present statute and rules, in addition to Attorney General Opinion DM-161, that the design of buildings is an element of engineering. The Board believes that the statute allows an engineer to perform building design with or without the involvement of an architect. The Board does, however, recognize that architects have broad authority to manage and oversee building projects, which may include building design. Nothing in this opinion is intended to limit an architect's ability under their statutory authorization. However, building design is also considered engineering and therefore may be performed exclusively by a licensed professional engineer competent in this field.

Discussion: The statute under Texas Occupations Code--Title 6, Subtitle A, Chapter 1001 (§1001.003) also known as the Texas Engineering Practice Act (Act), specifies that design is the practice of engineering and that a building is listed in conjunction with design under this section of the law. This opinion is based on the information contained in the Act as it relates to engineers, while not prohibiting building design by architects who are bound by the laws and rules of the Texas Board of Architectural Examiners (TBAE). The Act defines what is engineering and an excerpt from the beginning of the law in §1001.003 explains, in part: (bold added for emphasis)

§1001.003. Practice of Engineering.

(c) The practice of **engineering includes**:

(10) a service, **design**, analysis, or other work performed for a public or private entity **in connection with a** utility, structure, **building**, machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature;

Since the design of buildings has been identified as engineering, the buildings can be grouped into public works and private works, which are mentioned in various sections of the Act. This separation allows for further clarification of applicable law as it relates to these two categories. Engineering aspects of a public works project must be designed and constructed under the supervision of a licensed professional engineer, unless exempted under the Act.

When is building design exempted under the Act?

Under the Act there are several sections that provide exemptions from the licensure requirements when working on building projects. Specifically, §1001.053 contains some specific exemptions from the Act for public works projects, depending on the type of project and monetary value. Also, §1001.056 describes building projects for the private sector and defines when an engineer is not required to be involved with the building project.

Legislative Intent: Under §1001.004(b) of the Act, there is a description of the legislative purpose and intent as follows:

(b) The purpose of this chapter is to:

(1) protect the public health, safety, and welfare;

(2) enable the state and the public to identify persons authorized to practice engineering in this state; and

(3) fix responsibility for work done or services or acts performed in the practice of engineering.

In addition to specifying the purpose and intent of the statute, there are sections that also allow other individuals to perform work without being in violation of the Act. In other words, architects may design buildings without creating a situation where there would necessarily be a violation of the Act; however, the laws and rules of the TBAE would still apply to them, unless exempted. This is addressed in §1001.004(e) of the Act:

(e) This chapter does not:

(4) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

Legal Interpretation: The Board has the authority to issue an advisory opinion as stated in §1001.601 but, under §1001.603, it does not affect the authority of the attorney general to issue an opinion as authorized by law. There exists an attorney general opinion; DM-161 dated August 27, 1992, relating to the construction of Section 16 of Article 249a V.T.C.S., the act regulating the practice of architecture, which was requested by then executive director of TBAE. In that opinion, Attorney General Dan Morales opined that the professions of architects and engineers overlap. There is also a reference to the fact that the Board of Architectural Examiners prepared a report to assist in sunset review and recognized that "licensed engineers were authorized to prepare building designs under the engineer's licensing statute." In summary, General Morales opined that the statute regulating the practice of architecture, does not bar a licensed professional engineer from preparing plans and specifications for a building. In other words, the professional engineer is not prohibited from being the design professional for construction or modification of buildings, as long as the engineer has achieved competence in the field in which he practices.

TRD-200503632
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: August 24, 2005

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Policy Advisory Opinion Regarding Water Quality Planning

The Texas Board of Professional Engineers is given authority to issue Advisory Opinions under Chapter 1001, Subchapter M of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days. Pursuant to that requirement, the Board hereby presents the following final Policy Advisory Opinion regarding Water Quality Planning. The Board, upon a written request to issue a Policy Advisory regarding the engineering aspects of water quality planning, has developed a stakeholder process to gather information from professional engineers, architects and consultants. The following Policy Advisory, "Policy Advisory Opinion Regarding Water Quality Planning," was accepted by the Texas Board of Professional Engineers on August 11, 2005 in a public meeting.

Executive Summary: Water quality planning includes measurement/assessment activities and the design and/or implementation of systems for the use of water. Many of the assessment and measurement activities including TMDL (Total Maximum Daily Load) studies and biological assessments are performed by qualified scientists. When engineering analysis or design is required to implement a water use plan based on these studies, then professional engineers are required to perform these implementation tasks. Specific activities including feasibility studies, siting, performance monitoring and specification and design of water treatment systems require professional engineering. Engineer involvement is necessary for the implementation of water quality measures through the construction of public works not exempted from the Texas Engineering Practice Act (Act) and in the design of engineered water quality measures for private works not exempted by the Act.

Background: This policy advisory is intended to better define when the services of a Texas licensed professional engineer are required to perform specific tasks associated with water quality planning projects. Water quality planning involves the work of engineers and other professionals (for example, geoscientists, biologists, chemists). The technical portion of water quality planning projects can be divided into two phases, measurement/assessment and implementation. Measurement/assessment activities involve the actual sampling of water bodies and pollution sources and simulations to illustrate how the pollution sources affect the water body. Assessment includes the definition of the planning area and the analysis of pertinent studies and simulations already completed and the recommendation that further studies need to be performed. Usually, these assessment activities are performed by non-engineers. In the assessment stage of a project, recommendations are frequently made regarding water treatment options. A recommendation, in itself, is not an exclusive engineering activity. For example, a study may reveal that the concentration of a specific material exceeds a published guideline and would recommend that water treatment is necessary to remove the material. This type of non-specific recommendation is not engineering. Engineering would be involved in the design of the water treatment system and any testing or modeling required to design the engineered water treatment system would need to be supervised by a professional engineer.

Water Quality Planning Activities that Require Professional Engineers

(1) Feasibility studies regarding engineered water quality control measures, treatment technologies and treatment plants.

(2) Siting of engineered water quality management measures.

(3) Monitoring and evaluation of engineered water quality measures for assessment or adjustment of functional processes.

(4) Specification of engineered water treatment technologies.

In addition to these specific tasks, Texas licensed engineers are required to prepare the specifications, designs and perform construction monitoring of public works projects not exempted by the Act. Licensed

professional engineers are required to perform the design of the listed activities for private works not exempted by the Act.

TRD-200503633
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: August 24, 2005

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 17, 2005, West Telcom, Inc. 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 60721. Applicant intends to reflect a change in service area.

The Application: Application of West Telcom, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31500.

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 September 8, 2005. 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 31500.

TRD-200503483
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 19, 2005

♦ ♦ ♦

Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Orange County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 15, 2005, for a certificate of convenience and necessity for a proposed transmission line in Orange County, Texas.

Docket Style and Number: Application of Entergy Gulf States, Inc. (EGSI) for a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Orange County, Texas. Docket Number 31241.

The Application: The project is designated the Merlin Transmission Line Project. EGSI stated that the project is needed to meet the electric needs of EGSI's customers in Orange County. The proposed line is a double circuit 138-kV transmission line requiring approximately 2.6 miles of right-of-way. The estimated cost for the project is $3,142,673 for the transmission facilities and $2,695,185 for the substation facilities. The estimated date to energize the facilities is April 2007.

Persons wishing to intervene or 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. The deadline for intervention in this proceeding is September 30, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31241.

TRD-200503484
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 19, 2005

♦ ♦ ♦

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 16, 2005, for designation as an eligible telecommunications carrier.

Docket Title and Number: Application of VCI Company for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule 26.418(g). Docket Number 31499.

The Application: VCI Company is seeking designation as an eligible telecommunications carrier in the geographic areas of Texas currently served by SBC Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 22, 2005. 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 31499.

TRD-200503461
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2005

♦ ♦ ♦

Public Notice of Workshop on Advanced Metering

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding current and future advanced metering technologies on Friday, September 16, 2005, at 10:00 am in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31418, *Rulemaking Relating to Advanced Metering*, has been established for this proceeding.

In this workshop, the commission intends to explore advanced metering technologies, benefits to customers and the competitive retail electricity market, and costs associated with deployment of advanced meters. In future workshops, the commission plans to explore current Transmission and Distribution Utility deployment of advanced meters and customer and Retail Electric Provider expectations.

Any person desiring to make a presentation at this workshop should contact Shawnee Claiborn-Pinto, at 512-936-7388 by Monday, September 12, 2005, to be included on the agenda.

Questions concerning the workshop or this notice should be referred to Shawnee Claiborn-Pinto, Sr. Retail Market Analyst, at 512-936-7388. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200503647

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 2005

♦ ♦ ♦

Request for Comment on the Modified Competitive Solution Method

Staff solicits public comment on whether the Modified Competitive Solution Method (MCSM) ordered by the commission in Docket Number 24770 should be discontinued. MCSM is a pricing safeguard mechanism designed to mitigate the effect of so-called hockey stick pricing when all available Up-Balancing Energy Service (UBES) offers are required by the independent organization operating the electric grid for the Electric Reliability Council of Texas (ERCOT) power region. These questions are published under Project Number 23100, *PUC Market Oversight Activities*.

Background

MCSM is a limited form of the Competitive Solution Method (CSM) first proposed by commission Staff in Docket Number 24770. CSM would have been triggered whenever more than 95% of available UBES offers were required, or whenever the clearing price was set by a pivotal supplier. In contrast, MCSM is triggered only when 100% of available offers are required and only during intervals with no zonal congestion. When MCSM is triggered, the clearing price is limited to 150% of the price that would clear 95% of all available offers, although deployed offers priced above the limit receive their asking price.

Staff proposed implementing full CSM in Project Number 27917, *Rulemaking on Pricing Safeguards in ERCOT-Operated Wholesale Markets*. As concurrent stakeholder discussions on redesigning the ERCOT market progressed, however, it appeared that certain features of the new market design under consideration had the potential to provide price protection comparable to CSM. The commission did not include CSM in its 27917 order adopting P.U.C. Substantive Rule §25.502, relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas. Nevertheless, because key issues were still being debated in the stakeholder process, the commission noted that:

"it would also be premature to withdraw CSM from consideration. ... The commission reminds all commenters that CSM was designed to address two problems: "hockey stick" pricing (offers that include a small quantity priced extraordinarily high) and market distortions caused by pivotal suppliers. Unless both problems are adequately addressed, CSM will remain an option for a future rulemaking." (p. 11)

In the proposed order for that same rule, Staff expressed the view that three market enhancements would likely eliminate the need for CSM:

1) Co-optimizing ERCOT's purchase of energy and reserves;

2) Making a reasonable portion of reserve capacity available for deployment by ERCOT as a substitute for balancing energy (exchange function); and

3) Restricting the market behavior of major pivotal suppliers (specifically, availability requirements and limitations on offer prices). (p. 12)

The first two changes would address hockey-stick pricing - the problem MCSM was designed to address - by adding a small degree of elasticity to what is currently a highly inelastic demand for balancing energy. As a buyer of both balancing energy and reserve capacity, ERCOT would have the ability to respond to extremely high balancing energy offer prices by rationally changing its mix of purchases between energy and capacity. Adding even a small amount of elasticity to the demand for balancing energy would eradicate the particular market dysfunction that enables hockey-stick pricing. The third change pertains to the ability of pivotal suppliers to control the price at which balancing energy (or capacity for ancillary services) clears. MCSM does not address this problem, but CSM would have. Staff has proposed a Pivotal Supplier Test in its strawman draft rule in Project Number 29042, Rulemaking on Wholesale Electric Market Power in the ERCOT Power Region.

None of the three changes identified by Staff has been implemented yet. Stakeholders have proposed co-optimization for the day-ahead market under a future nodal pricing regime, but not for the real-time market where demand inelasticity is the greatest. Restrictions on major pivotal suppliers have been proposed and discussed in Project Number 29042, *Rulemaking on Wholesale Electric Market Power in the ERCOT Power Region*, but no proposal has been published in the *Texas Register*.

With regard to resource adequacy, the commission is considering how to implement an energy-only wholesale market for the ERCOT power region. Unlike wholesale markets elsewhere in the country, where generators receive supplemental capacity payments to cover fixed costs and to provide incentives for new investment, an energy-only market relies solely on scarcity-induced high prices. Prices in an energy-only market tend to be more volatile when generation reserve margins become small, but they can also rise without scarcity if a pivotal supplier is exercising market power. Staff has issued a strawman draft rule in Project 24255, *Rulemaking Concerning Planning Reserve Margin Requirements*.

Questions

1. Is MCSM consistent with an energy-only wholesale market? Why or why not?

2. If the commission were to adopt an energy-only wholesale market that phased out ERCOT's current offer caps in stages, would MCSM be an appropriate pricing safeguard during the transition? Why or why not?

3. If you believe MCSM is neither consistent with an energy-only market nor appropriate for a staged transition to an energy-only market, would your view change if the price ceiling set by MCSM when triggered were simply set higher? If so, what should that price be? If not, what would you recommend to address the market concerns that resulted in implementation of MCSM?

4. Please comment on whether the three market enhancements identified by Staff affect the need for MCSM in an energy-only market. Please explain your response.

5. If the commission were to adopt an energy-only wholesale market that phased out ERCOT's current offer caps in stages, and during the transition ERCOT were to run out of UBES and had no choice but to accept the most expensive offer, should there be any limitation on the price at which that supply is offered (other than the caps described in the Project 24255 strawman)? If you believe there should be no limitation, and if a supplier were to offer a small amount at an extremely high price, should all other offers be paid at that same price? Please explain your responses.

Responses (sixteen copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 28 days after publication (September 30) of these questions in the *Texas Register*. All responses should refer to Project Number 23100.

Questions concerning this notice should be referred to David Hurlbut, Senior Market Economist, Market Oversight Division, at (512) 936-7387. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200503628

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2005

♦ ♦ ♦

Texas A&M University, Board of Regents

Request for Proposals

Description: The Texas A&M University System (A&M System) announces a Request for Proposals (RFP) for an actuarial and consulting services agreement for its group health and benefit plans which may include, but is not limited to, the following services: actuarial analyses of plan pricing and IBNR reserve levels for the A&M System's self-insured health, prescription drug, dental, and workers' compensation plans; testing and attestation to the actuarial equivalency of the self-insured health plans in order to qualify for Medicare Part D subsidy; claim audits of health and prescription drug administrators; and counsel regarding plan design changes, implementation of a Consumer Directed Health Plan and Health Savings Account, tax-related issues, legislative changes, and carrier negotiations.

Responses: Firms wishing to respond to this request should be able to demonstrate the experience and qualifications necessary to produce excellent outcomes in the above areas. Of interest are relevant credentials of project personnel and experience in conducting similar projects for large multi-location employers.

Deadline for Submission of Response: The deadline for receipt of proposals in response to this request is 4:00 p.m. CST on September 23, 2005.

The A&M System reserves the right to accept or reject any or all proposals submitted. It is under no legal requirement to execute a resulting contract on the basis of this advertisement. The A&M System intends to use responses as a basis for further negotiations of specific project details and will base its choice on demonstrated competence, superior qualifications, evidence of conformance with the RFP criteria, and reasonableness of cost.

The RFP does not commit the A&M System to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the A&M System to award a contract or to pay any costs incurred in the preparation of a response. The A&M System specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the A&M System deems it to be in its best interest.

Format and Person to Contact: Beginning September 2, 2005, RFP instructions providing detailed information regarding the project can be downloaded from http://sago.tamu.edu/shro/rfp.asp or written requests can be faxed to:

Mr. Paul Bozeman

System Human Resource Office

The Texas A&M University System

FAX (979) 458-6190

Physical Address:

200 Technology Way, Suite 1281

College Station, Texas 77845-3424

For questions or further information regarding this notice, contact Mr. Paul Bozeman by facsimile or by email at pbozeman@tamu.edu .

TRD-200503661

Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: August 24, 2005

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

In the August 12, 2005 issue of the *Texas Register* (30 TexReg 4753), the Texas Department of Transportation, Aviation Division, published a request for proposal for aviation engineering services for Montgomery County. The deadline dates for submittal of proposals have been changed and extended. The following notice is re-published with the new deadlines.

Montgomery County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Montgomery County, Lone Star Executive Airport. TxDOT CSJ No.:0512CONRO. Scope: Provide engineering/design services to replace MIRL's runway 14-32, mark, overlay and improve drainage runway 14-32 and construct new hangar access taxiway.

The DBE goal is set at **5%**. TxDOT Project Manager is Bijan Jamalabad, P.E.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Lone Star Executive Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/avn/avn550.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Four completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight **Wednesday, September 7, 2005**. Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701. Overnight delivery must be received by 4:00 p.m. (CDT) on **Thursday, September 8, 2005**. Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. (CDT) on **Thursday, September 8, 2005**. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic

facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **www.dot.state.tx.us/business/avnconsultinfo.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Bijan Jamalabad, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200503487
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 19, 2005

♦ ♦ ♦

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: **http://www.dot.state.tx.us**. Click on Aviation, then click on Aviation Public Hearing. Or, contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 800-68-PILOT.

TRD-200503651
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 24, 2005

♦ ♦ ♦

Stephen F. Austin State University

Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will provide content editing services for the University Web site redesign. The Notice of Availability was filed in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3912).

The contract was awarded to Beverly Ricks, 8919 First Ave., Silver Spring, MD 20910, for an amount not to exceed $40,000.

The beginning date of the contract is September 1, 2005 and the ending date is January 1, 2006.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant.

For further information, please call (936) 468-4101.

TRD-200503455
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: August 17, 2005

♦ ♦ ♦

Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will provide graphics design services for the University Web site redesign. The Notice of Availability was filed in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3912).

The contract was awarded to 9th Insight, 1500 King Street, Suite 303, Alexandria, VA 22314, for an amount not to exceed $39,000.

The beginning date of the contract is September 1, 2005 and the ending date is January 1, 2006.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant.

For further information, please call (936) 468-4101.

TRD-200503456
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: August 17, 2005

♦ ♦ ♦

Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will provide web shell coordinating and programming services for the University Web site redesign. The Notice of Availability was filed in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3913).

The contract was awarded to The Kerry Company, 1101 30th Street NW, Washington, DC 20007, for an amount not to exceed $39,500.

The beginning date of the contract is September 1, 2005 and the ending date is January 1, 2006.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant.

For further information, please call (936) 468-4101.

TRD-200503457
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: August 17, 2005

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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