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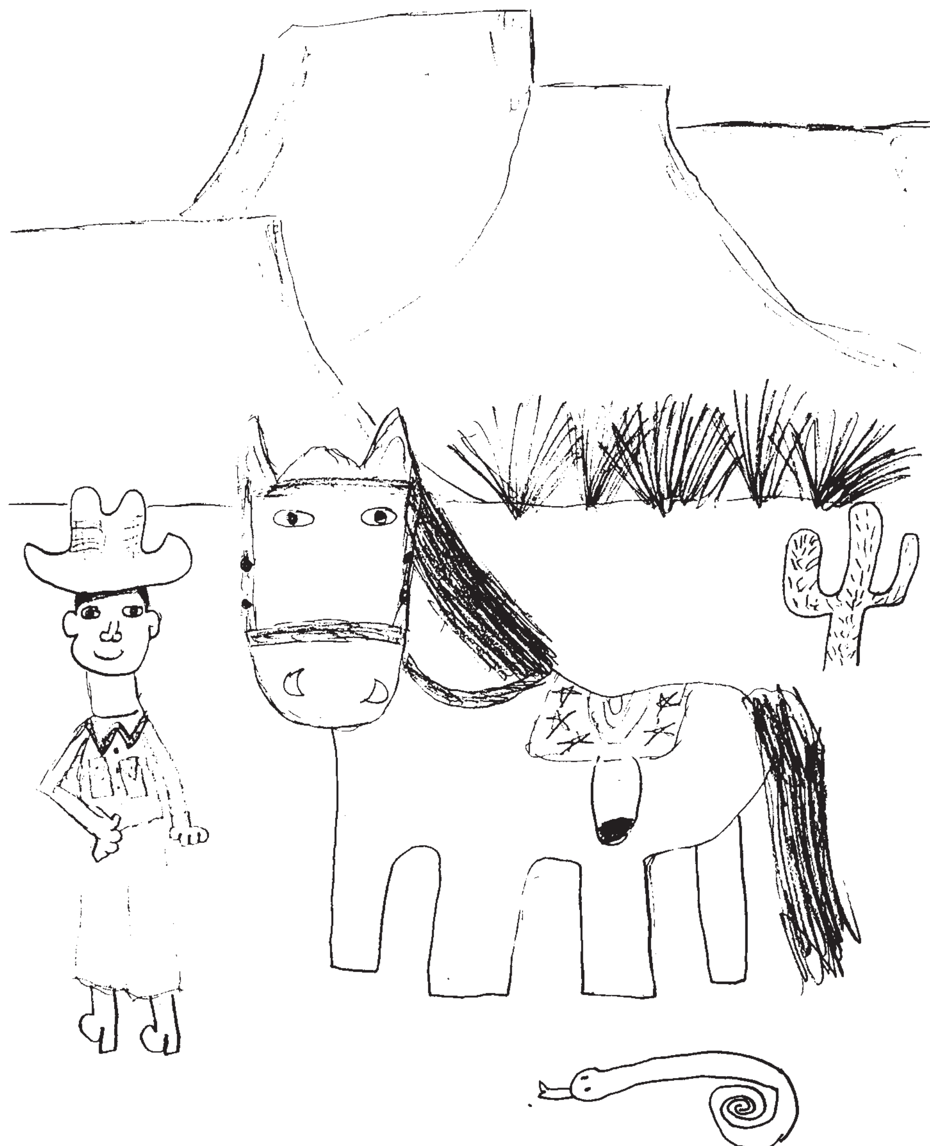

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OFFICE OF THE ATTORNEY GENERAL

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.

Attorney General Request for Opinions

RQ-0172-JC Requested by: The Honorable David Swinford, Chair, Committee on Agriculture & Livestock, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether the repeal of the Federal Cooperative Purchasing Program affects state agencies and political subdivisions (Request No. 0172-JC). *Briefs requested by March 2, 2000.*.

RQ-0174-JC Requested by: The Honorable Nolan B. Wickel, Jr., Henderson County Attorney, Courthouse Square, Athens, Texas 75751, regarding whether §52.032, Local Government Code, requires that a commissioners court include salary supplements when determining who is the highest paid elected county officer (Request No. 0174-JC). *Briefs requested by March 1, 2000.*

RQ-0175-JC Requested by: The Honorable Chris Harris, Chair, Jurisprudence Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding the right of conveyance of land dedicated as a cemetery, and related questions (Request No. 0175-JC). *Briefs requested by March 2, 2000.*

RQ-0176-JC Requested by: The Honorable Bill G. Carter, Chair, Urban Affairs Committee, Texas House of Representatives, P.O. Box 2910, GW.16, Austin, Texas 78768-2910, regarding whether a civil service commission may hear an appeal of a written reprimand that does not include a suspension or involuntary demotion (Request No. 0176-JC). *Briefs requested by March 2, 2000.*

For further information, please call 463-2110.

TRD-200000986
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: February 9, 2000

♦ ♦ ♦

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Chapter 371. MEDICAID FRAUD AND ABUSE PROGRAM INTEGRITY

Subchapter C. UTILIZATION REVIEW

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

1 TAC §371.208

The Health and Human Services Commission (HHSC) proposes the repeal of §371.208, relating to Appeals Requirements under the Texas Medical Review Program (TMRP) and Tax Equity and Fiscal Responsibility Act (TEFRA) and Hospital Notification. This rule was originally promulgated by the Texas Department of Health (TDH) as 25 T.A.C. §41.110 and became a rule of HHSC in 1997, with the passage of Senate Bill 30, 75th Legislature, 1997. This bill transferred responsibility for conducting utilization review of certain Medicaid services from TDH and the Texas Department of Human Services (TDHS) to HHSC and redesignated all rules of TDH and TDHS governing this function as HHSC rules. Although the performance of utilization review activities transferred to HHSC, the conduct of appeals of utilization review decisions remained with TDH and TDHS.

The Social Security Act, §1902a(30) (codified at 42 U.S.C. §1396a(a)(30)) requires HHSC to implement methods and procedures to safeguard against unnecessary care and services, and to assure that the payments made for services are consistent with efficiency, economy and quality of care in the Medicaid program. Federal regulations found at 42 C.F.R. Part 456, Subpart C, set forth the utilization control requirements for states participating in the Medicaid program. TDH adopted rules to govern the conduct of utilization review for inpatient hospitals submitting claims to the Texas Medicaid program. With the transfer of this function to HHSC via Senate Bill 30, the rules governing this function were redesignated rules of HHSC. HHSC has determined that responsibility for the review of utilization review decisions by HHSC should be conducted in accordance with provisions of the current Texas Medicaid Provider Procedures Manual, as updated by the Texas Medicaid Bulletin, which is incorporated by reference into each Medicaid provider agreement.

Don Green, Chief Financial Officer, has determined that there will be a cost savings to the state for each year of the first five years following the repeal of the rule. The cost to the state of providing each informal hearing is approximately five hundred dollars ($500.00). The number of informal provider hearings varies from year to year from approximately 60 to over 200. This would result in a cost savings to the state from $30,000 to $100,000 per year for each year following the repeal of the rule. There are no foreseeable fiscal implications on local government.

Mr. Green has also determined that for each year of the five years the repeal is in effect, the public benefits anticipated as a result of repeal of the rule are administrative simplification, increased efficiencies in the use of state resources resulting in savings of tax dollars, and a more expedient resolution of utilization review appeals. There will be no effect on small businesses or micro-businesses, because they are not required to comply with the rule. There is no anticipated economic costs to persons who are no longer required to comply with the rule. There is no impact on local employment.

Comments on the proposed repeal of the rule may be submitted to Steve Aragon, General Counsel, Health and Human Services Commission, 4900 N. Lamar, Fourth Floor, Austin, Texas 78756, (512) 424-6578. Comments will be accepted for 30 days following the publication in the *Texas Register*.

The repeal is proposed under the Human Resources Code, §32.021, and the Government Code, §531.021 and §531.033, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds and the state's medical assistance program and authorize HHSC to adopt rules necessary to carry out its statutory duties.

The repeal affects Government Code, §531.021 and §531.033, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds and the state's medical assistance program and authorize HHSC to adopt rules necessary to carry out its statutory duties.

§371.208. Appeals Requirements under the Texas Medical Review Program (TMRP) and Fiscal Responsibility Act (TEFRA) and Hospital Notification.

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 February 7, 2000.

TRD-200000942
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 424-6576

TITLE 10. COMMUNITY DEVELOPMENT

Part 5. TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT

Chapter 162. TEXAS EXPORTERS LOAN FUND

10 TAC §§162.1 - 162.10

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

The Texas Department of Economic Development (department) proposes the repeal of 10 Texas Administrative Code, Chapter 162. §§162.1 - 162.10, Texas Exporters Loan Fund in its entirety, relating to the administration of the procedures for participation in the Texas Exporters Loan Fund. The repeal is necessary because legislation authorizing the program provides that "the Department may not guarantee or make a loan under this section after August 31, 1997." Thus, agency review of this rule has found that the reason for the rules has ceased to exist.

Craig Pinkley, Director of Finance, has determined that for each year of the first five years that the repeal will be in effect there will be no fiscal implications to the state or to local governments as a result of the repeal. No cost to either government or the public will result from the repeal. There will be no impact on small businesses. No economic cost is anticipated to persons as a result of the repeal.

Mr. Pinkley has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be the avoidance of any confusion that may be caused by rules listed for a program that no longer exists. No economic costs are anticipated to persons who are required to comply with the proposed repeal.

Written comments on the proposed repeal may be hand-delivered to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 North Congress, Suite 130, Austin, Texas 78701, or mailed to P.O. Box 12728, Austin, Texas 78711-2728, within 30 days of publication. Comments may be faxed to Ms. Luper at (512) 936-0415.

The repeal is proposed pursuant to Government Code, §481.0044, which directs the governing board to adopt rules for the administration of the department and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

Government Code, Chapter 481, is affected by this proposed repeal.

§162.1. General Provisions.

§162.2. Texas Exporters Loan Fund.

§162.3. Eligibility Requirements.

§162.4. Filing Requirements and Consideration of Applications.

§162.5. Contents of Application.

§162.6. General Terms and Conditions of Department's Financial Commitment.

§162.7. Criteria for Approval of Loan Guaranty.

§162.8. Loan Administration.

§162.9. Loan Review Committee.

§162.10. Eligible Lenders.

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 February 4, 2000.

TRD-200000815
Robin Abbott
General Counsel
Texas Department of Economic Development
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 936-0177

Chapter 197. PRIVATE DONATIONS

10 TAC §197.2, §197.7

The Texas Department of Economic Development (Department) proposes amendments to Chapter 197. §197.2 and §197.7 relating to Private Donations. The proposed amendment to §197.2 to specifically addresses donated airline tickets in response to a State Auditor recommendation. The proposed amendment to §197.7 clarifies that state employees must follow all state laws and regulations as well as agency policies related to use of donated assets.

Robin Abbott, General Counsel, has determined that for each year of the first five years that the amendments will be in effect there will be no fiscal implications to the state or to local governments as a result of enforcing or administering the amendments. No cost or reduction in cost to either government or the public is anticipated as a result of the amendments. There will be no impact on small businesses or micro-businesses. No economic cost is anticipated to persons as a result of amending Chapter 197.

Ms. Abbott has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the rules will be the avoidance of any confusion that may be caused by incorrect wording, legal citations or agency names. No economic costs are anticipated to persons who are required to comply with the proposed amendments.

Written comments on the proposed amendments may be hand-delivered to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 North Congress, Suite 130, Austin, Texas, 78701, mailed to P.O. Box 12728, Austin, Texas, 78711-2728, or faxed to (512) 936-0415, within 30 days of publication.

The amendments are proposed pursuant to Government Code, §481.0044(a), which directs the Governing Board of the Department to adopt rules necessary for the administration of the Department, and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

Government Code, Chapter 481 is affected by this proposal.

§197.2. Procedure for Acceptance of Donations.

(a) Statutory authority. All donations shall be accepted under the authority granted in the Texas Government Code, §481.021(a)(3).

(b) Donation agreement. The donor and the department shall execute a donation agreement which documents the name of the donor, a description of the donation, and the purpose of the donation. Acceptance of donations to the department shall be approved by the governing board in accordance with Texas Government Code, Chapter 575.

(c) Deposited funds. The department shall deposit monetary contributions from private sources in a separate fund kept and held in escrow and in trust by the comptroller's treasury division for and on behalf of the department as funds held outside the treasury under the Texas Government Code, §404.073. The money contributed shall be used to carry out the purposes of the department and, to the extent possible, the purposes specified by the donors.

(d) Donated airline tickets. Donated airline tickets, vouchers, or any other documents authorizing complimentary or discounted travel must be deposited immediately upon receipt with the department's accounting division. This rule applies to donations of airline tickets regardless of dollar value as established by §197.1(c)(3) of this title and regardless of whether the donation is made to the department or the corporation.

§197.7. Standard of Conduct between Department Officers and Employees and Private Donors.

(a) An officer or employee shall not accept or solicit any gift, favor, or service from a private donor that might reasonably tend to influence his official conduct or that the officer or employee knows is being offered with the intent to influence official conduct.

(b) An officer or employee shall not accept employment or engage in any business or professional activity with a private donor which the officer or employee might reasonably expect would require or induce him to disclose confidential information acquired by reason of his official position.

(c) An officer or employee shall follow all agency policies and state laws and regulations related to acceptance of gifts, ethical standards, reporting of travel expenses, and use of government property.

(d) Failure of any officer or employee to follow agency policies and state laws and regulations may result in adverse employment action and referral to law enforcement or other appropriate authorities.

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 February 4, 2000.

TRD-200000816
Robin Abbott
General Counsel
Texas Department of Economic Development
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 936-0177

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TITLE 16. ECONOMIC REGULATION

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §26.130

The Public Utility Commission of Texas (the commission) proposes an amendment to §26.130 relating to Selection of Telecommunications Utilities. The proposed amendment will implement the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§55.301 - 55.308 (Vernon 1999 Supp.). These provisions: (1) eliminate the distinction between carrier-initiated and customer-initiated changes, (2) eliminate the information package mailing (negative option) as a verification method, (3) absolve the customer of any liability for charges incurred during the first 30 days after an unauthorized telecommunications utility change, (4) prohibit deceptive or fraudulent practice, and (5) require consistency with applicable federal laws and rules. This rulemaking also addresses the related issue of preferred telecommunications utility freezes. Project Number 21419 has been assigned to this proceeding.

To assist in this rulemaking, the commission held a workshop with all interested parties at the commission's offices on November 15, 1999. Additionally, the commission requested written comments from all interested parties regarding this rulemaking. The commission carefully considered all written and verbal comments in developing the proposed amendment to §26.130. The proposed amendment:

1. Eliminates the distinction between customer-initiated and carrier-initiated change orders.

2. Requires tape recording third party verification for a change order.

3. Requires as part of third party verification, clear confirmation by the customer for authorization to change service provider.

4. Requires that an independent third party verifier not be owned or directly controlled by the telecommunications utility or its marketing agent, and have no financial incentive to confirm change orders.

5. Eliminates the information package (negative option) as a verification method.

6. Revises the Letter of Agency (LOA) language.

7. Absolves the customer of liability for charges from an unauthorized carrier incurred during the first 30 days after an unauthorized change.

8. Adds information about freezes to the customer notice.

9. Eliminates the 30-day cure period to avoid an administrative penalty.

10. Requires that freezes be offered on a nondiscriminatory basis.

11. Requires separate freeze authorization for each type of service (intraLATA and interLATA).

12. Establishes requirements for freeze information provided to customers by telecommunications utilities.

13. Requires local exchange company (LEC) verification of a freeze request by one of three methods: written and signed authorization; electronic authorization; or third party verification.

14. Establishes requirements for each verification method related to a freeze request.

15. Establishes requirements for lifting a freeze.

16. Prohibits charging customers to impose or lift a freeze.

17. Prohibits freezes for local telephone service.

18. Prohibits marketing by the LEC during the process of imposing or lifting a freeze.

19. Provides suggested language for freeze information, freeze authorization form, and freeze lift form.

20. Establishes notice requirements when acquiring customers from another telecommunications utility that will no longer provide service.

21. Includes many changes to the current rule to enhance clarity and readability.

The proposed changes to §26.130 are based on the following considerations: ensuring customer protection while fostering competition in providing telecommunications services; minimizing administrative requirements and cost; ensuring compliance with all PURA requirements; and ensuring consistency with current applicable Federal Communications Commission (FCC) rules.

Several issues surfaced during this rulemaking and are discussed below.

Informing customers about freezes

Slamming victims often indicate they wish they had been aware of the availability of freeze protection before being slammed. Customers should not have to wait until they are slammed before being informed about freezes. The proposed amendment allows telecommunications utilities to inform customers about freezes, but prescribes the content of the information. The proposed amendment allows for "education," but not "marketing." The distinction between the two is that "marketing" is aimed at inducing behavior, whereas "education" is aimed at providing information in a neutral way so that customers can make informed decisions.

Prohibition on local telephone service freezes

Recent events have shown that local telephone service competition in Texas has great promise. However, local competition is still in its early stages, particularly for residential customers, and far behind the level of competition in the intraLATA and interLATA markets. Furthermore, local service slamming is considerably more difficult, more expensive, and more easily discovered by customers than long distance service slamming. Due to the limited value of a local service freeze and the potential for anti-competitive use, the proposed amendment prohibits freezes on local telephone service.

No customer charge for freezes

Several parties recommended that LECs be allowed to charge for implementing a freeze based on related cost. It appears that under current practice, LECs implement freezes without charge. A freeze is a basic customer protection that should be made available to customers at no charge. The proposed amendment prohibits charging customers to impose or lift a freeze.

Prohibition on marketing during freeze processing

Some parties expressed concern about incumbent local exchange companies (ILECs) marketing their services when a customer contacts the ILEC to request imposing or lifting a freeze. The LEC function of administering freezes must be completely separated from any marketing efforts to prevent anticompetitive behavior. The proposed amendment prohibits any marketing by the LEC during the processing of a request to impose or lift a freeze.

Court ordered stay of FCC liability rule changes

On December 23, 1998, the FCC issued a Second Report and Order, CC Docket Number 94- 129, Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers. In this order, the FCC adopted new rules related to verification, liability, and preferred carrier freezes. On May 18, 1999, the DC Circuit Court of Appeals ordered a stay of the FCC liability rules pending further order of the court. Also, the FCC has received several Petitions for Reconsideration of the rules released in the December 1998 order.

The proposed amendment is consistent with FCC rules that are currently in effect. It is essential that changes to the current §26.130 resulting from SB86 and SB560 be implemented as soon as possible and that this rulemaking not be delayed pending the final outcome of court and FCC actions. Should subsequent federal action require further revision to §26.130, the rule can be modified at that time.

Carrier submission of freeze forms to LECs

The current FCC preferred carrier freeze rules are based on customers submitting freeze requests to the LECs and the LECs verifying the requests. The current FCC rules do not specifically address the issue of preferred carriers submitting customer freeze requests to the LECs. Several carriers have requested guidance from the FCC on this issue. The proposed amendment reflects the current FCC rules on

freezes. If necessary, the proposed amendment will be revised to accommodate a final FCC ruling on this issue.

Suggested language for freeze information and forms

The FCC rules and the proposed amendment establish requirements for the content of freeze information provided to customers and for the content of freeze requests. Some parties requested that the commission develop specific language for use by carriers so that they can be assured that they comply with these requirements. National carriers expressed concern about requiring specific language since this may hinder development of nation-wide standard information and forms. The proposed amendment addresses both views by including suggested language for freeze information and forms, but allows other versions as long as they comply with the requirements in the rule.

This section contains two graphics that have been modified and three new graphics that will appear in the "Tables and Graphics" section of the *Texas Register*. Interested persons may obtain a redlined copy of the modified graphics from the commission's Central Records or web page at www.puc.state.tx.us. A description of the modifications to the existing graphics is as follows:

1. The graphic that provides the language for a Letter of Agency in existing §26.130(d)(3)(A) has been moved to proposed subsection (e)(3)(A), as a result of adding proposed new subsection (c) regarding the definition for "customer". The Letter of Agency language has also been modified to require that an individual legally authorized to act for a customer state their relationship to that customer; to clarify existing language; and to delete unnecessary language.

2. The graphic in §26.130(g)(3) has been modified to delete the language that required the slamming telephone company to return a customer to the original telephone company within three business days, as only the customer may request return to the original telephone company. Other modifications clarify intent and delete unnecessary language.

3. The graphics in subsection (j)(12), (13) and (14) are new graphics proposed for this section.

Ms. Jo Alene Kirkel, Director of Enforcement, Office of Customer Protection, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Kirkel has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the establishment of rights and responsibilities for both telecommunications utilities and customers regarding customer choice in the selection of local and long distance telecommunications providers. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There may be anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Kirkel has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, April 11, 2000, at 9:30 a.m.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to revise the proposed amendment or adopt the proposed amendment as published. All comments should refer to Project Number 21419.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1999 Supp) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and under PURA §§55.301 - 55.308 which require the commission to adopt and enforce rules to implement the provisions of PURA Chapter 55, Subchapter K, Selection of Telecommunications Utilities.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 and 55.301 - 55.308.

§26.130. Selection of Telecommunications Utilities.

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

(c) Definition. The term "customer" when used in this section, shall mean any person in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for telephone service.

(d) [~~(c)~~] Changes [~~initiated~~] by a telecommunications utility. Before a [~~carrier- initiated~~] change order is processed, the telecommunications utility initiating the change (the prospective telecommunications utility) must obtain verification from the customer that such change is desired for each affected telephone line(s) and ensure that such verification is obtained in accordance with 47 Code of Federal Regulations §64.1100. In the case of a [~~carrier-initiated~~]change by written solicitation, the prospective telecommunications utility must obtain verification as specified in 47 Code of Federal Regulations §64.1150, and subsection (e) [~~subsection (d)~~]of this section, relating to Letters of Agency. The prospective telecommunications utility must maintain records of all [~~carrier-initiated~~]changes, including verifications, for a period of 24[~~12~~] months and shall provide such records to the customer, if the [~~such~~] customer challenges the change, and to the commission staff if it so requests. A [~~carrier-initiated~~] change order must be verified by one of the following methods:[~~set out in paragraphs (1)-(4) of this subsection.~~]

(1) [~~Verification may be obtained by~~]Written [~~written~~] authorization from the customer in a form that meets the requirements of subsection (e) [~~subsection (d)~~] of this section.

(2) [~~Verification may be obtained by~~]Electronic [~~electronic~~] authorization placed from the telephone number [~~number(s)~~] which is [~~(are)~~] the subject of the change order [~~order(s)~~] except in exchanges where automatic recording of the automatic number identification (ANI)[~~ANI~~] from the local switching system is not technically possible. [~~; however, if verification is~~

obtained by electronic authorization,]The[the] prospective telecommunications utility must:

(A) ensure that the electronic authorization confirms the information described in subsection (e)(3)[subsection (d)(3)] of this section; and

(B) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a customer calling [whereby calls to] the toll-free number(s) will reach[connect the customer to] a voice response unit or similar mechanism that records the required information regarding the change and[, including] automatically records[recording] the ANI from the local switching system.

(3) [Verification may be obtained by the customer's]Oral[oral] authorization by the customer for [to submit]the change[order], given to an appropriately qualified and independent third party [operating in a location physically separate from the marketing representative,] that confirms [and includes] appropriate verification data such as[(e.g.,] the customer's date of birth or mother's maiden name[)]. The verification must be electronically recorded on audio tape. The recording shall include clear and conspicuous confirmation that the customer authorized the change in telephone service provider. The independent third party shall:

(A) not be owned, managed, or directly controlled by the telecommunications utility or the telecommunications utility's marketing agent;

(B) not have financial incentive to confirm change orders; and

(C) operate in a location physically separate from the telecommunications utility or the telecommunications utility's marketing agent.

[(4) Verification may be obtained by sending each new customer an information package via first class mail within three business days of a customer's request for a telecommunications utility change provided that such verification meets the requirements of subparagraph (A) of this paragraph and the customer does not cancel service after receiving the notification pursuant to subparagraph (B) of this paragraph.]

[(A) The information package must contain at least the information and material as specified in 47 Code of Federal Regulations §64.1100(d) and this subparagraph which includes:]

[(i) a statement that the information is being sent to confirm a telemarketing order placed by the customer within the previous week;]

[(ii) the name of the customer's current provider of the service that will be provided by the newly requested telecommunications utility;]

[(iii) the name of the newly requested telecommunications utility;]

[(iv) the type of service(s) that will be provided by the newly requested telecommunications utility]

[(v) a description of any terms, conditions, or charges that will be incurred;]

[(vi) the statement, "I understand that I must pay a charge of approximately $ (industry average charge) to switch providers. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge to that company. I also understand that my new telephone company may have different calling areas, rates and charges than my current telephone company, and by not canceling this change order within 14 days of the date that this information package was mailed to me I indicate that I understand those differences (if any) and am willing to be billed accordingly;]

[(vii) the telephone numbers that will be switched to the newly requested telecommunications utility;]

[(viii) the name of the person ordering the change;]

[(ix) the name, address, and telephone number of both the customer and the newly requested telecommunications utility;]

[(x) a postpaid postcard which the customer can use to deny, cancel or confirm a service order;]

[(xi) a clear statement that if the customer does not return the postcard the customer's telecommuiations utility will be switched to the newly requested telecommunications utility within 14 days after the date the information package was mailed by (the name of the newly requested telecommunications utility); and]

[(xii) the statement, "Complaints about telephone service and unauthorized changes in a customer's telephone service provider ("slamming") are investigated by the Public Utility Commission of Texas. If a telephone company "slams" you and fails to resolve your request to be returned to your original telephone company as required by law, or if you would like to know the complaint history for a particular telephone company, please write or call the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120, or toll-free within Texas at 1 (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936 7136."]

[(B) The customer does not cancel the requested change within 14 days after the information package is mailed to the customer by the prospective telecommunications utility.]

(e) [(d)] Letters of Agency (LOA). A [If a telecommunications utility obtains]written authorization from a customer for a change of telecommunications utility [as specified in subsection (c)(1) of this section, it]shall use a letter of agency (LOA) as specified in paragraph (3) of this subsection:[in this subsection.]

(1) The LOA shall be a separate or easily separable document containing only the authorizing language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be signed and dated by the customer [of the telephone line(s)]requesting the telecommunications utility change.

(2) The LOA shall not be combined with inducements of any kind on the same document,[;] except that the LOA may be combined with a check as specified in subparagraph (B) of this paragraph:[if the LOA and the check meet the requirements of subparagraphs (A)-(B) of this paragraph.]

(A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.

(B) An LOA [A check]combined with a[an] check[LOA] shall not contain any promotional language or material but shall contain[,] on the front [of the check]and [on the]back of the check in easily readable, bold-faced type[, type] near the signature line, the following notice: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that [the telecommunications utility]will be provided[providing]). "

(3) LOA language.

(A) The LOA must be printed clearly and legibly and use only the following language:
[~~Figure: 16 TAC §26.130(d)(3)(A).~~]
Figure: 16 TAC §26.130(e)(3)(A).

(B) In the LOA set out by subparagraph (A) of this paragraph, the telecommunications utility seeking authorization shall replace, in bold type, the words:

(i) "(new telecommunications utility)[~~,~~]" with its corporate name;

(ii) "(type of service(s) that will be provided[~~by the new telecommunications utility),~~]" with the type of service(s) that [~~it~~] will be provided[~~providing~~] to the customer; and

(iii) "I must pay a charge of approximately $ (industry average charge)" with the text, "there is no charge" only if there is no charge of any kind to the customer for the switchover.

(4) The LOA shall not [~~suggest or~~]require that a customer take some action in order to retain the customer's current telecommunications utility.

(5) If any portion of an [~~a~~]LOA is translated into another language, then all portions [~~of the LOA~~]must be translated[~~into that language~~]. The [~~Every~~]LOA must be translated into the same language as [~~any~~]promotional materials, oral descriptions or instructions provided with the LOA.

[~~(e) Changes initiated by a customer. In the case of a customer-initiated change of telecommunications utility, the telecommunications utility to which the customer has changed his service shall maintain a record of nonpublic customer specific information that may be used to establish that the customer authorized the change. Such information is to be maintained by the telecommunications utility for at least 12 months after the change and will be used to establish verification of the customer's authorization. This information shall be treated in accordance with the Federal Communications Commission (FCC) rules and regulations relating to customer-specific customer proprietary network information, and shall be made available to the customer and/or the commission staff upon request.~~]

(f) Unauthorized changes.

(1) Responsibilities of the telecommunications utility that initiated the change. If a customer's telecommunications utility is changed without verification[~~and the change was not made or verified~~] consistent with this section, the telecommunications utility that initiated the unauthorized change shall:

[~~(A) return the customer to the telecommunications utility from which the customer was changed (the original telecommunications utility) where technically feasible, and if not technically feasible, take all action within the utility's control to return the customer to the original utility, including requesting reconnection to the original telecommunications utility from a telecommunications utility that can execute the reversal, within three business days of the customer's request;~~]

(A) [~~(B)~~] pay all [~~usual and customary~~]charges associated with returning the customer to the original telecommunications utility within five business days of the customer's request;

(B) [~~(C)~~] provide all billing records to the original telecommunications utility [~~that are~~]related to the unauthorized change[~~provision~~] of services [~~to the customer~~]within ten[~~10~~] business days of the customer's request[~~to return the customer to the original telecommunications utility~~];

(C) [~~(D)~~] pay the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred, within 30 business days of the customer's request[~~to return the customer to the original telecommunications utility~~]; and

(D) Return to the customer within 30 business days of the customer's request:

(i) any amount paid by the customer for charges incurred during the first 30 days after the date of an unauthorized change; and

(ii) any amount paid by the customer after the first 30 days in excess of the charges that would have been charged if the unauthorized change had not occurred.

[~~(E) return to the customer any amount paid by the customer in excess of the charges that would have been imposed for identical services by the original telecommunications utility if the unauthorized change had not occurred, within 30 business days of the customer's request to return the customer to the original telecommunications utility.~~]

(2) Responsibilities of the original telecommunications utility. The original telecommunications utility [~~from which the customer was changed~~]shall:

(A) inform[~~provide~~] the telecommunications utility that initiated the unauthorized change of[~~with~~] the amount that would have been charged[~~imposed~~] for identical services [~~by the original telecommunications utility~~]if the unauthorized change had not occurred, within ten[~~10~~] business days of the receipt of the billing records required under paragraph (1)(B) [~~paragraph (1)(C)~~]of this subsection;

(B) provide to the customer all benefits associated with the service[~~service(s) (e.g.~~], such as frequent flyer miles[~~)~~] that would have been awarded had the unauthorized change not occurred, on receiving[~~receipt of~~] payment for service [~~service(s)~~] provided during the unauthorized change; and

(C) maintain a record of[~~related to~~] customers that experienced an unauthorized change in telecommunications utilities that contains:

(i) (No change.)

(ii) the telephone number(s) [~~that were~~]affected by the unauthorized change;

(iii) the date the customer asked[~~requested that~~] the telecommunications utility that made[~~initiated~~] the unauthorized change to return the customer to the original telecommunications utility[~~carrier;~~] and

(iv) (No change.)

(g) Notice of customer rights.

(1) Each telecommunications utility shall make available to its customers the notice set out in paragraph (3) of this subsection[~~in both English and Spanish as necessary to adequately inform the customer; however, the commission may exempt a telecommunications utility from the requirement that the information be provided in Spanish upon application and a showing that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in both~~

English and Spanish, in the notice, that the information is available in Spanish from the telecommunications utility, both by mail and at the utility's offices].

(2) Each notice provided under[as set out in] paragraph (4)(A) of this subsection shall [also]contain the name, address and telephone numbers where a customer can contact the telecommunications utility.

(3) Customer notice. The notice shall state:
Figure: 16 TAC §26.130(g)(3).

(4) Language, distribution[Distribution] and timing of notice.

(A) Telecommunications utilities shall send the notice to new customers at the time service is initiated, and upon customer request.

(B) Each telecommunications utility shall print the notice in the white pages of its telephone directories, beginning with the first publication of such directories after[subsequent to] the effective date of this section. [; thereafter,]The[the] notice must appear in the white pages of each telephone directory published thereafter[for the telecommunications utility]. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

(C) The notice shall be in both English and Spanish as necessary to adequately inform the customer. The commission may exempt a telecommunications utility from the Spanish requirement if the telecommunications utility shows that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in both English and Spanish that the information is available in Spanish by mail from the telecommunications utility or at the utility's offices.

(h) Compliance and enforcement.

(1) Records of customer verifications and unauthorized changes. A telecommunications utility shall provide a copy of records maintained under the requirements of subsections (d), (e), and (f)(2)(C)[subsections (c) - (e)] of this section to the commission staff upon request.

[(2) Records of unauthorized changes. A telecommunications utility shall provide a copy of records maintained under the requirements of subsection (f)(2)(C) of this section to the commission staff upon request.]

(2) [(3)] Administrative penalties. If the commission finds that a telecommunications utility is[has repeatedly engaged] in violation[violations] of this section, the commission shall order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) [PURA] §15.023 and §15.024. [For purposes of §15.024(b) and (c), there shall be a rebuttable presumption that a single incident of an unauthorized change in a customer's telecommunications utility ("slamming") is not accidental or inadvertent if subsequent incidents of slamming by the same utility occur within 30 days of when the incident is reported to the commission, or during the 30-day cure period. Any proceeds from administrative penalties that are collected under this section shall be used to fund enforcement of this section.]

(3) [(4)] Certificate revocation. If the commission finds that a telecommunications utility is repeatedly and recklessly in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the telecommunications utility, thereby denying the telecommunications utility the right to provide service in this state.[For purposes of this section, a single incident of slamming may be deemed reckless if subsequent incidents of slamming by the same telecommunications utility occur during the 30-day grace period after an incident of slamming is reported to the commission regarding the initial incident.]

(i) Notice of identity of a customer's telecommunications utility. Any bill for telecommunications services must contain the following information [contained in paragraphs (1)-(4) of this subsection]in easily-read[legible], bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, this[the] information [contained in paragraphs (1)-(3) of this subsection]must appear[be contained] on the first page of the bill if[to the extent] possible or[. Any information that cannot be located on the first page must be] displayed prominently elsewhere in the bill:[.]

(1) [If a bill is for local exchange service,]The[the] name and telephone number of the telecommunications utility [that is]providing local exchange service if the bill is for local exchange service[directly to the customer.]

(2) [If the bill is for interexchange services,]The[the] name and telephone number of the primary interexchange carrier if the bill is for interexchange service.

(3) The name and telephone number of the local exchange and interexchange providers if the local exchange provider is billing for the interexchange carrier. [In such cases where the telecommunications utility providing local exchange service also provides billing services for a primary interexchange carrier, the first page of the combined bill shall identify both the local exchange and interexchange providers, as required by paragraphs (1) and (2) of this subsection; however,]The[the] commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.

(4) A statement urging customers who believe they have been slammed to contact the[, prominently located in the bill, that if the customer believes that the local exchange provider or the interexchange carrier named in the bill is not the customer's chosen interexchange carrier, that the customer may contact:] Public Utility Commission -of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e-mail address: customer@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

(j) Preferred telecommunications utility freezes.

(1) Purpose. A preferred telecommunications utility freeze ("freeze") prevents a change in a customer's preferred telecommunications utility selection unless the customer gives consent to the local exchange company that implemented the freeze.

(2) Nondiscrimination. All local exchange companies shall offer freezes on a nondiscriminatory basis to all customers regardless of the customer's telecommunications utility selection except for local telephone service.

(3) Type of service. Customer information on freezes shall clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze shall obtain separate authorization for each service for which a freeze is requested.

(4) Freeze information. All information provided by a telecommunications utility about freezes shall have the sole purpose of educating customers and providing information in a neutral way to allow the customer to make an informed decision, and shall not market or induce the customer to request a freeze. A telecommunications utility shall not provide information about freezes, unless requested by the customer, during the process of signing up a customer for service. The freeze information provided to customers shall include:

(A) a clear, neutral explanation of what a freeze is and what services are subject to a freeze;

(B) instructions on lifting a freeze that make it clear that these steps are in addition to required verification for a change in preferred telecommunications utility;

(C) an explanation that the customer will be unable to make a change in telecommunications utility selection unless the customer lifts the freeze; and

(D) a statement that there is no charge to the customer to impose or lift a freeze.

(5) Freeze verification. A local exchange company shall not implement a freeze unless the customer's request is verified using one of the following procedures:

(A) A written and signed authorization that meets the requirements of paragraph (6) of this subsection.

(B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic authorization shall confirm appropriate verification data such as the customer's date of birth or mother's maiden name and the information required in paragraph (6)(G) of this subsection. The local exchange company shall establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the number(s) will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.

(C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze and confirms appropriate verification data such as the customer's date of birth or mother's maiden name and the information required in paragraph (6)(G) of this subsection. This shall include clear and conspicuous confirmation that the customer authorized a freeze. The independent third party shall:

(i) not be owned, managed, or directly controlled by the local exchange company or the local exchange company's marketing agent;

(ii) not have financial incentive to confirm freeze requests; and

(iii) operate in a location physically separate from the local exchange company or its marketing agent.

(6) Written authorization. A written freeze authorization shall:

(A) be a separate or easily separable document with the sole purpose of imposing a freeze;

(B) be signed and dated by the customer;

(C) not be combined with inducements of any kind;

(D) be completely translated into another language if any portion is translated;

(E) be translated into the same language as any educational materials, oral descriptions, or instructions provided with the written freeze authorization;

(F) be printed with readable type of sufficient size to be clearly legible; and

(G) contain clear and unambiguous language that confirms:

(i) the customer's name, address, and telephone number(s) to be covered by the freeze;

(ii) the decision to impose a freeze on the telephone number(s) and the particular service with a separate statement for each service to be frozen;

(iii) that the customer understands that a change in telecommunications utility cannot be made unless the customer lifts the freeze; and

(iv) that the customer understands that there is no charge for imposing or lifting a freeze.

(7) Lifting freezes. A local exchange company that executes a freeze request shall allow customers to lift a freeze by:

(A) written and signed authorization stating the customer's intent to lift a freeze;

(B) oral authorization stating an intent to lift a freeze confirmed by the local exchange company with appropriate confirmation verification data such as the customer's date of birth or mother's maiden name; or

(C) a three-way conference call with the local exchange company, the telecommunications utility that will provide the service, and the customer.

(8) No customer charge. The customer shall not be charged for imposing or lifting a freeze.

(9) Local service freeze prohibition. A local exchange company shall not impose a freeze on local telephone service.

(10) Marketing prohibition. A local exchange company shall not engage in any marketing of its services during the process of implementing or lifting a freeze.

(11) Freeze records retention. A local exchange company shall maintain records of all freezes and verifications for a period of 24 months and shall provide these records to customers and to the commission staff upon request.

(12) Suggested freeze information language. Telecommunications utilities that inform customers about freezes may use the following language. Other versions may be used, but shall comply with all of the requirements of paragraph (4) of this subsection.
Figure: 16 TAC §26.130(j)(12).

(13) Suggested freeze authorization form. The following form is recommended for written authorization from a customer requesting a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (6) of this subsection.
Figure: 16 TAC §26.130(j)(13).

(14) Suggested freeze lift form. The following form is recommended for written authorization to lift a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (7) of this subsection.
Figure: 16 TAC §26.130(j)(14).

(k) Transferring customers from one telecommunications utility to another.

(1) Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer and shall:

(A) identify the current and acquiring telecommunications utilities;

(B) explain why the customer will not be able to remain with the current telecommunications utility;

(C) explain that the customer has a choice of selecting a service provider and may select the acquiring telecommunications utility or any other telecommunications utility;

(D) explain that if the customer wants another telecommunications utility, the customer should contact that telecommunication utility or the local telephone company;

(E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;

(F) identify the effective date that customers will be transferred to the acquiring telecommunications utility;

(G) provide the rates and conditions of service of the acquiring telecommunications utility; and

(H) provide a toll-free telephone number for a customer to call for additional information.

(2) The acquiring telecommunications utility shall provide the Office of Customer Protection with a copy of the notice when it is sent to customers.

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 February 2, 2000.

TRD-200000742
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 936-7308

TITLE 19. EDUCATION

Part 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

Chapter 5. PROGRAM DEVELOPMENT

Subchapter M. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC UNIVERSITIES

19 TAC §§5.260 - 5.263

The Texas Higher Education Coordinating Board proposes new §§5.260 - 5.263, concerning Dual Credit Partnerships Between Secondary Schools and Texas Public Universities. These rules identify university responsibilities for dual credit arrangements in which a high school student enrolls in a university course and receives simultaneous academic credit for the course from both the university and the high school.

Marshall Hill, Assistant Commissioner for Universities and Health Related Institutions, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Hill also has determined that for the first five years the rules are in effect, the public benefit will be that the potential benefits of administering these sections will be to: expand the academic options for college-bound students; improve the college readiness of these students; reduce duplication of courses taken in high school and in college; and shorten the time required for high school students to complete an undergraduate degree. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the rules as proposed.

Comments on the proposed new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new rules are proposed under Texas Education Code, Section 61.027 and 61.076, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Dual Credit Partnerships Between Secondary Schools and Texas Public Universities.

These new sections affect the Texas Education Code, Section 61.076

§5.260. Purpose.

(a) In accordance with, and under the authority of Texas Education Code, §61.027 and §61.076, this subchapter provides rules and regulations for public universities which engage in dual credit arrangements with secondary schools.

(b) Dual credit is a process by which a high school student enrolls in a college or university course and receives simultaneous academic credit for the course from both the college and the high school. While dual credit courses are often taught on the secondary school campus to high school students only, these rules also refer (when applicable) to a high school student taking a course on the university campus and receiving both high school and college credit. (Note that dual credit rules for community/technical colleges are in Chapter 9, Subchapter H and are referred to as concurrent credit courses.)

§5.261. Institutional Agreements.

(a) Need for Institutional Agreements. For any dual credit arrangement between a secondary school and a public university, an agreement must be approved by the governing boards or designated authorities of both the public school district or private secondary school and the public university prior to the offering of such courses.

(b) Elements of Institutional Agreements. The dual credit agreement must address the following elements:

(1) Eligible Courses;

(2) Student Eligibility;

(3) Location of Class;

(4) Student Composition of Class;

(5) Faculty Selection, Supervision, and Evaluation;

(6) Course Curriculum, Instruction, and Grading;

(7) Academic Policies and Student Support Services;

(8) Transcripting of Credit; and

(9) Funding.

§5.262. Dual Credit Requirements.

(a) Eligible Courses.

(1) Courses offered for dual credit must be in the approved course inventory of the public university.

(2) Public universities may not offer remedial and developmental courses for dual credit and may not enroll high school students in state-funded developmental education courses.

(b) Student Eligibility.

(1) To be eligible for enrollment in a dual credit course in a public university, the high school student must present a passing score on the Texas Academic Skills Program (TASP) test or a Board-approved alternative assessment instrument in at least one area (mathematics, reading, writing) as deemed relevant by the university for the intended dual credit course in which the student shall enroll. Students who are exempt from taking the TASP test or the alternative assessment are also exempt for the purpose of enrolling in dual credit courses.

(2) To be eligible for enrollment in a dual credit course offered by a public university, students must meet all the university's regular prerequisite requirements designated for that course (e.g., minimum score on a specified placement test, minimum grade in a specified previous course, etc.)

(3) Dual credit students must have high school standing at the junior or senior year level. Exceptions to this requirement for students with demonstrated outstanding academic performance and capability may be approved by the principal of the high school and the chief academic officer of the public university.

(4) The university class load of a high school student shall not exceed two university courses per semester. Exceptions to this requirement for students with demonstrated outstanding academic performance and capability may be approved by the principal of the high school and the chief academic officer of the public university.

(c) Location of Class. Dual credit courses may be taught on the public university campus or on the high school campus. For dual credit courses taught exclusively to high school students on the high school campus, the university shall provide prior notice to the respective Higher Education Regional Council. In addition, dual credit courses taught on the high school campus and dual credit courses taught electronically shall comply with the Coordinating Board rules and regulations, Chapter 5, Subchapter H of this title (relating to Distance Education and Off- Campus Instruction) and with the Board's adopted Principles of Good Practice for Courses Offered Electronically.

(d) Composition of Class. Dual credit courses may be composed of dual credit students only or of dual and university credit students. Exceptions for a mixed class, which would also include high school credit-only students, may be allowed only under one of the following conditions:

(1) If the course involved is required for completion under the State Board of Education Recommended or Distinguished Achievement High School Program graduation requirements, and the high school involved is otherwise unable to offer such a course;

(2) If the high school credit-only students are advanced placement students;

(3) If the high school involved is classified by the Texas University Interscholastic League as a Class AA school or below, the mixed class may be offered until September 2002, by which time small school districts should have developed the capacity to receive dual credit courses from colleges and universities through instructional telecommunications.

(e) Faculty Selection, Supervision, and Evaluation.

(1) The public university shall select instructors of dual credit courses. These instructors must be regularly employed faculty members of the university or must meet the same standards (including minimal requirements of the Southern Association of Colleges and Schools) and approval procedures used by the university to select faculty responsible for teaching the same courses at the main campus of the university.

(2) The public university shall supervise and evaluate instructors of dual credit courses using the same or comparable procedures used for faculty at the main campus of the university.

(f) Course Curriculum, Instruction, and Grading. The public university shall ensure that a dual credit course and the corresponding course offered at the main campus of the university are equivalent with respect to the curriculum, materials, instruction, and method/rigor of student evaluation. These standards must be upheld regardless of the student composition of the class (dual, dual and university, or mixed with high school credit-only students).

(g) Academic Policies and Student Support Services.

(1) Regular academic policies applicable to courses taught at the public university's main campus must also apply to dual credit courses. These policies could include the appeal process for disputed grades, drop policy, the communication of grading policy to students, when the syllabus must be distributed, etc.

(2) Students in dual credit courses must be eligible to utilize the same or comparable support services that are accorded university students on the main campus. The university is responsible for ensuring timely and efficient access to such services (e.g., academic advising and counseling), to learning materials (e.g., library resources), and to other benefits for which the student may be eligible.

(h) Transcripting of Credit. For dual credit courses, high school as well as college credit should be transcripted immediately upon a student's completion of the performance required in the course.

(i) Funding.

(1) The state funding for dual credit courses will be available to both public school districts and public universities based on the current agreement between the Commissioner of Education and the Commissioner of Higher Education.

(2) The university may claim funding for all students getting college credit in dual credit courses.

(3) Only a public community/junior college may waive tuition and fees for a Texas public high school student enrolled in a course for which the student may receive dual course enrollment credit.

§5.263. Data Collection and Analysis.

All public universities offering dual credit courses shall collect and report each semester the number of semester credit hours of students enrolled in dual credit courses. Also, each university offering dual credit courses must conduct annually an analysis of the academic performance of dual credit students. This analysis should help the university identify any needed changes in the institution's policies and procedures relating to dual credit students.

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 February 3, 2000.

TRD-200000745
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 21, 2000
For further information, please call: (512) 483-6162

Chapter 22. GRANT AND SCHOLARSHIP PROGRAMS

Subchapter B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAMS

19 TAC §22.23

The Texas Higher Education Coordinating Board proposes amendments to §22.23, concerning Provisions for the Tuition Equalization Grant Program (Eligible Students). These amendments to the rule will allow theological or religion degree students to participate in the program if they meet the other eligibility requirements.

Sharon Cobb, Assistant Commissioner for Student Services, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule. Making this change will result in an increase in the number of students that will be eligible to receive funding from the program. This will not result in an increase in the funding available for the program, but may result in a change of the allocation of funds for students in the various independent institutions.

Ms. Cobb also has determined that for the first five years the rule is in effect, the public benefit will be that more students in the schools that offer theological or religion degree programs will be eligible for the grant. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the rule as proposed.

Comments on the proposed amendments to the rule may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments are proposed under Texas Education Code, §61.221 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Provisions For the Tuition Equalization Grant Program (Eligible Students).

The proposed amendment affects the Texas Education Code, §61.221.

§22.23. Eligible Students.

To be eligible to receive an award through the Tuition Equalization Grant Program, a student must

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

(3) be enrolled in an individual degree plan [~~in a program other than a theological or religion degree program~~] in an approved college or university;

(4)-(8) (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 February 3, 2000.

TRD-200000746
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 21, 2000
For further information, please call: (512) 483-6162

TITLE 22. EXAMINING BOARDS

Part 11. BOARD OF NURSE EXAMINERS

Chapter 218. DELEGATION OF SELECTED NURSING TASKS

22 TAC §§218.1 - 218.11

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

The Board of Nurse Examiners proposes the repeal of §§218.1 - 218.11 concerning Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel; Purpose; Definitions; General Criteria for Delegation; Supervision; Unlicensed Personnel to Whom Tasks are Delegated by Other Licensed Practitioners; Nursing Students Working as Unlicensed Personnel; Nursing Tasks That May Not Be Delegated; Administration of Medications; Specific Nursing Task Which May Be Delegated; Nursing Tasks That May Not Be Routinely Delegated; Exclusion from Rules.

The repeal would allow for the adoption of new sections.

Katherine A. Thomas, MN, RN, Executive Director, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Katherine A. Thomas, MN, RN has determined that for each year of the first five years the repeals as proposed are in effect the public benefits from promotion of independent living for clients who might otherwise be institutionalized. There will be no effect on local government nor businesses to comply with the rule.

Written comments on the proposed repeals may be submitted to Katherine Thomas, Board of Nurse Examiners, P.O. Box 430, Austin, Texas, 78767-0430.

The repeals are proposed under the Nursing Practice Act, (Texas Occupational Code §301.151) which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

There are no other rules, codes, or statutes that will be effected by this proposal.

§218.1. Purpose.

§218.2. Definitions.

§218.3. General Criteria for Delegation.

§218.4. Supervision.

§218.5. Unlicensed Personnel to Whom Tasks are Delegated by Other Licensed Practitioners.

§218.6. Nursing Students Working as Unlicensed Personnel.

§218.7. Nursing Tasks That May Not Be Delegated.

§218.8. Administration of Medications.

§218.9. Specific Nursing Task Which May Be Delegated.

§218.10. Nursing Tasks That May Not Be Routinely Delegated.

§218.11. Exclusion from Rules.

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

Filed with the Office of the Secretary of State, on February 7, 2000.

TRD-200000927
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 305-6811

Chapter 218. DELEGATION OF SELECTED NURSING TASKS BY REGISTERED PROFESSIONAL NURSES TO UNLICENSED PERSONNEL

22 TAC §§218.1 - 218.11

The Texas Board of Nurse Examiners (BNE) proposes new §§218. - 218.11 concerning Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel; Purpose; Definitions; RN Accountability for Delegated Tasks; General Criteria for Delegation; Supervision; Delegation of Specific Tasks; Delegation of Tasks for the Client in Independent Living Environments with Stable and Predictable Health Care Needs Who Participate in the Management of Delegated Tasks; The Medication Aide Permit Holder; Supervising Unlicensed Personnel Performing Tasks Delegated by Other Practitioners; Nursing Students Working as Unlicensed Personnel.

The BNE, at the April 1999 Board meeting, voted to establish a Task Force to review the delegation rule beginning in September 1999. After considerable study and review, the Task Force recommended revised language to the Board at the January 20, 2000 Board meeting. In summary, the Task Force found that there has been a reluctance of nurses to delegate based on perceived "risk" of negative licensure action. The Board agreed that the rules of delegation should allow more, not less, discretionary power for the RN to delegate care for those individuals in independent living environments who are stable and predictable, capable of directing their own care and who would be managing that care except for their disability. The intent of these proposed rules is to improve the RN's understanding of their licensure obligation under the delegation rules and to facilitate the ability of individuals to live in the community rather than in an institutional setting. The proposed rules primarily promote the concept of delegation for nursing tasks which frequently occur in activities of daily living and which do not require the unlicensed person to exercise nursing judgment.

The proposed rules lists specific tasks to encourage the RN to be discretionary based upon the clients needs and are not designed to restrict the RN's practice. The proposed rules are written in an effort to broaden the tasks delegated to stable and predictable clients within the independent living environment. The proposed rules seek to expand RN delegation of medication administration when the independently living client is stable, predictable, and able to participate in the management of the delegated task. The proposed rules expand delegated medication administration when appropriate to include inhalation therapy for prophylaxis/maintenance, unit dose medications and the administration of subcutaneous injectable insulin.

At the January 20, 2000 Board meeting the BNE voted to repeal current Chapter 218 and authorized BNE staff to proposed new Chapter 218 for a comment period of 30 days. Further, if no comments are received following the 30 day comment period, the staff is authorized to submit the adoption of new Chapter 218 indicating that the Board has determined that the reasons for adopting the chapter continue to exist.

Katherine A. Thomas, RN, MN, 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 sections.

Katherine A. Thomas, RN, MN has determined that for each year of the first five years the sections are in effect the public benefit will be an enhance nursing practice in the areas identified by the sections without economic costs or local employment impact. There is no effect on local government, nor businesses to comply with the rule.

Questions about the content of this proposed rule may be directed to Kim Flores at (512) 305-6841 at the BNE office. Written comments on the proposal may be submitted to Ms. Flores, Nursing Consultant- Practice, Texas Board of Nurse Examiners, P.O. Box 430, Austin, Texas, 78767-0430.

The new rules are proposed under the Nursing Practice Act, Texas Occupations Code §301.151, which provides the Board of Nurse Examiners with authority and power to make and enforce

all rules and regulations necessary for the performance of its duties.

There are no other rules, codes, or statutes that will be affected by this proposal.

§218.1. Purpose.

The Texas Board of Nurse Examiners (BNE or Board) recognizes that changes in health care delivery have and will continue to influence the way nursing care is delivered. The Board believes that the registered nurse (RN) is in a unique position to develop and implement a nursing plan of care that incorporates a professional relationship between the RN and the client. The Board recognizes that the RN's responsibility may vary from that of the nurse providing care at the bedside of an acutely ill client to managing health care delivery in institutional and community settings. Assessment of the nursing needs of the client, the plan of nursing actions, implementation of the plan, and evaluation are essential components of professional nursing practice and are the responsibilities of the RN. The full utilization of the services of a RN may require delegation of selected nursing tasks to unlicensed personnel. The scope of delegation and the level of supervision by the RN may vary depending on the setting, the complexity of the task, the skills and experience of the unlicensed person, the client's physical and mental status, and the client's ability and willingness to be involved in the management of his/her own care. The following sections govern the RN in delegating nursing tasks to unlicensed personnel across a variety of settings where nursing care services are delivered.

§218.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions which are exclusively related to the delegation of tasks for clients in independent living environments with stable and predictable health care needs who participate in the management of the delegated task may be found in §218.8 of this title (relating to Delegation of Tasks for the Client in Independent Living Environments with Stable and Predictable Health Care Needs Who Participate in the Management of Delegated Tasks).

(1) Activities of daily living–Limited to the following activities: bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation and assistance with self administered medications.

(2) Client–Refers to the individual and/or his/her family or significant others.

(3) Delegation–Authorizing an unlicensed person to provide nursing services while retaining accountability for the outcome. It does not include situations in which an unlicensed person is directly assisting a RN by carrying out nursing tasks in the presence of a RN.

(4) Unlicensed person–An individual, not licensed as a health care provider, who is monetarily compensated to provide certain health related tasks and functions in a complementary or assistive role to the RN in providing direct client care or carrying out common nursing functions. The term includes, but is not limited to, nurse aides, orderlies, assistants, attendants, technicians, home health aides, medication aides permitted by a state agency, and other individuals providing personal care/assistance of health related services.

§218.3. RN Accountability for Delegated Tasks.

(a) The RN is accountable for tasks delegated to unlicensed persons.

(b) Licensure accountability is met when the delegating RN has complied with and can verify compliance with §§218.5, 218.7(2) and 218.8 of this title (relating to General Criteria for Delegation; Delegation of Specific Task; and Delegation of Tasks for the Client in Independent Living Environments with Stable and Predictable Health Care Needs Who Participate in the Management of Delegated Tasks) as appropriate.

§218.4. Application of Chapter.

This chapter does not apply to RNs who:

(1) supervise or instruct others in the gratuitous nursing care of the sick;

(2) are qualified nursing faculty or preceptors directly supervising or instructing nursing students in the performance of nursing tasks while enrolled in accredited nursing programs;

(3) instruct and/or supervise an unlicensed person in the proper performance of nursing tasks as a part of an education course designed to prepare persons to obtain a state license, certificate or permit that authorizes the person to perform such tasks;

(4) practice in situations in which the unlicensed person is directly assisting the RN by carrying out nursing tasks in the RN's presence; and

(5) assign tasks to or supervise LVNs or other licensed practitioners practicing within the scope of their license.

§218.5. General Criteria for Delegation.

The following standards must be met before the RN delegates nursing tasks to unlicensed persons. These criteria apply to all instances of RN delegation. Additional criteria, if appropriate to the particular task being delegated, may also be found in §218.7(2) and §218.8 of this title (relating to Delegation of Specific Task and Delegation of Tasks for the Client in Independent Living Environments with Stable and Predictable Health Care Needs Who Participate in the Management of Delegated Tasks).

(1) The RN must make an assessment of the client's nursing care needs. The RN should, when the client's status allows, consult with the client, and when appropriate the client's family and/or significant other(s), to identify the client's nursing needs prior to delegating nursing tasks.

(2) The nursing task must be one that a reasonable and prudent RN would find is within the scope of sound nursing judgment to delegate. The RN should consider the five rights of delegation: the right task, the right person to whom the delegation is made, the right circumstances, the right direction and communication by the RN, and the right supervision as determined by the RN.

(3) The nursing task must be one that, in the opinion of the delegating RN, can be properly and safely performed by the unlicensed person involved without jeopardizing the client's welfare.

(4) The nursing task must not require the unlicensed person to exercise nursing judgment or intervention except in emergency situations.

(5) The unlicensed person to whom the nursing task is delegated must be adequately identified. The identification may be by individual or, if appropriate, by training, education, and/or certification/permit of the unlicensed person.

(6) The RN shall have either instructed the unlicensed person in the delegated task or verified the unlicensed person's competency to perform the nursing task. The verification of competence may be done by the RN making the decision to

delegate or, if appropriate, by training, education, experience and/or certification/permit of the unlicensed person.

(7) The RN shall adequately supervise the performance of the delegated nursing task in accordance with the requirements of §218.6 of this title (relating to Supervision).

(8) If the delegation continues over time, the RN shall periodically evaluate the delegation of tasks and shall incorporate this evaluation into the client's Plan of Care.

§218.6. Supervision.
The registered professional nurse shall provide supervision of all nursing tasks delegated to unlicensed persons in accordance with the following conditions. These supervision criteria apply to all instances of RN delegation. Additional criteria, if appropriate to the particular task being delegated may be found in §218.7(2) and §218.8 of this title (relating to Delegation of Specific Task and Delegation of Tasks for the Client in Independent Living Environments with Stable and Predictable Health Care Needs Who Participate in the Management of Delegated Tasks).

(1) The degree of supervision required shall be determined by the RN after an evaluation of appropriate factors involved including, but not limited to, the following:

(A) the stability of the status of the client;

(B) the training, experience and capability of the unlicensed person to whom the nursing task is delegated;

(C) the nature of the nursing task being delegated; and

(D) the proximity and availability of the RN to the unlicensed person when the nursing task will be performed.

(2) The RN or another equally qualified RN shall be available in person or by telecommunications, and shall make decisions about appropriate levels of supervision using the following examples as guidelines:

(A) In situations where the RN's regularly scheduled presence is required to provide nursing services, including assessment, planning, intervention and evaluation of the client whose health status is changing and/or to evaluate the client's health status, the RN must be readily available to supervise the unlicensed person in the performance of delegated tasks. Settings include, but are not limited to acute care, long term care, rehabilitation centers and/or clinics providing public health services.

(B) In situations where nursing care is provided in the client's residence but the client's status is unstable and unpredictable and the RN is required to assess, plan, intervene and evaluate the client's unstable and unpredictable status and need for skilled nursing services, the RN shall make supervisory visits at least every fourteen calendar days. The RN shall assess the relationship between the unlicensed person and the client to determine whether health care goals are being met. Settings include, but are not limited to group homes, foster homes and/or the client's residence.

§218.7. Delegation of Specific Tasks.
The tasks which follow apply to RN delegation in all settings. Additional tasks which may be delegated for the client in independent living environments with stable and predictable health care needs who participate in the management of delegated tasks may be found in §218.8 of this title (relating to Delegation of Tasks for the Client in Independent Living Environments with Stable and Predictable Health Care Needs Who Participate in the Management of Delegated Tasks).

(1) Tasks Which are Most Commonly Delegated. By way of example, and not in limitation, the following nursing tasks are ones that are most commonly the type of tasks within the scope of sound professional nursing practice to be considered for delegation, regardless of the setting, provided the delegation is in compliance with §218.5 of this title (relating to General Criteria for Delegation) and the level of supervision required is determined by the RN in accordance with §218.6 of this title (relating to Supervision):

(A) non-invasive and non-sterile treatments;

(B) the collecting, reporting, and documentation of data including, but not limited to:

(i) vital signs, height, weight, intake and output, capillary blood and urine test for sugar and hematest results;

(ii) environmental situations;

(iii) client or family comments relating to the client's care; and

(iv) behaviors related to the plan of care;

(C) ambulation, positioning, and turning;

(D) transportation of the client within a facility;

(E) personal hygiene and elimination, including vaginal irrigations and cleansing enemas;

(F) feeding, cutting up of food, or placing of meal trays;

(G) socialization activities;

(H) activities of daily living; and

(I) reinforcement of health teaching planned and/or provided by the registered nurse.

(2) Discretionary Delegation Tasks.

(A) In addition to General Criteria for Delegation outlined in §218.5 of this title, the nursing tasks in subparagraph (B) of this paragraph may be delegated to an unlicensed person only:

(i) if the RN delegating the task is directly responsible for the nursing care given to the client;

(ii) if the agency, facility, or institution employing unlicensed personnel follows a current protocol for the instruction and training of unlicensed personnel performing nursing tasks under this subsection and that said protocol is developed with input by registered nurses currently employed in the facility and includes:

(I) the manner in which the instruction addresses the complexity of the delegated task;

(II) the manner in which the unlicensed person demonstrates competency of the delegated task;

(III) the mechanism for reevaluation of the competency; and

(IV) an established mechanism for identifying those individuals to whom nursing tasks under this subsection may be delegated; and

(iii) if the protocol recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the RN's professional judgment.

(B) the following are nursing tasks that are not usually within the scope of sound professional nursing judgment to delegate and may be delegated only in accordance with, §218.5 of this title and subparagraph (A) of this paragraph. Treatments which include:

(i) sterile procedures–those procedures involving a wound or an anatomical site which could potentially become infected;

(ii) non-sterile procedures–such as dressing or cleansing penetrating wounds and deep burns;

(iii) invasive procedures–inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube, unless allowed in this paragraph, paragraph (1) of this section, §218.8(f) of this title.

(iv) care of broken skin other than minor abrasions or cuts generally classified as requiring only first aid treatment;

(3) Nursing Tasks That May Not Be Delegated. By way of example, and not in limitation, the following are nursing tasks that are not within the scope of sound professional nursing judgment to delegate:

(A) physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

(B) formulation of the nursing care plan and evaluation of the client's response to the care rendered;

(C) specific tasks involved in the implementation of the care plan which require professional nursing judgment or intervention;

(D) the responsibility and accountability for client health teaching and health counseling which promotes client education and involves the client's significant others in accomplishing health goals; and

(E) administration of medications, except as permitted by §218.8(f) of this title and §218.9 of this title (relating to Administration of Medications).

§218.8. Delegation of Tasks for the Client in Independent Living Environments with Stable and Predictable Health Care Needs Who Participate in the Management of Delegated Tasks.

(a) Purpose.

(1) The Texas Board of Nurse Examiners recognizes that public preference in the provision of health care services includes a greater opportunity for clients to share with the RN in choice and control for delivery of services in the community based setting. The Board believes that it is essential that the registered nurse who works with the client in an independent living environment with stable and predictable health care needs, and the ability to participate in the management of the delegated task understand the delegation rules. The RN shall work with the client in his/her pursuit of independent living and shall include the client in the management of the client's needs and support the client and family throughout their experience in the health care system.

(2) In addition to the General Criteria for Delegation in §218.5, in situations involving clients with stable and predictable health care needs, the RN, with the client shall: verify the training, experience and competency of the unlicensed person to whom the delegation is made; verify the client's ability and willingness to participate in his/her own health care; provide communication and direction for the safe completion of any delegated task; and supervise the unlicensed person's performance of the task.

(b) Definitions Related to the Client with Stable and Predictable Health Care Needs:

(1) "Administration of Medications"–Removal of an individual/unit dose from a previously dispensed, properly labeled container; verifying it with the medication order; giving the correct medication and the correct dose to the proper client at the proper time by the proper route; and promptly recording the time and dose given.

(2) "Client"–Refers to the individual and/or his/her family or significant others.

(3) "Ability to participate in the delegation decision"–the ability and willingness to participate in one's own health care.

(4) "Independent living environment"–A client's individual residence which may include a home or homelike setting such as the client's home, a group home, foster home, or assisted living facility and includes where the client works, attends school, or engages in other community activities.

(5) "Stable and predictable"–A situation where the client's clinical and behavioral status is determined to be non-fluctuating and consistent. A stable/predictable condition involves long term health care needs which are not recuperative in nature and do not require the regularly scheduled presence of a registered nurse or licensed vocational nurse. Excluded by this definition are situations where the client's clinical and behavioral status is expected to change rapidly or in need of the continuous/continual assessment and evaluation of a registered nurse or licensed vocational nurse.

(c) Application of this Section.

(1) Applies to situations meeting the following criteria:

(A) The client resides in a home or homelike setting such as the client's home, a group home, foster home, or assisted living facility and includes where the client works, attends school, or engages in other community activities;

(B) The client has the ability to participate in the delegation decision, is able and willing to participate in the management and direction of the delegated task with minimal nursing supervision. This shall be ascertained in light of the overall situation of the client based on assessment of factors set out in subsection (d)(2) of this section.

(C) The health condition relative to which the task is being performed is a stable, predictable condition requiring minimal nursing supervision.

(2) Applies to in-home hospice care;

(3) Does not apply to settings where:

(A) laws or administrative rules governing licensing of the setting require the regularly scheduled presence of a registered nurse or licensed vocational nurse; or

(B) nursing services are continuously provided such as in an acute care facility, long term care facility, rehabilitation center or clinic.

(d) Criteria for Delegation Under this Section. A RN delegating tasks under this section must meet the following criteria:

(1) Comply with §218.5 and §218.7(2) of this title (relating to General Criteria for Delegation and Delegation of Specific Tasks) and in addition:

(2) Assess the situation with the client to determine:

(A) the client's ability to participate in the delegation decision and ability and willingness to participate in the management and direction of the delegated task with minimal nursing supervision.

(B) the adequacy and reliability of support systems available to the client;

(C) the stability and predictability of the client's health status relative to which delegation occurs;

(D) the client's knowledge base about his/her health status and the delegated task;

(E) the client's ability to communicate with the unlicensed person in traditional or non-traditional ways;

(F) how frequently the client's status shall be reassessed to determine that delegation continues to be appropriate;

(G) the unlicensed person's ability to recognize and inform the RN of data on client changes related to the delegated task; and

(H) the experience and competency of the unlicensed person to perform the delegated task.

(3) The RN determines the need for supervisory visits in consultation with the client and, when appropriate, family and/or significant other(s) as necessary to assure that safe and effective services are being provided.

(e) Additional Delegable Tasks Under this Section: In accordance with this section, in addition to those identified in §218.7 of this title, include:

(1) medication administration in compliance with subsection (f) of this section;

(2) assistance with feeding is broadened to include tube feeding through permanently placed feeding tubes;

(3) assistance with elimination is broadened to include intermittent catheterization, digital stimulation associated with a bowel program, tasks related to external stoma care including but not limited to pouch changes, measuring I & O, and skin care surrounding the stoma area; and

(4) assistance with other activities necessary to maintain the independence of the client such as maintenance of skin integrity and mobility.

(f) Administration of Medications for the Client in Independent Living Environments with Stable and Predictable Health Care Needs Who Participate in the Management of Delegated Tasks.

(1) In independent living environments where the client's clinical and behavioral status is stable and predictable, does not require the regular presence and assessment, intervention and evaluation by a RN, and the client has expressed his/her ability and willingness to participate in the management of his/her care, including in-home hospice settings where the client's deteriorating condition is predictable, the RN may delegate the administration of medications. The delegation may only occur after the RN has trained or verified the training and/or experience of the unlicensed person to administer the medication. The administration of medications may be delegated only in accordance with this section.

(A) The RN may delegate medications which are administered orally or via permanently placed feeding tubes, sublingually, or topically. These include eye, ear and nose drops and vaginal or rectal suppositories, and unit dose medication administration by way of inhalation for prophylaxis and/or maintenance.

(B) The RN may delegate the administration of oral unit dose medications from the client's daily reminder pill container under the following conditions:

(i) The client meets all requirements for delegation of medication administration as specified in this paragraph;

(ii) The RN has placed the unit dose medication(s) from the properly dispensed prescription bottle into the client's daily reminder pill container;

(iii) The client and the unlicensed person involved in such delegation activity have been instructed by the RN about each medication placed in such a container with regard to distinguishing characteristics of each medication, proper time, dose, route and adverse effects which may be associated with the medication;

(iv) The RN shall provide to the client and to the unlicensed person(s) instructions to contact the RN involved with the delegation before the medication is administered in instances in which there are questions concerning the medications or changes in the client's status related to the medication being given. Examples of situations which would be brought to the attention of the RN include but are not limited to instances in which the medications appear to be rearranged or missing;

(v) The RN shall make supervisory visits in the event there are changes in the client's status related to the medication being given and at least every fourteen calendar days to the client's location to evaluate the proper and safe medication administration from the client's daily reminder pill container; and

(vi) The registered nurse shall obtain in writing the client's agreement to have a properly trained unlicensed person which the RN has determined is competent to perform the administration of medications from the client's daily reminder pill container.

(C) The RN may delegate the administration of subcutaneous injectable insulin under the following conditions:

(i) The client meets all requirements for delegation of medication administration as specified in subparagraph (A) of this paragraph;

(ii) A registered nurse is available on call for consultation/intervention 24 hours each day;

(iii) The registered nurse must provide teaching of all aspects of subcutaneous injectable insulin to the client and the unlicensed person to include, but not limited to proper technique for determination of the client's blood sugar prior to each subcutaneous injection of insulin, proper injection technique, risks, side effects and the correct response(s). The RN must leave written instructions for the performance of the administration of subcutaneous injectable insulin, including a copy of the protocol as ordered by the physician, for the unlicensed person to use as a reference;

(iv) The registered nurse must delegate the administration of subcutaneous injectable insulin to an unlicensed person, specific to one client. The RN must teach that the administration of subcutaneous injectable insulin is to be performed only for the patient for whom the instructions are provided;

(v) The registered nurse may delegate the administration of subcutaneous injectable insulin to additional unlicensed persons providing care to the specific client provided the registered nurse limits the number of unlicensed persons to the number who will remain proficient in performing the task and can be safely supervised by the registered nurse;

(vi) The registered nurse shall instruct the unlicensed person that the task is client specific and not transferable to other clients or providers;

(vii) The registered nurse shall make supervisory visits in the event there are changes in the client's status and at least every fourteen calendar days to the client's location to evaluate the proper and safe medication administration of subcutaneous injectable insulin by the unlicensed person(s); and

(viii) The registered nurse shall obtain in writing the client's agreement to have a properly trained unlicensed person which the RN has determined is competent to perform the administration of subcutaneous injectable insulin.

(2) A RN shall not delegate the following tasks to any medication provider:

(A) calculation of any medication doses except for measuring a prescribed amount of liquid medication and breaking a tablet for administration, provided the RN has calculated the dose;

(B) administration of the initial dose of a medication that has not been previously administered to the client;

(C) administration of medications by an injectable route except as described for SQ insulin in paragraph (1)(C) of this subsection;

(D) administration of medications by way of a tube inserted in a cavity of the body except as stated in this subsection;

(E) responsibility for receiving verbal or telephone orders from a physician, dentist, or podiatrist; and

(F) responsibility for ordering a client's medication from the pharmacy.

§218.9. The Medication Aide Permit Holder.

(a) A RN may delegate the administration of medication to clients in long term care facilities and home health agencies to medication aides if:

(1) the medication aide holds a valid permit issued by the appropriate state agency to administer medications in that facility or agency;

(2) the RN assures that the medication aide functions in compliance with the laws and regulations of the agency issuing the permit;

(3) the route of administration is oral, via a permanently placed feeding tube, sublingual or topical including eye, ear or nose drops and vaginal or rectal suppositories.

(b) The following tasks may not be delegated to the Medication Aide Permit Holder:

(1) calculation of any medication doses except for measuring a prescribed amount of liquid medication and breaking a tablet for administration, provided the RN has calculated the dose;

(2) administration of the initial dose of a medication that has not been previously administered to the client;

(3) administration of medications by an injectable route (other than allowed by § 218.8(f) of this title (relating to Delegation of Tasks for the Client in Independent Living Environments with Stable and Predictable Health Care Needs Who Participate in the Management of Delegated Tasks);

(4) administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments (other than allowed by §218.8(f)(1)(A) of this title);

(5) administration of medications by way of a tube inserted in a cavity of the body except as stated in §218.8(f) of this title;

(6) responsibility for receiving verbal or telephone orders from a physician, dentist, or podiatrist; and

(7) responsibility for ordering a client's medication from the pharmacy;

§218.10. Supervising Unlicensed Personnel Performing Tasks Delegated by Other Practitioners.

(a) If a registered professional nurse practices in a collegial relationship with another licensed practitioner who has delegated tasks to an unlicensed person over whom the RN has supervisory responsibilities, the RN's licensure accountability is met if the RN:

(1) verifies the training of the unlicensed person; and

(2) verifies that the unlicensed person can properly and adequately perform the delegated task without jeopardizing the client's welfare.

(b) If the RN cannot verify the unlicensed person's capability to perform the delegated task, the RN must communicate this fact to the licensee who delegated the task as the delegating licensee retains accountability for the task being performed by the unlicensed person.

§218.11. Nursing Students Working as Unlicensed Personnel.

Certain nursing tasks may be delegated to professional nursing students working as unlicensed personnel in agencies, facilities, or institutions provided the students are currently enrolled in accredited professional nursing programs or are on semester breaks from such programs, and that the student has demonstrated a satisfactory level of performance of the task(s) which will be delegated. This delegation must be consistent with §218.7(1) and (2) of this title (relating to Delegation of Specific Tasks). Section 218.7(3) of this title which prohibits delegation of certain tasks also applies to nursing students working as unlicensed personnel.

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

Filed with the Office of the Secretary of State, on February 7, 2000.

TRD-200000928
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 305-6811

Chapter 221. ADVANCE PRACTICE NURSES

22 TAC §§221.1 - 221.14

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

The Board of Nurse Examiners proposes the repeal §§221.1-221.14, concerning Definitions; Titles; Education; Requirements for Initial Authorization to Practice; Petitions for Waiver;

Interim Approval; New Graduates; Maintaining Authorization as an Advanced Practice Nurse; Inactive Status; Reinstatement or Reactivation of Advanced Practice Nurse Status; Identification; Functions; Scope of Practice; and Enforcement. At the October 1999 meeting of the Board of Nurse Examiners, board members were briefed on the requirements of TX76RSB1340 which amended the Nursing Practice Act by adding Article 4527(e) regarding the adoption of rules that regulate the provision of anesthesia services in outpatient settings by persons licensed by the board. At that time, the Board adopted a new version of Chapter 221 on an emergency basis. This allowed the Board to be in compliance with the legislative mandate to have rules in effect by January 7, 2000 and allowed for resolution of conflicts between the Board of Medical Examiners and the Board of Nurse Examiners rules before rules are permanently adopted. Most of Chapter 221 remains unchanged from the emergency rules which were published in the November 19, 1999 issue of the *Texas Register* (24 TexReg 10255) and which took effect November 28, 1999. Amendments were made to §221.14(b)(2), (c)(6)(C) and (D) to further refine the rules and provide greater clarity in instances where the rules may appear vague. The new rules were published as proposed in the February 4, 2000 issue of the *Texas Register* (25 TexReg 663).

The repeal will coincide with the adoption of new sections published as proposed in the February 4, 2000 issue of the *Texas Register*, the notice of repeal was inadvertently omitted in the February 4, 2000 notice.

Katherine A. Thomas, MN, RN, Executive Director, has determined that there will be no fiscal implications for the state or local government as a result of enforcing or administering the rule.

Written comments on the proposed repeal may be submitted to Katherine A. Thomas, Board of Nurse Examiners, Post Office Box 430; Austin, Texas 78767-0430.

The repeal is proposed under the Nursing Practice Act, Texas Occupations Code, Section 301.151, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

There are no other rules, codes, or statutes that will be effected by this proposal.

§221.1. Definitions.

§221.2. Titles.

§221.3. Education.

§221.4. Requirements for Initial Authorization to Practice.

§221.5. Petitions for Waiver.

§221.6. Interim Approval.

§221.7. New Graduates.

§221.8. Maintaining Authorization as an Advanced Practice Nurse.

§221.9. Inactive Status.

§221.10. Reinstatement or Reactivation of Advanced Practice Nurse Status.

§221.11. Identification.

§221.12. Functions.

§221.13. Scope of Practice.

§221.14. Enforcement.

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 February 9, 2000.

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Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
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For further information, please call: (512) 305-6816

Part 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

Chapter 501. PROFESSIONAL CONDUCT

Subchapter A. GENERAL PROVISIONS

22 TAC §501.52

The Texas State Board of Public Accountancy (Board) proposes new §501.52 concerning Definitions. This new rule is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

The new §501.52 will allow unnecessary definitions from old §501.2 to be eliminated, grammatical changes to be made to existing definitions, a technically correct definition of "financial statement" consistent with those set by accounting standard setting bodies, and the rest of the definitions to be transferred from old §501.2.

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

A. the additional estimated cost to the state expected as a result of enforcing or administering the rule will be none in that the Rule is only being relocated, unnecessary definitions are being deleted, and grammatical changes are being made;

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be none in that the Rule is only being relocated, unnecessary definitions are being deleted, and grammatical changes are being made;

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be none in that the Rule is only being relocated, unnecessary definitions are being deleted, and grammatical changes are being made.

Mr. Treacy has determined that for the first five-year period the rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that an accurate list of definitions will be used in the Rules of Professional Conduct.

The probable economic cost to persons required to comply with the rule will be none in that the Rule is only being relocated, unnecessary definitions are being deleted, and grammatical changes are being made.

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

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 19, 2000. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the Rule is only being relocated, unnecessary definitions are being deleted, and grammatical changes are being made.

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

The new rule is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.52. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to include the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) Act–The Public Accountancy Act, Chapter 901, Occupations Code (Vernon's 1999).

(2) Advertisement–A message which is transmitted to persons by, or at the direction of, a certificate or registration holder and which has reference to the availability of the certificate or license holder to perform professional services.

(3) Board–The Texas State Board of Public Accountancy.

(4) Certificate or registration holder–The holders of all currently valid:

(A) certificates issued to individuals who have been awarded the designation certified public accountant by the board pursuant to the Act, or pursuant to corresponding provisions of a prior Act; and

(B) registrations with the board for the practice of public accounting in this state.

(5) Charitable organization–An organization which has been granted tax-exempt status under the Internal Revenue Code of 1986, §501(c), as amended.

(6) Client-

(A) The person or entity which retains a certificate or registration holder for the performance of professional services regardless of the fee arrangement;

(B) any person or entity upon whose financial statements the certificate or registration holder is retained to report or opine, whether or not this is the same person or entity which retains the certificate or registration holder.

(7) Commission–Compensation for recommending or referring any product or service to be supplied by another person.

(8) Contingent fee–A fee for any service where no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, a certificate or registration holder's non-contingent fees may vary depending, for example, on the complexity of the services rendered. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority.

(9) Financial statements-A presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles. Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements on Standards for Attestation Engagements and tax returns and supporting schedules do not constitute financial statements for the purposes of this definition.

(10) Firm–A proprietorship, partnership, or professional or other corporation, or other business engaged in the practice of public accountancy.

(11) Good standing–Compliance by a certificate or registration holder with the board's licensing rules, including the mandatory continuing education requirements and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the certificate or registration holder must be in compliance with all the provisions of the board order to be considered in good standing.

(12) Licensee–The holder of a license issued by the board to a certificate or registration holder pursuant to the Act, or pursuant to provisions of a prior act.

(13) Person–An individual, partnership, corporation, registered limited liability partnership, or limited liability company.

(14) Practice of public accountancy–The practice of public accountancy includes the client practice of public accountancy and the industry or government practice of public accountancy.

(A) Client Practice. Client practice of public accountancy is the offer to perform or the performance by a certificate or registration holder for a client or a potential client of a service involving the use of accounting, attesting, or auditing skills. The phrase "service involving the use of accounting, attesting, or auditing skills" includes:

(i) the issuance of reports on, or the preparation of, financial statements, including historical or prospective financial statements or any element thereof;

(ii) the furnishing of management or financial advisory or consulting services;

(iii) the preparation of tax returns or the furnishing of advice or consultation on tax matters;

(iv) the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations routinely require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting; and/or

(v) litigation support services.

(B) Industry or government practice. Industry or government practice of public accountancy is:

(i) the preparation of, or reporting on, financial statements (including historical or prospective financial statements or any element thereof) by an individual licensed under the Act, of the individual's employer or an entity affiliated with the employer, when the financial statement or report is to be used by an investor, a third party, or a financial institution;

(ii) the preparation of a tax return of the individual's employer or an entity affiliated with the employer, if the tax return is filed with a taxing authority; or

(iii) the supervision of those activities described in clauses (i) and (ii) of this subparagraph.

(C) A certificate or registration holder not engaged or employed to any extent in either the client practice of public accountancy or the industry or government practice of public accountancy is not engaged in the practice of public accountancy. Furthermore, the preparation of reports exclusively for internal use by the management and/or board of directors of the individual's employer or an entity affiliated with the employer are not the practice of public accountancy.

(D) For purposes of this section, an entity shall be deemed "affiliated with" a licensee's employer only if, and so long as, the employer (directly or indirectly through another entity affiliated with the employer) possesses the power to direct the management of the entity through ownership of a majority of the voting securities or other applicable voting equity interests of the entity.

(15) Practice unit–An office of a firm required to be registered with the board for the purpose of practicing public accountancy.

(16) Professional services–Any services performed or offered to be performed in the course of the practice of public accountancy.

(17) Report–When used with reference to financial statements, means either an engagement performed through the application of procedures under the Statement on Standards for Accounting and Review Services or any opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and/or includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any assurance as to the reliability of the financial statements to which reference is made and/or special competence on the part of the person or firm issuing such language; and it includes any form of language conventionally used with respect to a compilation or review of financial statements, and any other form of language that implies such special knowledge or competence.

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 February 4, 2000.

TRD-200000780
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 305-7848

Chapter 507. EMPLOYEES OF THE BOARD

22 TAC §507.6

The Texas State Board of Public Accountancy (Board) proposes new §507.6 concerning Employee Training and Education Assistance Program.

Proposed new §507.6 will allow the Board to have a policy on providing assistance for education and training for an employee under certain conditions.

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

A. The additional estimated cost to the state and to local governments expected as a result of enforcing or administering the new rule will be zero for local governments because the rule only affects the Board. The Board has no historical data on costs to the state but the rule has a maximum of $1,200.00 per year.

B. The estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero for local governments because the rule only affects the Board. There will be no reduction in costs to the state.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the new rule will be zero for local governments because the rule only affects the Board. There will be no affect on state revenue.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that the Board will have rules governing the circumstances under which the Board will assist its employees' job-related education and training, which should improve the quality of services offered and performance. The probable economic cost to persons required to comply with the new rule will be zero because this rule affects only the Board.

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

The Board requests comments on the proposed new rule from any interested person. Comments must be received at the

Board no later than noon on March 17, 2000. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

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

The new rule is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and the State Employees Training Act, §656 of the Government Code.

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

§507.6. Employee Training and Education Assistance Program.

(a) Pursuant to the State Employees Training Act, Section 656 of the Government Code, it is the policy and practice of the board to encourage an employee's professional development through training and education programs.

(b) The board may provide assistance for education and training for an employee if the executive director determines that the education or training will enhance the employee's ability to perform current or prospective job duties and will benefit both the board and the employee.

(c) Financial assistance may be awarded for some or all of the following expenses:

(1) tuition, including correspondence courses that fulfill degree, professional or General Equivalence Diploma (GED) program plan requirements;

(2) degree plan pertinent College Level Equivalency Program examinations if the employee receives college credit or waiver of course requirements;

(3) degree plan pertinent Life Experience Assessments if the employee receives college credit; and

(4) required fees, including lab fees, and books.

(d) Financial assistance granted under this program shall not exceed $1,200 per year per employee.

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 February 4, 2000.

TRD-200000783
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 305-7848

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22 TAC §507.7

The Texas State Board of Public Accountancy (Board) proposes new §507.7 concerning Eligibility for Training and Education Assistance.

Proposed new §507.7 will allow the Board to have written criteria regarding achieving initial eligibility and maintaining eligibility.

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

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the new rule will be zero for local governments because the rule only affects the Board. The Board has no historical data on costs to the state but the rule has a maximum of $1,200.00 per year.;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero for local governments because the rule only affects the Board. There will be no reduction in costs to the state.;

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the new rule will be zero for local governments because the rule only affects the Board. There will be no affect on state revenue.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that the Board will have rules governing the circumstances under which the Board will assists its employees' job-related education and training, which should improve the quality of services offered and performance. The probable economic cost to persons required to comply with the new rule will be zero because this rule affects only the Board.

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

The Board requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on March 17, 2000. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the proposed rule is an internal rule that affects only the Board. The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is

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

The new rule is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and the State Employees Training Act, §656 of the Government Code.

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

§507.7. Eligibility.

(a) To be eligible for consideration for training and education assistance, an employee must:

(1) be in good standing with the board;

(2) meet and continue to meet all performance expectations;

(3) have at least 12 months of service with the board; and

(4) seek enrollment and participation in a field of study that relates to assigned or prospective job duties, a professional development requirement, a GED program or a higher education degree plan.

(b) To maintain eligibility in a degree program an employee must be enrolled in an institution of higher education in a course of instruction leading toward a degree and maintain a passing grade point average.

(c) To maintain eligibility in a GED program an employee must be enrolled each semester in a GED program and maintain a passing grade point average.

(d) The employee must attend and satisfactorily complete the education and training, including passing tests or other types of performance measures where required.

(e) Each semester an employee must provide grade reports to verify that full credit was received for courses taken.

(f) An employee must provide fee receipts for courses to be taken and must promptly report outside funds such as grants, scholarships or other financial aid received. The executive director may adjust the assistance provided to the employee at any time for any reason.

(g) Any employee who has received assistance under this program shall repay the entire amount of the assistance received if the employee voluntarily leaves the board's employ within six months of concluding an educational program for which assistance was granted.

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 February 4, 2000.

TRD-200000782
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 305-7848

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22 TAC §507.8

The Texas State Board of Public Accountancy (Board) proposes new §507.8 concerning Procedures governing agency financial assistance for employee education or training.

Proposed new §507.8 will allow the Board to have written procedures regarding employee education and training assistance.

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

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the new rule will be The additional estimated cost to the state and to local governments expected as a result of enforcing or administering the new rule will be zero for local governments because the rule only affects the Board. The Board has no historical data on costs to the state but the rule has a maximum of $1,200.00 per year.;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero for local governments because the rule only affects the Board. There will be no reduction in costs to the state.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the new rule will be zero for local governments because the rule only affects the Board. There will be no affect on state revenue.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that the Board will have rules governing the circumstances under which the Board will assists its employees' job-related education and training, which should improve the quality of services offered and performance. The probable economic cost to persons required to comply with the new rule will be zero because this rule affects only the Board.

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

The Board requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on March 17, 2000. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because he proposed rule is an internal rule that affects only the Board. The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of

labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and the State Employees Training Act, §656 of the Government Code.

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

§507.8. Procedures.

(a) The executive director may require a written agreement between the board and the employee describing the terms and conditions of the education or training assistance to be provided by the board. The board may impose such terms and conditions as may be reasonable and appropriate, including but not limited to, specifying the circumstances under which the assistance may be terminated and the employee may be required to repay the amount of assistance.

(b) The executive director will reconsider each employee's participation in the Education Assistance Program each semester.

(c) Assistance may be terminated and the employee may be required to repay all funds received from the institution if the employee:

(1) withdraws from the institution;

(2) is removed or prohibited from attending the institution;

(3) fails to comply with one or more terms of the assistance agreement, including but not limited to, additional terms concerning termination and repayment of assistance; or

(4) is terminated by the board during the duration of the assistance agreement.

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 February 4, 2000.

TRD-200000781
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 305-7848

TITLE 25. HEALTH SERVICES

Part 1. TEXAS DEPARTMENT OF HEALTH

Chapter 28. MEDICAID THIRD PARTY RECOVERY

Subject to the approval of the State Medicaid Director, the Texas Department of Health (department) proposes an amendment to §28.102, and new §§28.501, 28.502, and 28.503 relating to health insurer requirements for third party recovery in the Medicaid program.

The Social Security Act, §1902a(25) (codified at 42 U.S.C. §1396a(a)(25)) requires the department to implement reasonable procedures to identify, establish, and seek recovery from third parties who may have a legal liability to pay for services provided by Medicaid. The Human Resources Code, §32.042, establishes the requirement that the department must identify Medicaid recipients and applicants who have third party health insurance coverage and that health insurers must provide information to the department to accomplish this requirement. It also provides a penalty for any insurer who fails or refuses to comply with the requirements of the section. These proposed rules implement the department's procedures for entering into agreements with health insurers, the information required from health insurers, the method of compliance and protections of confidentiality of Medicaid recipients and health insurers providing the information, and the imposition of penalties for a health insurer's failure to provide the requested information.

Joe Moritz, Chief, Bureau of Budget and Support Services, has determined that there will be no initial cost associated with paying for each of the data matches as the payments to the carriers will be made by a contractor of National Heritage Insurance Company who is paid on a contingency fee basis from recoveries. There will be a cost savings to the state for each year of the first five years following the adoption of the rule, as a result of identifying third party health insurers. The estimated amount of additional third party recoveries from health insurers is $7,000,000, resulting in a net savings to the state of $2,704,800 per year for each year following the adoption of the rule. There are no foreseeable fiscal implications on local government.

Mr. Moritz has also determined that for each year of the five years the rules are in effect, the public benefit anticipated as a result of the rule are increased third party recoveries into the Medicaid program and cost avoidance, resulting in savings of tax dollars. There will be no effect on small businesses or microbusinesses. The state will pay for all data matches which result from the rules so there is no uncompensated economic costs to health insurers who are required to comply with the rule. There is no impact on local employment. There is no impact on small businesses or micro businesses.

Comments on the proposal may be submitted to Terry Cottrell, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, by FAX at (512) 338-6495, or by telephone at (512) 338-6518. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register.*

Subchapter A. GENERAL PROVISIONS

25 TAC §28.102

The amendment is proposed under the Human Resources Code, §32.033, which gives the department the authority to adopt rules for the enforcement of its third party recovery rights, and Government Code, §531.021, which gives the Health and Human Services Commission the authority to adopt rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The proposed amendment affects Chapter 32 of the Human Resources Code and Chapter 531 of the Government Code.

§28.102. Definitions.

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

(1)-(10) (No change.)

(11) Plan administrator means a third-party administrator, prescription drug payer or administrator, pharmacy benefit manager, or a dental payer or 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 February 7, 2000.

TRD-200000886
Susan K. Steeg
General Counsel
Texsa Department of Health
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 458-7236

Subchapter E. HEALTH INSURER REQUIREMENTS

25 TAC §§28.501 - 28.503

The new sections are proposed under the Human Resources Code, §32.033, which gives the department the authority to adopt rules for the enforcement of its third party recovery rights, and Government Code, §531.021, which gives the Health and Human Services Commission the authority to adopt rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The proposed new sections affect Chapter 32 of the Human Resources Code and Chapter 531 of the Government Code.

§28.501. Third Party Health Insurer Information Requirements.

(a) Health insurers must maintain a file system that contains the following information for each policyholder or subscriber covered by the insurer:

(1) the name, address, social security number, and date of birth of each subscriber or policyholder and each dependent of each policyholder or subscriber;

(2) the name, address, including claim submission address, of the health insurer; and

(3) the name, address, and mailing address of the employer.

(b) The department and health insurers from whom the department requests information must enter into written agreements for the exchange of health insurance information relating to certified Medicaid recipients. The written agreements must contain the following mandatory terms and provisions:

(1) the department agrees to reimburse an insurer for the necessary and reasonable costs incurred in providing information requested under this subchapter;

(2) the department provides the insurer with Medicaid data tapes which contain identifying information of individuals whom the department certifies are applicants or recipients of services under Medicaid, or are legally responsible for an applicant or recipient of Medicaid services;

(3) the information requested from the insurer is specifically identified and limited to information necessary to determine whether health benefits have been or should be claimed and paid under the health insurance policy or plan for medical care or services received by an individual for whom Medicaid services would otherwise be available;

(4) the agreement states the time the department will request the data match and submit the Medicaid data tape to the insurer, and the manner in which the data match is to be conducted, and the time and the place where the information requested is to be produced to the department, and a method of verification of receipt by the department;

(5) the agreement limits the department to not more than one data match every six months;

(6) the agreement contains a confidentiality agreement which prohibits the health insurer from using the information received from the department for any purpose other than to data match insurer information against the Medicaid data tapes and prohibits any disclosure, reproduction or retention of the information for any purpose not directly related to the purpose of carrying out the requirements of the agreement;

(7) the agreement contains a confidentiality agreement which prohibits the department from using the information received from the health insurer for any purpose other than to identify Medicaid applicants or recipients, and persons legally responsible for a Medicaid applicant or recipient, who have or may have health insurance coverage through the health insurer and prohibits the department from further disclosure or use of the information except as required or authorized by state or federal law; and

(8) the agreement must contain a provision which requires the insurer to comply with a request for information not later than the 60th day following the date the request is made by the department.

(c) These sections apply to plan administrators in the same manner and to the same extent as an insurer if the plan administrator has the information necessary to comply with the department's request for a data match.

§28.502. Administrative Penalties for Failure to Provide Information.

(a) The department may impose administrative penalties on an insurer who:

(1) does not comply with a request for data match information under a written agreement with the department as required by the written agreement; and

(2) more than 180 days have passed since the date the request was made by the department; or

(3) refuses to enter into a written agreement with the department to provide information requested by the department as required by §28.501(b) of this title (relating to Third Party Health Insurers Information Requirements).

(b) If the insurer does not provide the requested information the administrative penalty will be assessed on a daily basis for each day of non-compliance beginning on the day following the 180th day

the department made a request for information, and continuing until the information is received by the department.

(1) The department's request for information may be made by any method which provides verification of receipt.

(2) The 180th day will be calculated from the date the department obtains written or electronic verification of receipt by the insurer.

(c) The amount of the administrative penalty may not exceed $10,000 per day for each day of non-compliance. The amount of the administrative penalty will be based on:

(1) the seriousness of the non-compliance, including the nature, circumstances, extent, and gravity of the non-compliance;

(2) the economic harm caused by the non-compliance;

(3) the history of previous non-compliance;

(4) the amount necessary to deter future non-compliance;

(5) efforts made by the insurer to correct the non-compliance; and

(6) other factors presented by the insurer or the department which affect the amount and the appropriateness of the administrative penalty.

§28.503. Notice and Appeal of Administrative Penalty.

(a) The department will send the insurer a Notice of Administrative Penalty at least 30 days prior to the date that administrative penalties will begin to accrue. The notice will contain the following information:

(1) the date on which administrative penalties will begin to accrue if the information requested by the department is not received on or before that date; and

(2) the amount of the administrative penalty which will be assessed for each day of non-compliance after the date indicated on the notice letter.

(b) If the insurer does not submit the information on or before the date on which administrative penalties begin to accrue, penalties will be assessed as stated in the notice letter.

(c) An insurer may request a hearing in writing within 20 days of receiving written notice from the department of administrative penalty.

(d) If a hearing is requested, the hearing is a contested case under the Administrative Procedure Act, Government Code, Chapter 2001, and the department's formal hearing rules in Chapter 1 of this title (relating to Formal Hearings).

(e) If an insurer fails to submit a request for hearing within 20 days from the date of the notice letter, or fails to appear at a scheduled hearing, the amount of penalties assessed per day of non-compliance is final and will continue to accrue at the rate assessed until paid, or until a final judicial decision is rendered.

(f) The order of administrative penalty will be reported to the attorney general for collection.

(g) The enforcement of the penalty may be stayed during the time the order is under judicial review if the insurer pays the penalty assessed as of the date of the order to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. An insurer who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by the Texas Rules of Civil Procedure.

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 February 7, 2000.

TRD-200000887
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 458-7236

Chapter 34. WAIVER PROGRAM FOR MEDICALLY DEPENDENT CHILDREN

25 TAC §34.3, §34.31

Subject to the approval of the State Medicaid Director, the Texas Department of Health (department) proposes an amendment to §34.3 and new §34.31 concerning the deinstitutionalization of children from nursing facilities which have terminated operations. The proposed amended §34.3 may potentially increase the number of eligible children served by the Medically Dependent Children Program (MDCP). New §34.31 is necessary in order to ensure that eligible children have adequate care and housing once their facility ceases to operate and there are no other appropriate resources of care available for their utilization.

The department proposes an amendment to §34.3 which would allow the Board of Health (board) to determine, on an annual basis, the date and duration of skilled nursing facility residency used in considering a resident's eligibility for deinstitutionalization into MDCP under §34.3. The amendment to §34.3 would enable the board to consider existing needs and resources to determine eligibility rather than be bound by a rule-specific date.

The proposed new §34.31 will allow the department to move eligible children from institutions to home and community settings if the parents make that choice. The new section provides an alternative to care in another nursing facility.

Section 34.31 was adopted on an emergency basis on November 19, 1999, by the board due to an imminent peril to public health and safety and as a response to a reasonably unforeseeable situation: the potential closure of Truman Smith, a facility in Gladewater, Texas. No other long-term care facility of this size in Texas is equipped to serve all the children residing at Truman Smith. Additionally, very few long term care facilities specialize in the care of children who are medically fragile. The emergency rule allowed the department to provide adequate and appropriate care for eligible children, in the event of such a facility closure. The emergency rule containing this section expires May 20, 2000.

Roy Middleton, Director, Division of Financial Management, Associateship for Community Health and Resources Development, has determined that for the first five-year period the new and amended sections are in effect, there will be no fiscal implications to local government as a result of administering the sections as proposed.

Roy Middleton has also determined that for state government, there may be a fiscal impact to the State Medical Assistance Program (Medicaid). The nature and amount of the fiscal impact will be determined by the number of individuals who move home, by the date on which they move home, and by the severity of their medical condition and the intensity of their medical and other care needs. The fiscal impact for each child in FY 2000 may range from an estimated potential increased cost of up to $18,208 ($7,019 in general revenue (GR)) per child, per year, to an estimated potential savings of $8,708 ($3,357 in GR) per child, per year, based on a maximum participation of five months. For FYs 2001 through 2004, the fiscal impact for each child may range from an estimated potential increased cost of up to $43,700 ($17,200 in GR) per child, per year to an estimated potential savings of $20,900 ($8,226 in GR) per child per year, based on 12 months of participation.

Roy Middleton has also determined that for each of the first five years the sections are in effect, the public benefits as a result of enforcing these sections will be that more families in Texas will be able to keep their children in their own home. There may be a positive economic effect on microbusinesses or small businesses in that nurses, home and community support agencies, and other providers of community-based care which qualify as small or microbusinesses will gain revenue once a child moves to a home or community setting. The positive economic impact may range up to an estimated $102,882 per child in a 12 month period. There may be an adverse economic effect on micro or small businesses in that any nursing facility which qualifies as a small or micro business will lose revenue once a child is removed from the facility to a home or community setting. The adverse economic impact may range up to an estimated $84,488 per child in a 12 month period. There are no economic costs to persons other than to the families of the children who participate. There will be no anticipated impact on local employment.

Comments on the proposal may be submitted in writing to Susan Penfield, M.D., Bureau of Children's Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, by FAX at (512) 458-7238, or by telephone at (800) 252-8023 or (512) 458-7111, extension 3104. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. A public hearing will be held to receive comments on the proposed rules from 10:00 am to 12:00 pm, on Thursday, March 2, 2000, in Room K100 at the Texas Department of Health, 1100 West 49th Street, Austin, Texas.

The amendment and new section are proposed under the Social Security Act, §1915(c) relating to Medicaid waiver programs for home or community based services; Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991), as amended by Chapter 747, Actions of the 73rd Legislature (1993) which authorizes the Texas Board of Health (board) to adopt rules necessary to administer the MDCP; and the Health and Safety Code§12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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

§34.3. Participant Eligibility Criteria.

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

(c) Deinstitutionalization.

(1) The Board of Health shall determine the latest nursing facility admission date for eligibility proposed under this section in open meetings and review that date annually. An MDCP registrant who was either admitted to a Texas nursing facility prior to the date determined by the Board of Health, [~~September 1, 1997, and continues to reside in the facility,~~] or one who was discharged from a nursing facility after [~~between~~] September 1, 1995, [~~and September 1, 1997, following a nursing facility placement of at least four months' duration,~~] may apply for services to support the individual's deinstitutionalization if the individual:

(A)-(B) (No change.)

(2)-(3) (No change.)

(d)-(i) (No change.)

§34.31. Deinstitutionalization Due to Closure of Facility.

(a) An individual who resided in a Texas nursing facility on November 1, 1999, and continued to reside there until they were scheduled to be discharged from the facility due to its closure may apply for services to support the individual's deinstitutionalization if the individual:

(1) has been determined to be Medicaid eligible; and

(2) has met all of the criteria in §34.3(b) of this title (relating to Participant Eligibility Criteria).

(b) The names of qualified individuals applying for nursing facility deinstitutionalization under the Medically Dependent Children Program ("MDCP") shall be maintained on a waiting list separate from that for other MDCP registrants.

(c) An individual applying for nursing facility deinstitutionalization under MDCP shall become eligible for waiver services under this subsection if:

(1) a vacancy designated for qualified individuals under this subsection exists within the waiver; and

(2) the individual's Texas Index for Level of Effort (TILE) funding is available to be allocated for home and community-based 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 February 7, 2000.

TRD-200000885
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 458-7236

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TITLE 34. PUBLIC FINANCE

Part 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

Chapter 105. CREDITABLE SERVICE

34 TAC §105.3

The Texas County and District Retirement System proposes the adoption of new §105.3 concerning the crediting of service in the retirement system for qualifying service performed in the military.

The proposed rule is necessary to implement and administer the statutory changes made by §19 and §64, Senate Bill 1129, 76th Legislature (1999) to the provisions of the Texas County and District Retirement System Act relating to the optional authorization allowing credited service in the retirement system for qualified military service. The proposed rule describes the eligibility requirements for establishing credited service under the rule, and the manner of calculating the amount of service that is to be credited to an eligible member based on the type of military duty. In addition, the proposed rule describes the eligibility requirements and effective date of an authorization reducing the eligibility period from 10 years to 8 years.

Terry Horton, Director of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local governments as a result of administering the rule.

Mr. Horton has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be a more clear and complete understanding by subdivisions and members of the manner and procedure by which credited service for qualified military service is calculated and granted. There will be no costs to small business. There are no anticipated costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Terry Horton, Director, Texas County and District Retirement System, at P.O. Box 2034, Austin, TX 78768-2034.

The rule is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §843.601 is affected by this proposed rule.

§105.3. Credited Service for Qualified Military Service.

(a) In this section:

(1) The term "Act" means the Texas Government Code, Title 8, Subtitle F as amended. Unless otherwise indicated, all section numbers refer to sections of the Act. The term "credited service" means membership service for determining retirement eligibility only. Member contributions and monetary credits are not required or permitted with respect to credited service for qualified military service established after December 31, 1999.

(2) The term "eligible member" means a member of an eligible subdivision who has performed, as an employee, at least 10 years of service credited in the retirement system; who does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent; who has performed qualified military service; and who has been released from military duty under honorable conditions.

(3) The term "eligible subdivision" means a subdivision whose governing board has adopted the optional authorization for the establishment of credited service in the retirement system for qualified military service under §843.601(c).

(4) The term "qualified military service" means service in the uniformed services as defined in 38 U.S.C. §4303(13). It excludes that service which was performed in a month for which the member has received credited service in this retirement system under any other provision of the Act, and that service which is credited by another retirement system or program established or governed by state law. A member may not receive more than one month of credited service for any month.

(b) An eligible member may receive one month of credited service in the retirement system for each month of qualified military service performed while on active duty. A member may receive one month of credited service in the retirement system for each 12 months or fraction of months of qualified military service performed while on inactive duty. An eligible member may not accumulate more than a combined total of 60 months of credited service in the retirement system for qualified military service under §843.601 and for membership credited service under §842.109(b).

(c) The governing body of an eligible subdivision that has adopted the Optional Benefit Eligibility Plan Two described by §844.210 may authorize a reduction in the minimum credited service requirement for eligibility to establish credit under §843.601(c) from 10 to 8 years. The reduction may not take effect until January 1 of the year following the year in which the authorization was adopted except that a reduction authorized by an eligible subdivision that begins participation after December 31, 1999 may take effect on the date the subdivision begins participation.

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 February 7, 2000.

TRD-200000930
Terry Horton
Director
Texas County and District Retirement System
Proposed date of adoption: March 20, 2000
For further information, please call: (512) 328-8889

Chapter 107. MISCELLANEOUS RULES

34 TAC §107.8, §107.9

The Texas County and District Retirement System proposes amendments to §107.8 relating to the electronic transfer of funds, and §107.9 relating to the electronic filing of documents.

The amendment to §107.8 clarifies that a reversal of an ACH Debit by a subdivision constitutes non-payment of the required contributions with respect to the monthly report. The amendment to §107.9 expands the definition of documents that can be electronically filed. In addition, the amendment clarifies that documents filed electronically by a subdivision will be considered to have been certified by the subdivision, and that documents electronically filed by a principal other than a subdivision will be considered to have been certified by the principal if certifying language appears on the document.

Terry Horton, Director of the Texas County and District Retirement System, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local governments as a result of administering the rules.

Mr. Horton has also determined that for each year of the first five years the amended rules are in effect the public benefit anticipated as a result of administering the rules will be a more clear and complete understanding by subdivisions and members of the treatment of ACH Debits and documents filed electronically that require certification. There will be no costs to small business. There are no anticipated costs to persons who are required to comply with the rules as proposed.

Comments on the proposed amendments may be submitted to Terry Horton, Director, Texas County and District Retirement System, at P.O. Box 2034, Austin, TX 78768-2034.

The amendments are proposed generally under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system; and under the Government Code, §845.116(b) which specifically authorizes the board of trustees to adopt rules and procedures relating to the electronic transfer of funds and the electronic filing of documents.

The Government Code, §845.116 is affected by the proposed amendment to §107.8 and the Government Code, §§842.101; 843.304; 843.501; 844.307; 845.403 are affected by the proposed amendment to §107.9.

§107.8. Electronic Transfer of Funds.

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

(g) The receipt of a monthly report filed under an unrevoked authorization agreement shall be considered to be receipt by the retirement system of the amount required to be contributed for the month based on that report provided that there are sufficient funds available for transfer from the subdivision's designated account on the later of the due date of the report or the date the report is received. An ACH Debit that is reversed by a subdivision or that fails because sufficient funds are not available for transfer constitutes non-payment of the required contributions with respect to that monthly report and, thereafter, such required contributions will not be considered to have been received until the day the funds are actually transferred to the account of the retirement system. A subdivision failing to timely file the required information or remit the required contributions by the due date of the report is subject to a penalty for late reporting in accordance with §107.6 of this title (relating to Penalty for Late Reporting).

§107.9. Electronic Filing of Documents.

(a) In this section:

(1) The term "document" means any form, statement, affidavit, application or report (and related attachments) required [~~developed retirement system for the administration of the system that is~~] to be completed by or on behalf of a principal and filed with the system [~~for the purposes of reporting information or making selections~~].

(2)-(3) (No change.)

(b) All documents required to be filed with the system by or on behalf of a principal in accordance with these rules or the provisions of Subtitle F of Title 8 of the Texas Government Code may be electronically filed. A document requiring certification by a subdivision that is filed with the system shall be considered to have been certified by the subdivision. A document that has been properly completed by a principal (other than a subdivision) or authorized agent of the principal and that is electronically filed with the system shall be considered to have been certified by the principal if certifying language appears on the document.

(c)-(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 February 7, 2000.

TRD-200000931
Terry Horton
Director
Texas County and District Retirement System
Proposed date of adoption: March 20, 2000
For further information, please call: (512) 328-8889

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 3. TEXAS YOUTH COMMISSION

Chapter 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.33

The Texas Youth Commission (TYC) proposes an amendment to the §93.33, concerning alleged mistreatment. The amendment to the section will ensure that parents are notified of any investigation and of the findings regarding any alleged mistreatment.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham 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 to increase efficiency in agency service. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to develop programs for the welfare, custody and rehabilitation of youth in its jurisdiction.

The proposed rule implements the Human Resource Code, §61.034, regarding making rules appropriate to the accomplishments of the agency's functions.

§93.33. Alleged Mistreatment.

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

(d) Reporting and Investigation Requirements.

(1) Any employee or volunteer who has cause to believe that a youth has been or may be abused, neglected, or exploited shall

report the allegation to the local administrator no later than the end of the work shift.

(2) Upon receipt of the allegation, the local administrator shall immediately notify the appropriate law enforcement agency when there is cause to believe that a youth has been or may be abused, neglected, or exploited. The Texas Department of Protective and Regulatory Services (DPRS) shall be immediately notified of any allegation of abuse, neglect, or exploitation involving a private residential program licensed by DPRS. However, if DPRS decides not to investigate, TYC shall conduct an investigation.

(3) The local administrator will notify the youth's parent or guardian of the allegation.

(4) [~~(3)~~] An employee or volunteer accused of mistreatment shall be notified in writing of the allegations prior to the commencement of the investigation.

(5) [~~(4)~~] Findings shall be based upon a preponderance of the evidence. A summary of the findings and conclusions shall be provided to the accused employee or volunteer, the youth, and the reporter at the conclusion of the investigation. A written copy of the same shall be given to the accused employee.

(6) [~~(5)~~] All allegations of mistreatment are thoroughly investigated, including new allegations that arise during the course of the initial investigation.

(7) [~~(6)~~] Each investigator shall submit an accurate and thorough report which indicates he/she has:

(A) interviewed witnesses and gathered relevant documents and physical evidence (when necessary);

(B) developed a written finding for each allegation based on a preponderance of the evidence, which describes what the investigator believes actually happened during the time mistreatment is alleged to have occurred; and

(C) documented a conclusion indicating whether each allegation is confirmed or unconfirmed, and summarized the evidence relied upon to support each conclusion.

(8) [~~(7)~~] When necessary, additional staff will be assigned to conduct investigations. Priority will be given to situations threatening the immediate safety and well-being of the youth.

(9) [~~(8)~~] The allegation of mistreatment is filed by the facility or program where the alleged incident occurred even though the alleged victim and other witnesses may have moved prior to the filing;

(10) [~~(9)~~] The youth rights administrator may aid or assume an investigation at any stage of the investigation process. This shall include enlisting the assistance of additional investigators when all parties are not located in the same place.

(11) The youth's parent or guardian shall be notified of the outcome of the investigation.

(e)-(g) (No change.)

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

Filed with the Office of the Secretary of State on February 3, 2000.

TRD-200000770
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 424-6244

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Part 9. TEXAS COMMISSION ON JAIL STANDARDS

Chapter 259. NEW CONSTRUCTION RULES

Subchapter B. NEW MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.136

The Texas Commission on Jail Standards proposes an amendment to §259.136 concerning New Maximum Security Design, Construction and Furnishing Requirements to clarify existing standards regarding design requirements for day room space.

Jack E. Crump, executive director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be clarification of existing standards.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.136. Day Rooms.

All single cells, multiple occupancy cells, and dormitories shall be provided with day room space. Separation cells, violent cells, holding cells, detoxification cells, and medical cells are exempt from this requirement. Day rooms shall accommodate no more than 48 inmates. [~~Day rooms shall be designed for no more than 48 inmates.~~] Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; a sufficient number of toilets, lavatories, and showers as approved by the Commission, mirrors, seating, and tables. A utility sink should be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the day room.

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 February 4, 2000.

TRD-200000788
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

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37 TAC §259.138

The Texas Commission on Jail Standards proposes an amendment to §259.138 concerning New Maximum Security Design, Construction and Furnishing Requirements to limit the amount of time an inmate is held in a holding cell to no more than 48 hours and ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, executive director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to provide minimum standards that ensure inmates are processed, classified, housed and provided a mattress, blanket, and/or hygiene items within 48 hours. Furthermore, requiring cordless phones within holding cells will lessen a potential risk factor associated with inmate suicides.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.138. Holding Cells.

(a) One or more holding cells shall be provided to hold inmates pending intake, processing, release, or other reason for temporary holding. Inmates shall not be held for more than 48 hours and the cell shall include the following items. [~~Holding cells shall contain the following features and equipment.~~]

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

(b) (No change.)

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

Filed with the Office of the Secretary of State, on February 4, 2000.

TRD-200000789
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

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37 TAC §259.139

The Texas Commission on Jail Standards proposes an amendment to §259.139 concerning New Maximum Security Design, Construction and Furnishing Requirements to ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, executive director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to lessen a potential risk factor associated with inmate suicides by requiring phones, if provided within detoxification cells, to be cordless.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§259.139. Detoxification Cells.

Any facility that anticipates the housing of intoxicated persons shall provide one or more detoxification cells for detention during the detoxification process. These cells shall include the following features and equipment.

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

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 February 4, 2000.

TRD-200000790
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

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Subchapter C. NEW LOCKUP DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.233

The Texas Commission on Jail Standards proposes an amendment to §259.233 concerning New Lockup Design, Construction and Furnishing Requirements to clarify existing standards regarding design requirements for day room space.

Jack E. Crump, executive director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be clarification of existing standards.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.233. Day Rooms.

Single cells, multiple occupancy cells, and dormitories may be provided with day room space. Holding cells and detoxification cells are exempt from this requirement. Day rooms shall accommodate no more than 48 inmates. [~~Day rooms shall be designed for no more than 48 inmates.~~] Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; a sufficient number of toilets, lavatories, and showers as approved by the Commission, mirrors, seating, and tables. A utility sink should be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the day room.

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 February 4, 2000.

TRD-200000791
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

37 TAC §259.235

The Texas Commission on Jail Standards proposes an amendment to §259.235 concerning New Lockup Design, Construction and Furnishing Requirements to ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, executive director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to lessen a potential risk factor associated with inmate suicides by requiring phones, if provided within holding cells, to be cordless

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§259.235. Holding Cells.

One or more holding cells shall be provided to hold inmates pending intake, processing, release, or other reason for temporary holding. Holding cells shall contain the following features and equipment.

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

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 February 4, 2000.

TRD-200000792
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

37 TAC §259.236

The Texas Commission on Jail Standards proposes an amendment to §259.236 concerning New Lockup Design, Construction and Furnishing Requirements to ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, executive director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to lessen a potential risk factor associated with inmate suicides by requiring phones, if provided within detoxification cells, to be cordless

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§259.236. Detoxification Cells.

A facility shall provide one or more detoxification cells for detention during the detoxification process. These cells shall include the following features and equipment.

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

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 February 4, 2000.

TRD-200000793
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

Subchapter D. NEW MEDIUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.330

The Texas Commission on Jail Standards proposes an amendment to §259.330 concerning New Medium Security Design, Construction and Furnishing Requirements to clarify existing standards regarding design requirements for day room space.

Jack E. Crump, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.330. Day Rooms.

All single cells, multiple occupancy cells, and dormitories shall be provided with day room space. Separation cells, violent cells, holding cells, and medical cells are exempt from this requirement. Day rooms shall accommodate no more than 48 inmates [~~Day rooms shall be designed for no more than 48 inmates~~]. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; a sufficient number of toilets, lavatories, and showers as approved by the Commission, mirrors, seating, and tables. A utility sink should be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the day room.

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 February 4, 2000.

TRD-200000794
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

Subchapter E. NEW MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.430

The Texas Commission on Jail Standards proposes an amendment to §259.430 concerning New Minimum Security Design, Construction and Furnishing Requirements to clarify existing standards regarding design requirements for day room space.

Jack E. Crump, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.430. Day Rooms.

All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, and medical cells are exempt from this requirement. Day rooms shall accommodate no more than 48 inmates [~~Day rooms shall be designed for no more than 48 inmates~~]. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; a sufficient number of toilets, lavatories, and showers as approved by the Commission, mirrors, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with inmate living areas provided that space requirements for living areas and day rooms are met. Convenient electrical receptacles circuited with ground fault protection shall be provided.

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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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-5505

Subchapter H. NEW LONG-TERM INCARCERATION DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.738

The Texas Commission on Jail Standards proposes an amendment to §259.738 concerning New Long-Term Incarceration Design, Construction and Furnishing Requirements to clarify existing standards regarding design requirements for day room space.

Jack E. Crump, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be clarification of existing standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.738. Day Rooms.

All single cells, multiple occupancy cells, and dormitories shall be provided with day room space. Separation cells, violent cells, holding cells, detoxification cells, and medical cells are exempt from this requirement. Day rooms shall accommodate no more than 48 inmates. [~~Day rooms shall be designed for no more than 48 inmates~~]. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; a sufficient number of toilets, lavatories, and showers as approved by the Commission, mirrors, seating, and tables. Seating and table for at least one inmate may be provided in day rooms serving administrative segregation cells upon Commission approval. A utility sink should be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles shall be individually controlled outside of the day room.

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 February 4, 2000.

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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-5505

37 TAC §259.740

The Texas Commission on Jail Standards proposes an amendment to §259.740 concerning New Long-Term Incarceration Design, Construction and Furnishing Requirements to limit the amount of time an inmate is held in a holding cell to no more than 48 hours and ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to provide minimum standards that ensure inmates are processed, classified, housed and provided a mattress, blanket, and/or hygiene items within 48 hours. Furthermore, requiring cordless phones within holding cells will lessen a potential risk factor associated with inmate suicides. There will be no effect on small businesses. There is no anticipated economic cost

to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.740. Holding Cells.

One or more holding cells shall be provided to hold inmates pending intake, processing, release, or other reason for temporary holding. An appropriate space shall be designated for staging inmates. Inmates shall not be held for more than 48 hours and the cell shall include the following features [~~Holding cells shall contain the following features and equipment~~].

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

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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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-5505

37 TAC §259.741

The Texas Commission on Jail Standards proposes an amendment to §259.741 concerning New Long-Term Incarceration Design, Construction and Furnishing Requirements to ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to lessen a potential risk factor associated with inmate suicides by requiring phones, if provided within detoxification cells, to be cordless There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§259.741. Detoxification Cells.

Any facility that anticipates the housing of intoxicated persons shall provide one or more detoxification cells for detention during the detoxification process. These cells shall include the following features and equipment.

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

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 February 4, 2000.

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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-5505

Chapter 260. COUNTY CORRECTIONAL CENTERS

Subchapter B. CCC DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §260.134

The Texas Commission on Jail Standards proposes an amendment to §260.134 concerning County Correctional Centers Design, Construction and Furnishing Requirements to ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, executive director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to provide minimum standards that ensure inmates are processed, classified, housed and provided a mattress, blanket, and/or hygiene items within 48 hours. Furthermore, requiring cordless phones within holding cells will lessen a potential risk factor associated with inmate suicides.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures

establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

§260.134. Holding Cells.

One or more holding cells should be provided to hold offenders during processing, housing assignment, discharge, or other reason for temporary housing. Holding cells shall contain the following features and equipment.

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

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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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-5505

Chapter 261. EXISTING CONSTRUCTION RULES

Subchapter A. EXISTING MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.138

The Texas Commission on Jail Standards proposes an amendment to §261.138 concerning Existing Maximum Security Design, Construction and Furnishing Requirements to limit the amount of time an inmate is held in a holding cell to no more than 48 hours and ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, executive director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to provide minimum standards that ensure inmates are processed, classified, housed and provided a mattress, blanket, and/or hygiene items within 48 hours. Furthermore, requiring cordless phones within holding cells will lessen a potential risk factor associated with inmate suicides.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

§261.138. Holding Cells.

(a) One or more holding cells should be provided to hold inmates pending booking, court appearance, identification, housing assignment, discharge, or other reason for temporary housing. Inmates shall not be held for more than 48 hours and the cell shall include the following features. [~~Holding cells shall contain the following features and equipment:~~]

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

(b) (No change.)

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

Filed with the Office of the Secretary of State, on February 4, 2000.

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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-5505

37 TAC §261.139

The Texas Commission on Jail Standards proposes an amendment to §261.139 concerning Existing Maximum Security Design, Construction and Furnishing Requirements to ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, executive director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to lessen a potential risk factor associated with inmate suicides by requiring phones, if provided within detoxification cells, to be cordless

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

§261.139. Detoxification Cells.

Any facility that anticipates the housing of intoxicated persons should provide one or more detoxification cells for the detention of persons during the detoxification process. These cells shall include the following features and equipment:

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

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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Jack E. Crump
Executive Director
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For further information, please call: (512) 463-5505

Subchapter B. EXISTING LOCKUP DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.234, §261.235

The Texas Commission on Jail Standards proposes amendments to §261.234 and §261.235 concerning Existing Lockup Design, Construction and Furnishing Requirements to ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, executive director, has determined that for the first five year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the rules as proposed will be to provide minimum standards that ensure inmates are processed, classified, housed and provided a mattress, blanket, and/or hygiene items within 48 hours. Furthermore, requiring cordless phones within holding cells will lessen a potential risk factor associated with inmate suicides.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §351.002 and §351.015.

§261.234. Holding Cells.

One or more holding cells should be provided to hold inmates pending booking, court appearance, identification, housing assignment, discharge, or other reason for temporary housing. Holding cells shall contain the following features and equipment:

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

§261.235. Detoxification Cells.

A facility should provide one or more detoxification cells for the detention of persons during the detoxification process. These cells shall include the following features and equipment:

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

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 February 4, 2000.

TRD-200000802
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

Subchapter C. EXISTING MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.332

The Texas Commission on Jail Standards proposes an amendment to §261.332 concerning Existing Minimum Security Design, Construction and Furnishing Requirements to limit the amount of time an inmate is held in a holding cell to no more than 48 hours and ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, executive director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to provide minimum standards that ensure inmates are processed, classified, housed and provided a mattress, blanket, and/or hygiene items within 48 hours. Furthermore, requiring cordless phones within holding cells will lessen a potential risk factor associated with inmate suicides.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

§261.332. Holding Cells.

Inmates shall not be held for more than 48 hours and the cells, if provided, shall include the following features. [~~Holding cells, if provided, shall contain the following features and equipment:~~]

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

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 February 4, 2000.

TRD-200000803
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

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37 TAC §261.333

The Texas Commission on Jail Standards proposes an amendment to §261.333 concerning Existing Minimum Security Design, Construction and Furnishing Requirements to ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, executive director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to lessen a potential risk factor associated with inmate suicides by requiring phones, if provided within detoxification cells, to be cordless.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

§261.333. Detoxification Cells.

Any facility that anticipates the housing of intoxicated persons should provide one or more detoxification cells for the detention of persons during the detoxification process. These cells shall include the following features and equipment:

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

(6) Phones. If located within the cell, shall be wall mount, detention type cordless phones.

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 February 4, 2000.

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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

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Chapter 271. CLASSIFICATION AND SEPARATION OF INMATES

37 TAC §271.1, §271.7

The Texas Commission on Jail Standards proposes amendments to §271.1 and §271.7 concerning Classification and Separation of Inmates to allow for separate classification plans for Texas Department of Criminal Justice and Federal inmates.

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

Mr. Crump has determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to recognize that facilities holding contracted Texas Department of Criminal Justice and Federal inmates, when housed together and separately from other inmates, need not be classified by Texas Jail Standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by the amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§271.1. Objective Classification Plan.

(a) Each sheriff/operator shall develop and implement an objective classification plan approved by the Commission by January 1, 1997. The plan shall include principles, procedures, instruments and explanations for classification assessments, housing assignments, reassessments and inmate needs. Plans utilizing an approved objective classification system shall be submitted and approved by

the Commission. The following principles and procedures shall be addressed:

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

(7) when housed together and separately from all other inmates, contracted TDCJ-ID inmates may be classified solely by approved TDCJ-ID classification policies and procedures. When housed together and separately from all other inmates, federal inmates need not be classified by objective jail classification requirements as outlined in this chapter. Housing units for federal and contracted TDCJ-ID inmates shall be approved by federal and TDCJ-ID officials, respectively, to ensure that the inmates' custody level does not exceed the construction security level of the assigned housing.

(8) persons assigned to a detoxification cell shall be transferred to a housing or holding area as soon as they can properly care for themselves;

(9) the status of persons confined to a violent cell shall be reassessed and documented at least every 24 hours for continuance of status;

(10) inmates who require protection or those who require separation to protect the safety and security of the facility may be housed in administrative separation. The status of inmates placed in administrative separation shall be reviewed and documented at least every 30 days for continuance of status. Inmates housed in administrative separation shall retain access to services and activities, unless the continuance of the services and activities would adversely affect the safety and security of the facility; and

(11) single cells may be utilized for disciplinary or administrative separation. Inmates in administrative separation shall be provided access to a day room for at least one hour each day. Inmates in disciplinary separation shall be provided a shower every other day.

[~~(7) persons assigned to a detoxification cell shall be transferred to a housing or holding area as soon as they can properly care for themselves;~~]

[~~(8) the status of persons confined to a violent cell shall be reassessed and documented at least every 24 hours for continuance of status;~~]

[~~(9) inmates who require protection or those who require separation to protect the safety and security of the facility may be housed in administrative separation. The status of inmates placed in administrative separation shall be reviewed and documented at least every 30 days for continuance of status. Inmates housed in administrative separation shall retain access to services and activities , unless the continuance of the services and activities would adversely affect the safety and security of the facility; and~~]

[~~(10) single cells may be utilized for disciplinary or administrative separation. Inmates in administrative separation shall be provided access to a day room for at least one hour each day. Inmates in disciplinary separation shall be provided a shower every other day.~~]

(b) The following classification procedures shall be conducted utilizing the approved classification instruments.

(1) (No change.)

(2) Initial Custody Assessment. To be completed on all newly admitted inmates prior to housing assignments to determine custody levels. [~~This shall be accomplished within 72 hours of admission.~~]

(3) (No change.)

(c) (No change.)

§271.7. Audit.

The plan shall provide that an annual, internal audit shall be conducted on the classification system. Audit records shall be maintained for Commission review. The audit shall assess the following features of the objective classification system:

(1) inmates are classified prior to placement in inmate housing [~~within 72 hours~~];

(2)-(4) (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 February 4, 2000.

TRD-200000805
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

Chapter 273. HEALTH SERVICES

37 TAC §273.6, §273.7

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

The Texas Commission on Jail Standards proposes the repeal of §273.6 and §273.7 concerning Health Services. The repeal of §273.6 and §273.7 is deemed necessary to implement changes to standards. This repeal is being proposed simultaneously with the propose new §§273.6 - 273.8 to establish minimum standards regarding the use of restraints under Chapter 273 Health Services.

Jack E. Crump, 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 the repeal of the sections.

Mr. Crump has determined that for each year of the first five years the repeals are in effect the public benefits anticipated as a result of enforcing the repeals will be to ensure minimum standards that address procedures regarding the use of restraints are provided. There will be no effect on small businesses. There is no anticipated economic cost to persons as a result of the repeal of the sections.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by the repeals are Local Government Code, Chapter 351, §351.002 and §351.015.

§273.6. Tuberculosis Screening Plan.

§273.7. Health 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 February 10, 2000.

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Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

37 TAC §§273.6 - 273.8

The Texas Commission on Jail Standards proposes new §§273.6 - 273.8 concerning Health Services to establish minimum standards regarding the use of restraints.

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

Mr. Crump has determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the rules as proposed will be to ensure adequate procedures are provided if the use of restraints is deemed necessary. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The new sections are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by the new sections rule are Local Government Code, Chapter 351, §351.002 and §351.015.

§273.6. Restraints.

Inmates exhibiting behavior indicating that they are a danger to themselves or others shall be managed in such a way as to minimize the threat of injury or harm. If restraints are determined to be necessary, they shall be used in a humane manner, only for the prevention of injury, and not as a punitive measure.

(1) The decision to apply restraints shall be made by supervisory or medical personnel. Appropriate staff should assess the inmate's medical condition.

(2) Restraints should restrict movement of an inmate only to the degree necessary to avoid injurious behavior. Soft or padded restraints should be used when feasible. Inmates shall not be restrained in an unnatural position (e.g., hog-tied, face-down, or spread-eagle).

(3) A documented observation of the inmate shall be conducted every 15 minutes, at a minimum. The observations should include an assessment of the security of the restraints and the circulation to the extremities.

(4) The inmate should receive medical care a minimum of every 2 hours, to include changing position, exercising extremities, offering nourishment and liquids, offering toilet facilities, checking for medication needs, and taking vital signs. These checks shall be documented.

(5) Documentation of use of restraints shall include, but not be limited to the following: the events leading up to the need for restraints, the time the restraints were applied, the justification for their use, observations of the inmate's behavior and condition, the 15-minute checks and the time the restraints were removed.

(6) Restraints shall be removed from an inmate at the earliest possible time that the inmate no longer exhibits behavior necessitating restraint. In no case shall an inmate be kept in restraints longer than 24 hours.

§273.7. Tuberculosis Screening Plan.

(a) Each facility having a capacity of 100 or more inmates, or housing inmates transferred from a facility with a capacity of at least 100 beds or housing inmates from another state, shall develop and implement a plan for tuberculosis screening tests of employees, volunteers, and inmates. Inmates confined in the jail for more than 7 days shall be tested on or before the 7th day after the day of confinement. Inmates may be exempt from the screening test when the test conflicts with the tenets of an organized religion to which the individual belongs or when the test is contraindicated based on an examination by a physician. An inmate is not required to be retested at each rebooking if the inmate is booked into the facility more than once during a 12-month period, unless the inmate shows symptoms of or is known to have been exposed to tuberculosis.

(b) The tuberculosis screening plan shall be developed and implemented in accordance with 25 TAC §§97.171-97.180 (relating to Communicable Diseases) and the Texas Health and Safety Code, §§89.001-89.102 and shall be approved by the Tuberculosis Elimination Division, Texas Department of Health prior to use. The plan shall be made available to the Commission upon request. A copy of an inmate's medical records or documentation of screenings or treatment received during confinement shall accompany an inmate transferred from one correctional facility to another or to TDCJ-ID and be available for medical review upon arrival of the inmate.

§273.8. Health Services.

For the purpose of establishing a continuity of care system for offenders with mental impairments, elderly, physically disabled, terminally ill, or significantly ill, the Texas Council on Offenders with Mental Impairments (TCOMI) and the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and the Texas Commission on Jail Standards (TCJS) agree to the following Memorandum of Understanding.

(1) Authority and Purpose. Senate Bill 252, Acts 1993, 73rd Legislature, Chapter 488, 1, codified as Texas Health and Safety Code, §614.013, authorizes TCOMI and TCLEOSE and the TCJS to establish a written Memorandum of Understanding that identifies methods for:

(A) identifying offenders in the criminal justice system who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill;

(B) developing procedures for the exchange of information relating to offenders who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill by the Council,

TCLEOSE, and the TCJS for use in the continuity of care and services program; and

(C) adopting rules and standards that assist in the development of a continuity of care and services program for offenders who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill.

(2) All entities agree to the extent possible to:

(A) enter into a Memorandum of Understanding fulfilling the statutory requirements and purposes of Health and Safety Code, §614.013, as set forth in this section;

(B) seek a statutory change in current statutes to allow for the exchange of information (including electronic) about offenders with special needs without consent of the individuals involved for the purpose of providing or coordinating services among the entities;

(C) develop a system that provides for timely identification of offenders with special needs who come into contact with law enforcement or jail personnel;

(D) submit a list of contact staff to the TCOMI who are responsible for responding to referrals and/or issues regarding persons with special needs;

(E) distribute relevant training seminar and/or educational information towards improving each agency's knowledge and understanding of the identification and management of offenders with special needs;

(F) develop and implement a standardized release of information form that can facilitate the exchange of client information;

(G) inform the other of any proposed rule or standards changes which could affect the continuity of care system. Each agency shall be afforded 30 days after receipt of proposed change(s) to respond to the recommendations prior to the adoption;

(H) provide ongoing status reports to the Council on the implementation of initiatives outlined in this Memorandum of Understanding; and

(I) provide opportunities for cross-training for each other's staff.

(3) Texas Commission on Mental Impairments shall:

(A) provide technical assistance toward the development of improved medical and psychiatric screening standards;

(B) provide training and technical assistance to state or local law enforcement or jails on enhancing identification and management strategies for offenders with special needs;

(C) develop a statewide directory of contact staff for distribution to state and local law enforcement and jail personnel;

(D) monitor and coordinate the implementation of the activities of this Memorandum of Understanding;

(E) provide reports to the Legislature on the status of implementation of activities; and

(F) participate in any relevant research or studies relevant to offenders with special needs who come into contact with law enforcement or who are incarcerated in county jails.

(4) Texas Commission on Law Enforcement Officer Standards and Education shall:

(A) develop and publish a mental health officer training inservice curriculum to train law enforcement officers and county corrections officers;

(B) establish a Mental Health Officer Certification Program; and

(C) develop and publish an inservice training course for law enforcement officers and county corrections officers that is concerned with individuals with special needs.

(5) Texas Commission on Jail Standards shall:

(A) develop mental health standards which address training needs, identification, communication, housing, supervision and referrals; and

(B) provide technical assistance for local jails on management strategies for offenders with special needs.

(6) Review and Monitoring.

(A) TCOMI, TCLEOSE, and TCJS shall jointly monitor implementation of the continuity of care system as outlined in this Memorandum of Understanding. The intent of all agencies is to provide timely communication, discussion and resolution of transitional problems should any occur.

(B) This Memorandum of Understanding shall be adopted by the Texas Council on Offenders with Mental Impairments, the Texas Commission on Law Enforcement Officer Standards and Education and the Texas Commission on Jail Standards. Subsequent to adoption, all parties to this memorandum shall annually review this memorandum and provide status reports to the Texas Council on Offenders with Mental Impairments. Amendments to this Memorandum of Understanding may be made at any time by mutual agreement to 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 February 4, 2000.

TRD-200000806
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

Chapter 283. DISCIPLINE AND GRIEVANCES

37 TAC §283.1

The Commission on Jail Standards proposes amendment to §283.1 concerning Discipline and Grievances to allow for separate discipline procedures for Texas Department of Criminal Justice and Federal inmates.

Jack E. Crump, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to recognize that facilities holding contracted Texas Department

of Criminal Justice and Federal inmates, when housed together and separately from other inmates, need not be disciplined by Texas Jail Standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§283.1. Inmate Discipline Plan.

Each sheriff/operator shall develop and implement a written disciplinary plan, approved by the Commission, governing inmate conduct. The plan shall provide for the firm, fair, and consistent application of rules and regulations. Facilities housing contracted TDCJ-ID inmates may adhere to TDCJ-ID disciplinary policies and procedures for these inmates, when they are housed together, and separately from all other inmates. Facilities housing federal inmates may adhere to federal disciplinary policies and procedures for these inmates, when they are housed together, and separately from all other inmates. For purposes of inmate discipline, violations of institutional rules and regulations shall be divided into Minor Infractions and Major Infractions.

(1)-(4) (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 February 4, 2000.

TRD-200000807
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 463-5505

Chapter 291. SERVICES AND ACTIVITIES

37 TAC §291.1

The Texas Commission on Jail Standards proposes amendment to §291.1 concerning Services and Activities to ensure that if provided, phones will be detention type and cordless.

Jack E. Crump, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to lessen a potential risk factor associated with inmate suicides by requiring phones, if provided, to be cordless. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§291.1. Inmate Telephone Plan.

Each facility shall have and implement a written plan, approved by the Commission [~~commission~~], governing the availability and use of inmate telephones.

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

(3) Phones located within holding and detoxification cells shall be wall mount, detention type cordless phones.

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 February 4, 2000.

TRD-200000808
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 463-5505

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. TEXAS DEPARTMENT OF HUMAN SERVICES

Chapter 15. MEDICAID ELIGIBILITY

The Texas Department of Human Services (DHS) proposes amendments to §15.435, concerning liquid resources, §15.605, concerning medical effective date, and §15.610, concerning Medicaid coverage, in its Medicaid Eligibility chapter. The purpose of the amendments is to simplify the medical effective date policy for clients in institutional settings, clarify that parents of a deceased child of any age can file for benefits on his behalf, and address the treatment of funds in the "Texas Tomorrow" program as a resource.

The medical effective date is currently the first day on which all eligibility criteria are met. The proposed medical effective date for an individual filing a Medicaid application in the month of facility entry would be the first day of that month if all eligibility criteria are met during that month.

The current rule language on parental rights to apply for Medicaid benefits for a deceased child caused confusion because it seems to limit the right to file only to parents of minor children.

The amendment will ensure that parents of a deceased child of any age can file for Medicaid benefits on his behalf.

The "Texas Tomorrow" program allows parent/grandparents to purchase a prepaid college education for a child/grandchild. If the funds can be withdrawn from the program, they are a countable resource to the purchaser. If the right to withdraw funds has been irrevocably waived, the funds are not countable and there is no transfer of assets.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Bost 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 that policy will be applied correctly and consistently statewide. There will be no effect on large, small, or micro businesses as a result of enforcing or administering the sections because it applies only to the client's financial eligibility for Medicaid benefits, not to the operation of business. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Questions about the content of this proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-132, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Subchapter D. RESOURCES

40 TAC §15.435

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001 - 22.030 and §§32.001 - 32.042.

§15.435. Liquid Resources.

(a)-(t) (No change.)

(u) "Texas Tomorrow" funds which can be withdrawn with approval of the Texas Prepaid Higher Education Tuition Board are a countable resource to the purchaser. If the purchaser irrevocably waives any right to revoke the contract and receive a refund of monies invested, the funds are no longer a countable resource. Irrevocably waiving the right to withdraw "Texas Tomorrow" funds is not a transfer of assets.

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 February 4, 2000.

TRD-200000810

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: March 19, 2000

For further information, please call: (512) 438-3108

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Subchapter G. APPLICATION FOR MEDICAID

40 TAC §15.605, §15.610

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001 - 22.030 and §§32.001 - 32.042.

§15.605. Medical Effective Date.

The effective date for medical assistance is

(1) (No change.)

(2) the first day of the month of nursing facility, intermediate care facility for the mentally retarded (ICF/MR) facility, or state school entry if the applicant filed a Medicaid application during that month and met all eligibility criteria.

(3) [~~(2)~~] the earliest date in the month of application on which the applicant met all eligibility criteria;

(4) [~~(3)~~] the date on which the applicant subsequently met all eligibility criteria, if not eligible in the month of application; or

(5) [~~(4)~~] the day after the effective date of denial (under Type Program 13), for individuals transferred from SSI assistance to MAO (excluding qualified Medicare beneficiaries).

§15.610. Medicaid Coverage.

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

(d) SSI-MAO eligibility requirements.

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

(4) Prior coverage for deceased individuals.

(A)-(B) (No change.)

(C) If a bona fide agent was not appointed during the individual's lifetime, then only the individual's spouse, children, sibling or half-sibling, parent[~~(in the case of a minor child)~~], or court-appointed estate representative may file for benefits on behalf of the deceased individual.

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 February 4, 2000.

TRD-200000811

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: March 19, 2000

For further information, please call: (512) 438-3108

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Chapter 79. LEGAL SERVICES

Subchapter T. ADMINISTRATIVE FRAUD DISQUALIFICATION HEARINGS

40 TAC §79.1906

The Texas Department of Human Services (DHS) proposes an amendment to §79.1906 to eliminate duplicative advance notice of hearing, in its Legal Services chapter. The purpose of the amendment is to delete the requirement of "certified mail, return-receipt requested" for simplification and as a cost savings for DHS. It will retain the requirement of notice by first-class mail.

Eric M. Bost, commissioner, has determined that for the first five- year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the sections will be in effect is an estimated reduction in cost of $6,072 in fiscal year (FY) 2000; $18,215 in FY 2001; $18,215 in FY 2002; $18,215 in FY 2003; and $18,215 in FY 2004. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Mr. Bost 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 a cost savings for DHS and, therefore, more efficient use of state resources. There will be no effect on large, small, or micro businesses, because the change is internal to DHS. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Barbara Stegall at (512) 438-4878 in DHS's Hearings Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-131, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §§22.001 - 22.030 and §§31.001 - 31.0325.

§79.1906. Advance Notice of Hearing.

(a) The hearing officer sends the household member an advance notice of the hearing in sufficient time to allow receipt at least 30 calendar days before the scheduled hearing date. The notice is sent first class [~~and certified mail, return-receipt requested,~~] and marked "return service requested" to the address where the household member last received benefits. Delivery is not restricted to the addressee. The notice specifies the charges against the household member and a summary of the evidence (including how and where it may be examined). If the notice is returned showing a new address, it will be resent and the normal due process rules will be reapplied.

(b) Advance notice requirements are met when the notice is mailed to the most current mailing address available to any division within the department whether or not the [~~certified or~~] first class mail is returned. The hearing will be conducted.

(1)-(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 February 4, 2000.

TRD-200000778
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 438-3108

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Chapter 97. HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Texas Department of Human Services (DHS) proposes the repeal of §97.13, concerning change of ownership or services; proposes amendments to §97.1, concerning purpose; §97.2, concerning definitions; §97.3, concerning licensing fees; §97.11, concerning application and issuance of initial license; §97.12, concerning issuance and renewal of license; §97.14, concerning application and issuance of a branch office license; §97.15, concerning application and issuance of an alternate delivery site license; §97.16, concerning time periods for processing and issuing a license; §97.21, concerning licensure requirements and standards for agencies providing licensed home health, licensed and certified home health, or hospice services; §97.51, concerning survey procedures; and §97.52, concerning enforcement action; and proposes new §97.13, concerning change of ownership or services, in its Home and Community Support Services Agencies chapter. The purpose of the repeal, amendments, and new section is to implement recent legislation from the 76th Legislative Session, which amended Health and Safety Code, Chapter 142, relating to licensing and regulation of home and community support services agencies (HCSSA).

In addition, the sections concerning license application processes have been amended and the sections on change of ownership/services have been rewritten to address licensure problems that have been identified by DHS. The timelines for applying for a license have been changed to expedite the application process. The definition of change of ownership has been amended. The application procedures for change of ownership include new time periods for applying for a license and include a late fee for not complying with the time periods. The time periods for notifying DHS of specific service changes have been changed to reflect more realistic expectations. Also, a process for informal reconsideration of proposed enforcement actions has been added to the enforcement section in compliance with Government Code, §2001.054.

House Bill (HB) 2914, 76th Legislature, requires agencies to provide a written statement describing the agencies policy for drug testing of employees who have direct contact with clients to certain individuals. Senate Bill (SB) 94, 76th Legislature,

requires DHS to adopt minimum standards for acceptable quality of care; adds the concept of a controlling person and adds a definition for controlling person; amends the requirements for disposal of special or medical waste; adds requirements regarding the reporting of abuse, neglect, and exploitation; and adds requirements prohibiting retaliation. HB 2037 establishes a late renewal fee for licenses that have been expired for 90 days or less. Senate Bill 1260 requires additional language relating to advance directives policy. The policy must include a clear and precise statement of any procedure the agency is unwilling to provide or withhold. This statement must be shared with clients. Failure to comply will result in an administrative penalty.

In addition, DHS has made technical changes to the sections which facilitate the transfer from the Texas Department of Health to DHS.

Eric M. Bost, commissioner, 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 sections.

Mr. Bost 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 stronger HCSSA rules, particularly the sections which require agencies to provide a written statement describing the agency's policy for drug testing of employees who have direct contact with clients to certain individuals; require agencies to dispose of special or medical waste generated in the home in the same manner as they do at the agency; require agencies to report abuse, exploitation, and neglect; prohibits retaliation against a person for filing a complaint or presenting a grievance; and require agencies to inform residents of policies regarding advance directives and establishes a $500 administrative penalty for failure to do so. Also the sections on application procedures and change of ownership have been strengthened to expedite the application process for licensing of HCSSAs. There will be some effect on large, small, or micro businesses, because HCSSAs will be required to dispose of special or medical waste generated in a client's home in the same manner as they do at the agency, as required by statute. Cost will vary depending on the current method of disposal and on the number of clients served. The rules establish a renewal fee for licenses that have been expired for 90 days or less. The fee is one and one-half times the normal renewal license fee. If an agency renews its license 90 days or less after the expiration date of the license, the agency will incur the higher fee. The rules relating to change of ownership include a $250 late fee for applications submitted postmarked 29 days or less prior to the date of the change of ownership and prior to the expiration date, unless there is a valid emergency. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Linda Kotek at (512) 438-3158 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-100, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Subchapter A. GENERAL PROVISIONS

40 TAC §§97.1 - 97.3

The amendments are proposed under the Health and Safety Code, Chapter 142, which provides the department with the authority to adopt rules for the licensing and regulation of home and community support services agencies.

The amendments implement the Health and Safety Code, Chapter 142.001 - 142.030.

§97.1. Purpose.

(a) (No change.)

(b) These sections provide minimum standards for acceptable quality of care, which include the following components:

(1) client independence and self-determination;

(2) humane treatment;

(3) continuity of care;

(4) coordination of services;

(5) professionalism of service providers;

(6) quality of life; and

(7) client satisfaction with services. [~~home and community support services which may include licensed home health services, licensed and certified home health services, home dialysis designation, hospice services or personal assistance services, procedures for granting, denying, suspending, and revoking a license, requirements for permitting home health medication aides, approving home health medication aide programs, home health aide training programs, and criminal history checks.~~]

(c) (No change.)

§97.2. Definitions.

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

(1)-(21) (No change.)

(22) Controlling person - A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.

(A) A controlling person includes:

(i) a management company, landlord, or other business entity that operates or contracts with others for the operation of an agency;

(ii) any person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency;

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender,

secured creditor, or landlord, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(23) [~~(22)~~] Counselor–An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(24) [~~(23)~~] Department–The Texas Department of Human Services (DHS) [~~Health~~].

(25) [~~(24)~~] Dialysis treatment record–For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(26) [~~(25)~~] Dietitian–A person who is currently licensed under the laws of this state to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(27) [~~(26)~~] Director–The director of the Home and Community Support Services Agencies [~~Health Facility Licensing Division~~] of the Texas Department of Human Services [~~Health~~] or his or her designee.

(28) [~~(27)~~] End stage renal disease (ESRD)–For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(29) [~~(28)~~] Freestanding hospice–An agency that provides hospice services to clients of the agency who are residing at the agency's physical location including inpatient and respite care.

(30) [~~(29)~~] Functional need–Needs of the individual which require services without regard to diagnosis or label.

(31) [~~(30)~~] Health assessment–A determination of a client's physical and mental status through inventory of systems.

(32) [~~(31)~~] Home and community support services agency–A person who provides home health, hospice, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(33) [~~(32)~~] Home health medication aide–A person permitted under the Health and Safety Code, Chapter 142, Subchapter B.

(34) [~~(33)~~] Home health service–The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(35) [~~(34)~~] Hospice–A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(36) [~~(35)~~] Hospice services–Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a residence, nursing facility, residential unit, independent living environment, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client.

(37) [~~(36)~~] Independent living environment–A client's individual residence, which may include a group home or foster home, or other settings where a client participates in activities, including school, work, or church.

(38) [~~(37)~~] Individual/family choice and control–Individuals and families who express preferences and make choices about how their support service needs are met.

(39) [~~(38)~~] Inpatient unit–A facility that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with the conditions of participation for inpatient units adopted under Social Security Act, Title XVIII (42 United States Code §1395 et seq.) and standards adopted under this chapter.

(40) [~~(39)~~] Interdisciplinary team–

(A) for home dialysis designation, the physician, the registered nurse, the dietitian, and the qualified social worker responsible for planning the care delivered to the home staff-assisted dialysis patient; or

(B) a group of individuals who work together in a coordinated manner to provide hospice services and must include a physician, registered nurse, social worker, and counselor.

(41) [~~(40)~~] Licensed vocational nurse–A person who is currently licensed under Texas Civil Statutes, Article 4528c, as a licensed vocational nurse.

(42) [~~(41)~~] Long-term program–For home dialysis designation, the written documentation of the selection of a suitable treatment modality and dialysis setting which has been selected by the client and the interdisciplinary team.

(43) [~~(42)~~] Manager–A person having a contractual relationship to provide management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered to be contracts for management services shall include contracts solely for maintenance, laundry, or food services.

(44) [~~(43)~~] Medication administration record–A record used to document the administration of a client's medications.

(45) [~~(44)~~] Medication list–A list of a client's medications that includes the recommended dosage and the frequency and method of administration. The medication list is used to identify possible ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contraindications. The medication list does not include a medication profile.

(46) [~~(45)~~] Notarized copy–A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(47) [~~(46)~~] Nursing facility–An institution licensed as a nursing home under the Health and Safety Code, Chapter 242.

(48) [~~(47)~~] Nutritional counseling–Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include, but is not limited to, the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help him or her understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(49) [~~(48)~~] Occupational therapist–A person who is currently licensed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, as an occupational therapist.

(50) [~~(49)~~] Owner–One of the following persons which will hold or does hold a license issued under the statute in the person's name or the person's assumed name:

(A) a corporation;

(B) a limited liability company;

(C) an individual;

(D) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(E) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(F) all co-owners under any other business arrangement.

(51) [~~(50)~~] Palliative care–Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness.

(52) [~~(51)~~] Parent agency–The agency that develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

(53) [~~(52)~~] Parent company–A person, other than an individual, who has a direct 100% ownership interest in the owner of an agency.

(54) [~~(53)~~] Person–An individual, corporation, or association.

(55) [~~(54)~~] Personal assistance services–Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Board of Nurse Examiners through a memorandum of understanding with DHS [~~the department~~] in accordance with Health and Safety Code, §167 142.016, and health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or physician.

(56) [~~(55)~~] Physical therapist–A person who is currently licensed under Texas Civil Statutes, Article 4512e, as a physical therapist.

(57) [~~(56)~~] Physician–A person who is currently licensed under the laws of a state within the United States and in which the person practices medicine and who holds a doctor of medicine or doctor of osteopathy degree.

(58) [~~(57)~~] Physician assistant–A person who is licensed under the Physician Assistant Licensing Act, Texas Civil Statutes, Article 4495-1, as a physician assistant.

(59) [~~(58)~~] Physician delegated tasks–Tasks performed in accordance with the Medical Practice Act, Texas Civil Statutes, Article 4495d, §3.06, including orders signed by a physician which specify the delegated task(s), the individual to whom the task(s) is delegated, and the client's name.

(60) [~~(59)~~] Place of business–An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. The term does not include an administrative support site.

(61) [~~(60)~~] Plan of care–The written orders of a practitioner for a client who requires skilled services.

(62) [~~(61)~~] Practitioner–A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is a registered nurse registered with the Board of Nurse Examiners for the State of Texas as an advanced practice nurse.

(63) [~~(62)~~] Presurvey conference–A conference held with department staff and the applicant or his or her representatives to review licensure standards and survey documents and provide consultation prior to the on-site licensure survey.

(64) [~~(63)~~] Progress note–A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(65) [~~(64)~~] Psychoactive treatment–The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideations or tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of the plan of care.

(66) [~~(65)~~] Registered nurse (RN)–A person who is currently licensed under the Nursing Practice Act, Texas Civil Statutes, Article 4513 et seq. as a registered nurse.

(67) [~~(66)~~] Registered nurse delegation–Delegation by a registered nurse in accordance with 22 TAC §§218.1-218.11 (Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel).

(68) [~~(67)~~] Residence–A place where a person resides and includes a home, a nursing facility, a convalescent home, an independent living environment, or a residential unit. A residence includes a group or a foster home.

(69) [~~(68)~~] Residential unit–A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Texas Special Care Facility Licensing Act, Health and Safety Code, Chapter 248.

(70) [~~(69)~~] Respiratory therapist–A person who is currently licensed under Texas Civil Statutes, Article 4512l, as a respiratory care practitioner.

(71) [~~(70)~~] Respite services–Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect. Respite services may be provided under home health, hospice, or personal assistance services depending on the needs of the client.

(72) [~~(71)~~] Sections–Chapter 97 of this title (Home and Community Support Services Agency).

(73) [~~(72)~~] Service area–The geographic area(s) established by an agency in which all or some of the agency's services are available.

(74) [~~(73)~~] Skilled services–Services in accordance with a plan of care that require the skills of a:

(A) registered nurse;

(B) licensed vocational nurse;

(C) physical, occupational, or respiratory therapist;

(D) speech-language pathologist;

(E) audiologist;

(F) social worker; or

(G) dietitian.

(75) [~~(74)~~] Social worker–A person who is currently licensed as a social worker under Human Resource Code, Chapter 50.

(76) [~~(75)~~] Speech-language pathologist–A person who is currently licensed under the Texas Civil Statutes, Article 4512j, as a speech-language pathologist.

(77) [~~(76)~~] Statute–The Health and Safety Code, Chapter 142.

(78) [~~(77)~~] Supervising nurse–The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §97.21(b)(3)(C) of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services). This person may also be known as the director of nursing or similar title.

(79) [~~(78)~~] Supervision–Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(80) [~~(79)~~] Support services–Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(81) [~~(80)~~] Survey–An inspection or investigation conducted by a representative of the department to determine if a licensee is in compliance with the statute and this chapter. A survey may be conducted onsite, by mail, by telephone or by electronic communication methods.

(82) [~~(81)~~] Terminal illness–An illness for which there is a limited prognosis if the illness runs its usual course.

(83) [~~(82)~~] Unlicensed person–An individual who is not licensed as a health care professional. The term includes, but is not limited to, home health aides, medication aides permitted by the department, and other individuals providing personal care or assistance in health services.

(84) [~~(83)~~] Volunteer–An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses. A volunteer must [~~shall~~] meet the same requirements and standards in this chapter as apply to an employee of the agency doing the same activities unless the volunteer is exempt under this chapter from certain requirements or standards.

§97.3. Licensing Fees.

(a) The schedule of fees for licensure of an agency authorized to provide one or more services is as follows:

(1) initial (includes change of ownership) license fee–$875;

(2) (No change.)

(3) initial (includes change of ownership) branch office license fee–$875;

(4) (No change.)

(5) initial (includes change of ownership) alternate delivery site license fee–$500; and

(6) (No change.)

(b) If an applicant for an initial license, based on a change of ownership, makes late application for a license to the Texas Department of Human Services (DHS) in accordance with §97.13(b)(2)(C)(iii) of this title (relating to Change of Ownership and Services), the applicant shall submit the appropriate initial license fee as set out in subsection (a) of this section plus an additional late fee of $250.

(c) [~~(b)~~] DHS [~~The Texas Department of Health~~] will not consider an application as officially submitted until the applicant pays the licensing fee. The fee must accompany the application form.

(d) [~~(c)~~] Fees paid to DHS [~~the department~~] are not refundable, except as provided by §97.16 of this title (relating to Time Periods for Processing and Issuing a License).

(e) [~~(d)~~] Any remittance submitted to DHS [~~the department~~] in payment of a required fee must be in the form of a certified check,

money order, or personal check made out to the Texas Department of Human Services [~~Health~~].

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 February 7, 2000.

TRD-200000934
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3108

Subchapter B. APPLICATION AND ISSUANCE OF A LICENSE

40 TAC §§97.11 - 97.16

The new section and amendments are proposed under the Health and Safety Code, Chapter 142, which authorizes the department to adopt rules for the licensing and regulation of home and community support services agencies.

The new section and amendments implement the Health and Safety Code, Chapter 142.001 - 142.030.

§97.11. Application and Issuance of Initial License.

(a) All first-time applications for a license are applications for an initial license. An application for a license when there is a change of ownership is considered to be a first-time application for an initial license.

(b) Upon written request, the Texas Department of Human Services (DHS) [~~Health (department)~~] will furnish a person with an application packet for an agency license.

(c) If the applicant is an individual, the applicant must [~~shall~~] be at least 18 years of age.

(d) The applicant must [~~shall~~] retain a copy of all documentation that is submitted to DHS [~~the department~~].

(e)-(f) (No change.)

(g) The applicant must [~~shall~~] apply for a license in accordance with this subsection.

(1) (No change.)

(2) All applications for a license must be made on forms prescribed by and available from DHS.

(A) The application must be completed in accordance with DHS instructions, and it must contain original signatures and be notarized.

(B) The address provided on the application must be the address from which the agency will be operating and providing services.

(C) The address for the agency's place of business to be licensed must be located in the State of Texas.

[~~(2) The applicant for a license shall submit the information listed in subparagraphs (A)-(T) of this paragraph to the department within six months from the date the department mails the application packet to the applicant. If the department does not receive the information listed in subparagraphs (A)-(T) of this paragraph within six months from the mailing date, the applicant must request a new application packet. The following documents must be submitted with the original application form and shall be originals or notarized copies:~~]

[~~(A) an accurate and complete application form which contains original signatures. The address provided on the application must be the address from which the agency will be operating and providing services. The address for its place of business to be licensed by the department must be located in the State of Texas;~~]

(3) The following items must accompany the application form and must be originals or notarized copies:

(A) [~~(B)~~] a description of the agency's service area. The service area must [~~shall~~] be established in accordance with

(i) §97.21(a)(7) [~~§97.21(a)(6)~~] of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services) for agencies providing licensed home health, licensed and certified home health, or hospice services; or

(ii) §97.26(b) of this title (relating to Standards for Personal Assistance Services) for agencies with the category of personal assistance services;

(B) [~~(C)~~] a nonrefundable license fee;

(C) [~~(D)~~] the name of the applicant and identifying information relating to the owner(s), administrator, and chief financial officer (if applicable) on a form provided by the department to enable DHS [~~the department~~] to conduct criminal background checks;

(D) the name of any controlling person and documentation relating to any controlling person, if requested by DHS and relevant to the controlling person's compliance with any applicable licensing standard;

(E)-(J) (No change.)

(K) for a parent agency:

(i)-(ii) (No change.)

(iii) its organizational structure, a list of management personnel (including names and titles), and a job description of each administrative and supervisory position. The job description must contain at a minimum the job title, qualifications including required education and training, and job responsibilities; [~~.~~]

(iv) [~~The applicant must submit~~] a plan to provide annual continuing education and training for management personnel;

(v) [~~(iv)~~] the resume or curriculum vitae of the agency administrator. The resume or curriculum vitae must [~~shall~~] reflect that the administrator has the qualifications described in:

(I) §97.21(b)(3)(B) of this title for agencies providing licensed home health, licensed and certified home health, or hospice services; or

(II) §97.26(g) of this title for agencies providing personal assistance services; and

(vi) [~~(v)~~] the resume or curriculum vitae of the agency supervising nurse (if applicable). The resume or curriculum vitae must [~~shall~~] reflect that the supervising nurse has the qualifications described in §97.21(b)(3)(C) of this title;

(L)-(S) (No change.)

(T) notice that the agency has attended a presurvey conference at the office designated by DHS [~~the department~~], or that the designated survey office has waived the presurvey conference. [~~The application is not considered complete and correct unless the department has received this notice.~~]

(i) (No change.)

(ii) The administrator and supervising nurse (if applicable) must [~~shall~~] attend the presurvey conference.

(iii) The designated survey office must [~~shall~~] verify compliance with the applicable provisions of this chapter and recommend that the agency be issued an initial license or that the application be denied pursuant to §97.52 of this title (relating to Enforcement Action); and [~~.~~]

(U) information relating to compliance by the applicant or a controlling person with respect to the applicant with regulatory requirements in any other state in which the applicant or controlling person operates or operated a home and community support services agency.

(V) any other document or information that DHS requests that is relevant to the application process.

(4) [~~(3)~~] Upon DHS's [~~the department's~~] receipt of the application form, the required information described in paragraph (3) [~~(2)~~] of this subsection, and the fee from an applicant, DHS will [~~the department shall~~] review the material to determine whether it is complete and correct.

(A) DHS will review the materials [~~The time periods for reviewing the material shall be~~] in accordance with time periods established in §97.16 of this title (relating to Time Periods for Processing and Issuing a License).

(B) If an agency receives a notice from DHS [~~the department~~] that some or all of the information required under paragraphs (2) and (3) [~~paragraph (2)~~] of this subsection is deficient, the agency must [~~shall~~] submit the required information no later than 30 calendar days [~~six months~~] from the date of the notice.

(i) An agency which fails to submit the required information within 30 calendar days [~~six months~~] from the notice date is considered to have withdrawn its application for an initial agency license. The license fee will not be refunded.

(ii) An agency which has withdrawn its application must reapply for a license in accordance with this section, if it wishes to continue the application process. A new license fee is required.

(C) Information received by the department relating to the competence and financial resources of the applicant is confidential and may not be disclosed to the public.

(5) [~~(4)~~] Once DHS [~~the department~~] has determined that the application form, the information described in paragraph (3) [~~(2)~~] of this subsection required to accompany the application form, and the license fee are complete and correct, and that the applicant meets the requirements for the license, DHS will [~~the department shall~~] issue the initial license. The initial license is valid for one year from the date of issuance. [~~shall expire~~]:

[~~(A) on the last day of the preceding month of the next year if issued on the first day of a month; or~~]

[~~(B) on the last day of the month of issuance of the next year if issued on the second or any subsequent day of a month.~~]

(6) [~~(5)~~] DHS will [~~The department shall~~] mail the initial license certificate to the licensee. The license certificate will designate the category(ies) of service the agency is authorized to provide at or from the designated place of business.

(h) (No change.)

(i) The agency must [~~shall~~] admit at least one client and initiate services during the initial license period.

(1) Upon admitting the first client, the agency must [~~shall~~] inform the designated survey office of the admission and the name of the client and request that an initial survey be conducted.

(2) The agency is not required to admit a client(s) under each category authorized under the license in order to be surveyed by DHS [~~the department~~].

(j) A DHS [~~department~~] surveyor will [~~shall~~] conduct an onsite survey of the agency after the issuance of the initial license.

(1) Upon receiving an agency request for an initial survey, the designated survey office will [~~shall~~] schedule the survey of the agency and will [~~shall~~] inform the agency of the survey date and time.

(2) An initial survey will [~~shall~~] not be required if the agency has received notification of accreditation from [~~by~~] the Community Health Accreditation Program or the Joint Commission on Accreditation for Healthcare Organizations since the issuance of the initial license.

(3) (No change.)

(4) At the time of the initial survey, the agency must [~~shall~~]:

(A)-(B) (No change.)

(5) DHS [~~The department~~] will not renew the license unless the designated survey office has conducted an initial survey of the agency.

(6) By applying for or holding a license, an agency consents to entry and survey by DHS [~~the department~~] or a representative of DHS [~~the department~~] to verify compliance with the statute or this chapter. The agency must [~~shall~~] provide a DHS [~~department~~] representative entry to the agency and access to documents in accordance with §97.51(a) of this title (relating to Survey Procedures).

(k) A person who has requested the category of licensed and certified home health services on the initial license application must [~~shall~~] also make application for certification by the United States Department of Health and Human Services (USDHHS) as a Medicare certified agency under the Social Security Act, Title XVIII.

(1) Pending approval by the USDHHS Health Care Financing Administration (HCFA), the person:

(A) (No change.)

(B) must [~~shall~~] comply with the Medicare conditions of participation for home health agencies in 42 Code of Federal Regulations, Part 484, as if the person were duly certified.

(2) Upon becoming certified by HCFA to participate in the Medicare program during the initial licensing period, DHS will [~~the department shall~~] send notice to the agency that the category of licensed and certified home health services has been added to the license. The agency must [~~shall~~] submit a written request for deletion or retention of the licensed home health services category.

(3) If HCFA denies certification to the person or if the person withdraws application for participation in the Medicare

program, the person will retain the category of licensed home health services. An agency's retention of the licensed home health services category does not preclude DHS [the department] from taking enforcement action, as appropriate, under §97.52 of this title (relating to Enforcement Action).

(l) Continuing compliance with the minimum standards and the provisions of this chapter for the services authorized to be provided under the license is required during the initial licensing period in order for a first renewal license to be issued.

(1) An agency authorized under the license to provide licensed home health, licensed and certified home health, or hospice services must [shall] comply with §97.21 of this title.

(2) An agency authorized under the license to provide licensed home health services must [shall] comply with §97.22 of this title (relating to Standards for Licensed Home Health Services).

(3) An agency authorized under the license to provide licensed and certified home health services must [shall] comply with §97.23 of this title (relating to Standards for Licensed and Certified Home Health Services).

(4) An agency authorized under the license to provide home dialysis must [shall] comply with §97.24 of this title (relating to Standards for Home Dialysis Designation).

(5) An agency authorized under the license to provide hospice services must [shall] comply with §97.25 of this title (relating to Standards for Hospice Services).

(6) An agency which holds a license with the category of personal assistance services must [shall] comply with §97.26 of this title (relating to Standards for Personal Assistance Services).

(m) If DHS [the department] determines that compliance with the minimum standards and the provisions of this chapter is not substantiated after the issuance of the initial license, the department may propose to revoke the initial license and deny the first renewal license and must [shall] notify the applicant of a license revocation and denial as provided in §97.52 of this title (relating to Enforcement Action).

(n) If an applicant decides not to continue the application process for an initial license, the application may be withdrawn. If a license has been issued, the applicant must [shall] cease providing services and return the license to the department with its written request to withdraw. DHS will [The department shall] acknowledge receipt of the request to withdraw. The license fee will not be refunded.

(o) (No change.)

§97.12. Issuance and Renewal of License.

(a) Eligibility for license renewal.

(1) An agency must [shall] renew a license annually. The Texas Department of Human Services (DHS) will [Health (department) shall] issue a renewal license to an agency which meets the minimum standards for a license.

(2) The renewal license is valid for one year [shall expire 12 months] from the date of issuance. For each annual license period, the agency must [shall] provide services to one or more clients and document the provision of services. The agency must show proof that services have been provided under the license within the previous 12 months. Such documentation must [shall] be available for review by a DHS [department] surveyor.

(3)-(5) (No change.)

(6) An agency license will not be renewed with the category of licensed and certified home health services if the agency withdraws from or is terminated (voluntarily or involuntarily) from participation in the Medicare program. However, if continued compliance with the requirements for licensed home health services is demonstrated, the license will [shall] be renewed with the category of licensed home health services.

(7)-(9) (No change.)

(b) Renewal application.

(1) DHS [The department] will send notice of expiration to an agency at least 60 calendar days before the expiration date of the license. If the agency has not received notice of expiration from DHS [the department] 45 calendar days prior to the expiration date, it is the duty of the agency to notify DHS [the department] and request a renewal application for a license.

(2) The agency must [shall] submit to DHS [the department] postmarked at least 30 days prior to the expiration date of the license:

(A) a complete and correct application renewal form which includes updated information as required by §97.11(g)(3)(C)-(J)) [§97.11(g)(2)(D)-(J)], §97.11(g)(3)(K)(iii)-(vi) [§97.11(g)(2)(K)(iii)-(v)], and §97.11(g)(3)(R) and (S) [§97.11(g)(2)(R) and (S)] of this title;

(B) a description of the agency's service area. The service area must [shall] be established in accordance with §97.21(a)(7) of this title (relating to Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services) for agencies providing licensed home health, licensed and certified home health, or hospice services; or §97.26(b) of this title (relating to Standards for Personal Assistance Services) for agencies with the category of personal assistance services;

(C)-(E) (No change.)

(F) if certified by or contracting with another state agency to deliver services for which a license is required under this chapter, documentation from the certifying state agency(ies) confirming the certification or contract; [and]

(G) if an applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification that the tax owed to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171; and [.]

(H) information relating to compliance by the license holder or a controlling person with respect to the license holder with regulatory requirements in any other state in which the license holder or controlling person operates or operated a home and community support services agency.

(I) any other document or information that DHS requests that is relevant to the application process.

(3) All documents submitted with the renewal application must [shall] be notarized copies or originals. The time periods for processing an application must [shall] be in accordance with §97.16 of this title (relating to Time Periods for Processing and Issuing a License).

(c) Timely application required. [An agency which fails to make timely and sufficient application for renewal of its license shall

~~not provide home health, hospice, or personal assistance services after the expiration date of the license.~~] If an agency fails to make timely and sufficient application for renewal of a license at least 30 days prior to the expiration date of the license, the agency must cease operation upon expiration of the license. [~~In order to resume operations, the agency must apply for an initial license in accordance with §97.11 of this title.~~]

(1) An agency whose license has been expired for 90 days or less may renew the license by paying the DHS renewal fee that is 1 and 1/2 times the normally required renewal fee established in §97.3 of this title (relating to Licensing Fees).

(2) An agency whose license has been expired for more than 90 days must apply for an initial license in accordance with §97.11 of this title (relating to Application and Issuance of Initial License.

(d) Active military duty exception. If a licensee fails to timely renew his or her license on or after August 1, 1990, 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 pursuant to this subsection.

(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 must [~~shall~~] include a current address and telephone number for the individual requesting the renewal.

(2) (No change.)

(3) A copy of the official orders or other official military documentation showing that the licensee is or was on active military duty serving outside the State of Texas must [~~shall~~] be filed with DHS [~~the department~~] along with the renewal form.

(4) A copy of the power of attorney from the licensee must [~~shall~~] be filed with DHS [~~the department~~] along with the renewal form if the individual having the power of attorney executes any of the documents required in this section.

(5) A licensee renewing under this subsection must [~~shall~~] pay the applicable renewal fee.

(6)-(7) (No change.)

(e) Withdrawal of application. If an agency decides not to continue the application process for the renewal of a license, the application may be withdrawn. If a license has been issued, the applicant must [~~shall~~] return the license to the department with its written request to withdraw and cease providing services. DHS will [~~The department shall~~] acknowledge receipt of the request to withdraw.

§97.13. Change of Ownership or Services.

(a) Change of ownership.

(1) A license may not be transferred.

(2) A change of ownership occurs when there is:

(A) a change of 50% or more in the ownership of the business organization or sole proprietorship that is licensed to operate the agency; or

(B) a change in the federal tax payer identification number.

(3) A change of ownership for a parent agency is a change of ownership for the parent agency's branch office(s) or alternate delivery site(s) and requires the submittal of a new initial application(s) and fee(s) for the branch office(s) or alternate delivery site(s).

(4) A change of ownership does not include when the licensee is a business entity who is simply amending its official documents to revise its name.

(b) Agency procedures for change of ownership.

(1) An application for a change of ownership must be requested at least 60 calendar days prior to the effective date of the change of ownership.

(2) To avoid a gap in the license period, the prospective new owner must submit to the Texas Department of Human Services (DHS) a complete application for a license, along with the appropriate license fee at least 30 days before the anticipated date of sale or other transfer of ownership and prior to expiration date of the license.

(A) The application must be completed, as applicable, in accordance with §97.11 of this title (relating to Application and Issuance of Initial License), §97.14 of this title (relating to Application and Issuance of a Branch Office License) or §97.15 of this title (relating to Application and Issuance of an Alternate Delivery Site License). In addition, the application packet must include:

(i) the effective date of the change of ownership;

(ii) a notarized affidavit signed by the previous owner acknowledging agreement with the change of ownership;

(iii) if the applicant is a corporation, a copy of the applicant's articles of incorporation; and

(iv) if the applicant is a business entity other than a corporation, a copy of the sales agreement.

(B) The applicant must meet all requirements for a license.

(C) If the applicant has submitted a timely and sufficient application packet and license fee for a license and otherwise meets all requirements for a license, DHS will issue the applicant a license effective on the date of the transfer of ownership. DHS considers an applicant to have filed a timely and sufficient application for a license if the applicant submits:

(i) a complete application packet and license fee to DHS, and the application packet and license fee are received by DHS postmarked at least 30 calendar days before the anticipated date of sale or other transfer of ownership and prior to the expiration date of the license;

(ii) an incomplete application packet and license fee to DHS with a letter explaining the circumstances which prevented the inclusion of the missing information, and the application packet, license fee, and letter are received by DHS postmarked at least 30 calendar days before the anticipated date of sale or other transfer of ownership and prior to the expiration date of the license, and the explanation is found to be acceptable to DHS. The missing information must be submitted to DHS within 30 calendar days from the date of the letter;

(iii) a complete application packet and license fee to DHS, and the application packet and license fee are received by DHS postmarked 29 calendar days or less before the anticipated date of sale or other transfer of ownership and prior to the expiration date of the license, and the applicant pays a late fee as set out in §97.3(b) of this title (relating to Licensing Fees); or

(iv) a complete application packet and license fee to DHS, and the application packet and license fee are received by DHS by the date of sale or other transfer of ownership and prior to the expiration date of the license, and the applicant proves to DHS's satisfaction that the health and safety of the agency's clients required an emergency change of ownership.

(3) If an application and license fee are timely filed, but DHS determines that the application is incomplete and a letter explaining the circumstances which prevented the inclusion of the missing information was not filed with the application, the application is considered to be timely filed but insufficient.

(A) DHS will provide the applicant with written notification of the missing information required to complete the application and may assess a late fee as set out in §97.3(b) of this title (relating to Licensing Fees) for failure to comply with paragraph (2) of this section.

(B) The applicant must submit the required information and late fee, if assessed, no later than 30 calendar days from the date of the notice.

(i) An applicant which fails to submit the required information within 30 calendar days from the notice date is considered to have withdrawn the application for an initial agency license. The license fee will not be refunded.

(ii) An applicant which has withdrawn the application must reapply for a license in accordance with this section, if wishing to continue the application process. A new license fee is required.

(4) Failure to comply with the application procedures set out in this section may result in an enforcement action(s) under §97.52 of this title (relating to Enforcement Action).

(5) The initial license issued to the new owner is valid for one year from the date of issuance.

(6) The previous owner's license is void on the effective date of the new initial license and must be surrendered to DHS.

(7) DHS may deny issuance of a license for any of the reasons specified in §97.52(a) of this title (relating to Enforcement Action).

(8) DHS may waive the on-site survey required by §97.11(i) of this title (relating to Application and Issuance of Initial License).

(c) Federal law or regulations.The requirements of this section are in addition to any applicable federal law or regulation relating to change of ownership or control.

(d) Notification procedures for agency name change.

(1) If an agency changes the agency's name (legal entity or doing business as), but does not undergo a change of ownership as defined in subsection (a)(2) of this section, the agency must provide:

(A) written notification to DHS within five business days prior the effective date of change;

(B) a copy of a certificate of amendment from the Secretary of State's office or other governmental authority(ies), e.g., an assumed name certificate, reflecting the name change to DHS within 30 days of receipt of the certificate; and

(C) a copy of the agency's current federal tax payer identification number.

(2) On receipt and verification of the certificate of amendment and the current federal tax payor identification number, DHS will provide the agency with a notification of change in the agency's new name.

(e) Service change/agency closure procedures.

(1) An agency must provide written notification to DHS within five calendar days of the agency's receipt of notice of change in state or federal certification or accreditation status. The licensee must include a copy of the notice of change with its written notice to DHS.

(2) An agency must notify DHS in writing within five calendar days prior to the cessation of operation of the agency, branch office, or alternate delivery site.

(A) The agency must include in the written notice the reason for closure, the location of the client records, and the name and address of the client record custodian.

(B) If the agency closes with an active client roster, the agency must transfer a copy of the active client record with the client to the receiving agency in order to assure continuity of care and services to the client.

(C) The agency must mail or return the initial license or renewal license to DHS at the end of the day services were terminated.

(D) Continuing to operate after the closure date specified in the notice may result in enforcement action.

(f) Procedures for adding or deleting a category to the license.To add or delete a category to the license, the agency must provide written notification to DHS at least 30 calendar days prior to the addition or deletion of the category.

(1) DHS will approve or disapprove the addition of a category.

(A) At the discretion of DHS, an agency must attend a presurvey conference at the designated survey office prior to DHS approving the addition of a category.

(B) If disapproved, DHS will inform the agency of the reason for disapproval.

(2) At the discretion of DHS, an on-site survey may be conducted following the approval of a category.

(3) DHS's receipt of an agency request to delete a category from the license does not preclude DHS from taking enforcement action as appropriate in accordance with §97.52 of this title (relating to Enforcement Action).

§97.14. Application and Issuance of a Branch Office License.

(a) The Texas Department of Human Services (DHS) [~~Health (department)~~] may issue a branch office license to a person who holds a current agency license to provide home health or personal assistance services. A person who holds a current agency license is eligible to apply for a branch office license:

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

(b) Upon written request, DHS will [~~the department shall~~] furnish a license holder with an application for a branch office license.

(c) The parent agency applicant must [~~shall~~] submit to DHS [~~the department~~]:

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

(d) The applicant must [~~shall~~] retain a copy of all documentation that is submitted to DHS [~~the department~~].

(e) DHS will [~~The department shall~~] review the application and accompanying material to determine whether it is complete and correct.

(1) The time frames for review will [~~shall~~] be in accordance with §97.16 of this title (relating to Time Periods for Processing and Issuing a License).

(2) An agency which fails to respond to the department's notice of an incomplete application for a branch office license described in §97.16(b) of this title within 30 calendar days [~~six months~~] from the date of the notice is considered to have withdrawn the application for a branch office license. The branch office license fee will not be refunded.

(3) (No change.)

(f) DHS will [~~The department shall~~] notify the designated survey office of the agency's request to establish a branch office.

(g) The designated survey office will conduct a review of the applicant's request to establish a branch office. The survey office will recommend to approve or disapprove the branch office request. At the discretion of DHS [~~the department~~], the designated survey office may conduct an onsite survey of the branch office prior to recommending approval or disapproval of the branch office request.

(h) DHS [~~The department~~] may propose denial of the application according to §97.52 of this title (relating to Enforcement Action) after consideration of the designated survey office's recommendation.

(i) Upon approval of the branch office license application, DHS [~~the department~~] will issue the branch office a license, which will [~~shall~~] expire on the same expiration date as the parent agency's license and will [~~shall~~] be renewed with the parent agency's license.

(j) At the discretion of DHS [~~the department~~], an onsite survey of the branch office may be conducted after issuance of the license to determine compliance with the statute and this chapter.

(k) DHS [~~The department~~] will mail the branch office license to the licensee. The branch office license must [~~shall~~] be posted in a conspicuous place on the licensed branch office premises.

(l) The branch office must [~~shall~~] comply with §97.27 of this title (relating to Standards for Branch Offices and the standards relating to the category(ies) authorized under the license.

§97.15. Application and Issuance of an Alternate Delivery Site License.

(a) The Texas Department of Human Services (DHS) [~~department~~] may issue an alternate delivery site license to a person who holds a current agency license to provide hospice services. A person who holds a current agency license to provide hospice services is eligible to apply for an alternate delivery site license:

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

(b) Upon written request, DHS will [~~the department shall~~] furnish a hospice license holder with an application for an alternate delivery site license.

(c) The hospice must [~~shall~~] submit to DHS [~~the department~~]:

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

(d) The hospice must [~~shall~~] retain a copy of all documentation that is submitted to DHS [~~the department~~].

(e) DHS will [~~The department shall~~] review the application and accompanying material to determine whether it is complete and correct.

(1) The time frames for review will [~~shall~~] be in accordance with §97.16 of this title (relating to Time Periods for Processing and Issuing a License).

(2) An agency which fails to respond to DHS's [~~the department's~~] notice of an incomplete application for an alternate delivery site license described in §97.16(b) of this title within 30 calendar days [~~six months~~] from the date of the notice is considered to have withdrawn the application for an alternate delivery site license. The alternate delivery site license fee will not be refunded.

(3) (No change.)

(f) DHS will [~~The department shall~~] notify the designated survey office of the hospice's request to establish an alternate delivery site.

(g) The designated survey office will [~~shall~~] conduct a review of the hospice's request to establish an alternate delivery site. The survey office will recommend to approve or disapprove the alternate delivery site request. At the discretion of DHS [~~the department~~], the designated survey office may conduct an onsite survey of the alternate delivery site prior to recommending approval or disapproval of the alternate delivery site request.

(h) DHS [~~The department~~] may propose denial of the application according to §97.52 of this title after consideration of the designated survey office's recommendation.

(i) Upon approval of the alternate delivery site application, the department will issue the alternate delivery site a license, which will [~~shall~~] expire on the same expiration date as the hospice's license, and will [~~shall~~] be renewed with the hospice's license. The alternate delivery site license must [~~shall~~] be posted in a conspicuous place on the licensed alternate delivery site premises.

(j) The alternate delivery site must [~~shall~~] comply with §97.25 of this title (relating to Standards for Hospice Services) and §97.28 of this title. The designated survey office will conduct an on-site survey after a license has been issued to verify compliance with §97.25 of this title (relating to Standards for Hospice Services) and §97.28 of this title (relating to Standards for Alternate Delivery Sites).

(k) If the designated survey office recommends that the licensed alternate delivery site seek a license as a hospice, a written report supporting the recommendation must [~~shall~~] be submitted to DHS [~~the department~~] for review.

§97.16. Time Periods for Processing and Issuing a License.

(a) General.

(1) The date a license application is received is the date the application reaches the Home and Community Support Services Agency Division [~~Health Facility Licensing Division (division)~~], Texas Department of Human Services (DHS) [~~Health (department)~~].

(2) An application for an initial license is complete when DHS [~~the department~~] has received, reviewed, and found acceptable the information described in §97.11 of this title (relating to Application and Issuance of Initial License).

(3) An application for a renewal license is complete when DHS [~~the department~~] has received, reviewed and found acceptable the information described in §97.12 of this title (relating to Issuance and Renewal of License).

(4) An application for a change of ownership license is complete when DHS [~~the department~~] has received, reviewed, and found acceptable the information described in §97.13 of this title (relating to Change of Ownership or Services).

(b) Time periods. An application from an agency for an initial license, renewal license, or change of ownership license will [~~shall~~] be processed in accordance with the following time periods.

(1) The first time period begins on the date the division receives the application and ends on the date the license is issued, or if the application is received incomplete, the period ends on the date the facility is issued a written notice that the application is incomplete. The written notice must [~~shall~~] describe the specific information that is required before the application is considered complete. The first time period is 45 days.

(2) (No change.)

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods stated in subsection (b) of this section, the applicant has the right to request that DHS [~~the department~~] reimburse in full the fee paid in that particular application process. If DHS [~~the department~~] does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) (No change.)

(d) Appeal. If the request for reimbursement as authorized by subsection (c) of this section is denied, the applicant may then appeal to the commissioner of DHS [~~health~~] for a resolution of the dispute. The applicant must [~~shall~~] give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. DHS will [~~The department shall~~] submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will make the final decision and provide written notification of the decision to the applicant and the director.

[~~(e) Hearings. If a hearing is proposed during the processing of the application, the time periods in §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearing) are applicable.~~]

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 February 7, 2000.

TRD-200000936
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 438-3108

40 TAC §97.13

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

The repeal is proposed under the Health and Safety Code, Chapter 142, which authorizes the department to adopt rules for the licensing and regulation of home and community support services agencies.

The repeal implements the Health and Safety Code, Chapter 142.001 - 142.030.

§97.13. Change of Ownership or 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 February 7, 2000.

TRD-200000935
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 438-3108

Subchapter C. SERVICE STANDARDS

40 TAC §97.21

The amendment is proposed under the Health and Safety Code, Chapter 142, which authorizes the department to adopt rules for the licensing and regulation of home and community support services agencies.

The amendment implements the Health and Safety Code, Chapter 142.001 - 142.030.

§97.21. Licensure Requirements and Standards for Agencies Providing Licensed Home Health, Licensed and Certified Home Health, or Hospice Services.

(a) Conditions of license. An agency licensed to provide licensed home health, licensed and certified home health, or hospice services must [~~shall~~] comply with the requirements in this section.

(1) A license must [~~shall~~] be displayed in a conspicuous place in the designated place of business.

(2) A license may not be transferred from one location to another without prior approval from the Texas Department of Human Services (DHS) [~~Health (department)~~]. If an agency is considering relocation, the agency must [~~shall~~] notify the department 30 calendar days prior to the intended relocation. DHS [~~The department~~] will provide written notification to the agency amending the annual license to reflect the new location.

(3) The relocation of a branch office or alternate delivery site to a different parent agency requires [~~shall require~~] submission of a new application for the branch office or alternate delivery site and compliance [~~shall comply~~] with §97.14 of this title (relating to Application and Issuance of a Branch Office License) and §97.15 of this title (relating to Application and Issuance of an Alternate Delivery Site License) as appropriate.

(4) An agency must [~~shall~~] notify DHS [~~the department~~] in writing of any change in its telephone number within 30 calendar days after the change.

(5) An agency must [~~shall~~] notify DHS [~~the department~~] in writing of any change in the agency administrator or chief financial officer within 15 calendar days after the change.

(6) A license may [~~shall~~] not be materially altered.

(7) An agency must [~~shall~~] provide services only within its service area.

(A) The agency must [~~shall~~] maintain adequate staff to provide services and to supervise the provision of services within the service area.

(B) An agency may expand its service area at any time during the licensure period. To expand its service area, an agency must submit to DHS [~~the department~~] a written notice for the expansion which includes revised boundaries of the agency's original service area, the effective date of the expansion, and an updated list of management and supervisory personnel (including names), if changes are made. The notice must be submitted either before or within 30 calendar days after the effective date of the expansion.

(C) An agency may reduce its service area at any time during the licensure period by sending DHS [~~the department~~] written notification of the reduction, revised boundaries of the agency's original service area, and the effective date of the reduction.

(D) A branch office or alternate delivery site must [~~shall~~] be located within the parent agency's service area.

(8) (No change.)

(b) Agency responsibilities.

(1) General.

(A) An agency must [~~shall~~] adopt, implement, and enforce the provisions of the Human Resources Code, Chapter 102 (Rights of the Elderly).

(B) An agency must [~~shall~~] investigate complaints made by a client or the client's family or guardian or the client's health care provider regarding treatment or care that is (or fails to be) furnished or regarding the lack of respect for the client's property by anyone furnishing services on behalf of the agency and must document the receipt of the complaint and the disposition of the complaint. The investigation and documentation must be completed within 30 calendar days after the agency receives the complaint, unless the agency has and documents reasonable cause for a delay.

(C) An agency that generates special or medical waste while providing home health services must dispose of the waste according to [~~shall meet~~] the requirements [~~set forth by the department~~] in 25 TAC §§1.131-1.137 [~~of this title~~] (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities). [~~This requirement does not apply to disposition of special waste in a client's place of residence, but would apply to any special waste disposed of from an agency's office location.~~] An agency must provide both verbal and written instructions to the agency's clients regarding the proper procedure for disposing of sharps. For purposes of this subparagraph, sharps include hypodermic needles, hypodermic syringes with attached needles, scalpel blades, razor blades, disposable razors, disposable scissors used in medical procedures, and intravenous stylets and rigid introducers.

(D) An agency that provides laboratory services must [~~shall~~] meet the Clinical Laboratory Improvement Amendments of 1988, 42 United States Code, §263a, Certification of Laboratories (CLIA 1988). CLIA 1988 applies to all agencies with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(E) An agency must [~~shall~~] comply with the Nursing Practice Act, Texas Civil Statutes, Articles 4525a and 4525b, concerning professional nurse reporting and peer review.

(F) An agency must [~~shall~~] comply with 22 TAC §§240.11-240.13, concerning licensed vocational nurse peer review and reporting.

(G) (No change.)

(H) An agency must provide a written statement describing the agency's policy for the drug testing of employees who have direct contact with clients to the following persons:

(i) each person applying for services from the agency; and

(ii) any person requesting the information.

(2) Reports of abuse, exploitation and neglect.

(A) In this paragraph, "abuse," "exploitation," and "neglect" have the meanings assigned by §48.002, Human Resources Code.

(B) An agency that has cause to believe that a client has been abused, exploited or neglected by an employee of the agency must report the information to:

(i) DHS at 1-800-228-1570; and

(ii) the Texas Department of Protective and Regulatory Services at 1-800-252-5400.

(3) Retaliation prohibited.

(A) An agency may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to home health, hospice or personal assistance services provided by the agency.

(B) An agency is not prohibited from terminating an employee for a reason other than retaliation.

(4) [~~(2)~~] Provision of services.

(A) An agency must [~~shall~~] conduct an ongoing, comprehensive, integrated, self-assessment of the quality and appropriateness of care provided, including services provided under arrangement. The findings are to be used by the agency to correct identified problems and to revise policies, if necessary. The agency staff responsible for the quality assurance program must [~~shall~~]:

(i) ensure that all service providers involved in the care of a client (e.g., contracted health care professional or another agency) are engaged in an effective interchange, reporting, and coordination of care regarding the client. The agency must [~~shall~~] document the steps taken to meet this standard;

(ii) implement and report on activities and mechanisms for monitoring the quality of care;

(iii) identify and, when possible, resolve problems; and

(iv) make suggestions for improving care.

(B) If an agency utilizes independent contractors, there must [~~shall~~] be a written agreement between such independent contractors (i.e., per hour, per visit) and the agency. The agreement must [~~shall~~] be enforced by the agency and clearly designate:

(i) that clients are accepted for care only by the licensed agency;

(ii) the services to be provided;

(iii) the necessity to conform to all applicable agency policies, including personnel qualifications;

(iv) the plan of care or care plan to be carried out;

(v) the manner in which services will be coordinated and evaluated by the licensed agency in accordance with subparagraph (A) of this paragraph;

(vi) the procedures for submitting information and documentation regarding the client's needs and services, including clinical and progress notes, if required; the scheduling of visits; and periodic client evaluation or supervision; and

(vii) the procedures for determining charges and reimbursement.

(C) Services provided by an agency under arrangement with another agency or organization shall be subject to a written agreement conforming with the requirements specified in subparagraph (B) of this paragraph.

(D) The agency must [~~shall~~] provide for back-up services when an employee or contractor is not able to deliver the services.

(E) A person who is not licensed to provide hospice services may not use the word "hospice" in a title or description of a facility, organization, program, service provider or services or use any other words, letters, abbreviations, or insignia indicating or implying that the person holds a license to provide hospice services.

(F) The agency must [~~shall~~] have a written contingency plan which is implemented in the event of dissolution to assure continuity of client care. The plan must be consistent with subparagraph (I) of this paragraph and include provisions for notifying the client of the agency's dissolution and for documenting the notification, and procedures for carrying out the notification.

(G) The agency and the client or his family must [~~shall~~] have a written agreement for services. The agency must [~~shall~~] obtain an acknowledgment of receipt of the agreement. The agency must [~~shall~~] comply with the terms of the agreement. The agreement must [~~shall~~] include, but may not be limited to, the following:

(i) notification of the Human Resources Code, Chapter 102 (Rights of the Elderly);

(ii) documentation concerning notification to the client of the availability of durable power of attorney for health care, advance directive or do-not-resuscitate (DNR) [~~DNR~~] orders in accordance with the applicable law;

(iii) services to be provided;

(iv) supervision by the agency of services provided; and

(v) agency charges for services rendered if the charges will be paid in full or in part by the client or the client's family, or on request.

(H) An agency must [~~shall~~] maintain a current list of clients which includes the services being delivered by the agency and establish a record for each client which is maintained in accordance with and contains the information described in paragraph (6)(I) [~~(4)(I)~~] of this subsection.

(I) Except in an emergency [~~situation~~], an agency intending to transfer or discharge a client must [~~shall~~] notify the client or the client's parent, family, spouse, significant other, or legal representative; and the client's attending physician not later than five days before the date on which the client will be transferred or discharged.

(J) An agency may transfer or discharge a client without five days notice:

(i) upon the client's request;

(ii) if the client's medical needs require transfer (e.g., a medical emergency);

(iii) in the event of a natural disaster where if not transferred, the client's health and safety is at risk;

(iv) for the protection of staff or a client after the agency has made a documented reasonable effort to notify the client, the client's family and physician, and appropriate state or local authorities of the agency's concerns for staff or client safety, and in accordance with agency policy;

(v) according to physician orders; or

(vi) if the client fails to pay for services, except as prohibited by federal law.

(5) [~~(3)~~] Staffing.

(A) A personnel record must [~~shall~~] be maintained on each employee and volunteer. All information must [~~shall~~] be kept current. A personnel record must [~~shall~~] include, but not be limited to, the following:

(i) job description. In lieu of the job description and qualifications for employment, the personnel record may include a statement signed by the employee that the employee has read the job description and qualifications for the position accepted;

(ii) qualifications;

(iii) application for employment or volunteer agreement;

(iv) verification of license, permits, reference(s), job experience, and educational requirements as appropriate; and

(v) performance evaluations and disciplinary actions.

(B) The agency must [~~shall~~] appoint an administrator who shall administratively supervise the provision of all services.

(i) The administrator must [~~shall~~]:

(I) be a physician, registered nurse, social worker, or nursing home administrator;

(II) have a baccalaureate or postgraduate degree in administration in a health or human services field and at least one year of full-time administrative experience as the administrator of an agency or licensed health care facility; or

(III) have training and experience in health service administration and at least one year of full-time supervisory or administrative experience in home health care, hospice, or related health programs.

(ii) The administrator must [~~shall~~] not have been employed in the last one year as an administrator with another agency at the time the agency was cited with violations of the statute or this chapter which resulted in enforcement action taken against the agency. For purposes of this clause only, the term "enforcement action" means license revocation, suspension, emergency suspension, or denial of a

license or injunction action but does not include administrative or civil penalties. If DHS [~~the department~~] prevails in one enforcement action (e.g., injunctive action) against the agency but also proceeds with another enforcement action (e.g., revocation) based on some or all of the same violations, but DHS [~~the department~~] does not prevail in the second action (e.g., the agency prevails), the prohibition in this clause does not apply.

(iii) The administrator must [~~shall~~] not have been convicted of a felony or misdemeanor listed in §97.52(a)(2)(B) of this title (relating to Enforcement Action).

(iv) The administrator must [~~shall~~] be able to read, write and comprehend English.

(v) The administrator must [~~shall~~]:

(I) organize and direct the agency's ongoing functions;

(II) assure documentation of services provided is accurate and timely;

(III) employ qualified personnel and ensure adequate staff education and evaluations;

(IV) ensure the accuracy of public information materials and activities;

(V) implement an effective budgeting and accounting system; and

(VI) authorize in writing an assistant administrator or other individual to act in his or her absence. The administrator, assistant administrator, or other designee shall be available during the agency's usual working hours. The administrator's designee shall be able to read, write, and comprehend English and have at least six months of full-time supervisory or administrative experience in home health, hospice, or related health programs.

(C) An agency with a license to provide licensed home health, licensed and certified home health, or hospice services must [~~shall~~] appoint a supervising nurse. The supervising nurse must [~~shall~~] designate an alternate to serve as supervising nurse in his or her absence, provided the alternate meets the qualifications of this subparagraph. The supervising nurse may also be the administrator of the agency if the supervising nurse meets the qualifications of an administrator described in subparagraph (B) of this paragraph. The supervising nurse or designee must [~~shall~~]:

(i) be a registered nurse;

(ii) have at least one year experience in nursing obtained within the last 24 months;

(iii) be available at all times during operating hours;

(iv) be able to read, write, and comprehend English;

(v) participate in activities relevant to professional services furnished including the development of qualifications and assignment of agency personnel;

(vi) assure a client's plan of care is executed as written;

(vii) assure a reassessment of a client's needs is performed by the appropriate health care professional:

(I) when there is a significant health status change in the client's condition;

(II) at the physician's request; or

(III) after hospitalization; and

(viii) if the agency holds the home dialysis designation, have the qualifications described in §97.24(r)(1)(A) of this title (relating to Standards for Home Dialysis Designation).

(D) An agency which only provides physical, occupational, speech, or respiratory therapy; medical social services; or nutritional counseling is not required to comply with subparagraph (C) of this paragraph. Supervision of these services shall be provided by the applicable licensed professional (e.g., a physical therapist supervising physical therapy services).

(6) [~~(4)~~] Client record. An agency must [~~shall~~] establish and maintain a client record system to assure that the care and services provided to each client is completely and accurately documented, readily available, and systematically organized to facilitate the compilation and retrieval of information.

(A) For each client an agency may keep a single file or separate files for each category provided to the client and the client's family.

(B) The agency must [~~shall~~] have written procedures which are adopted, implemented, and enforced regarding the removal of records and the release of information. An agency may [~~shall~~] not release any portion of a client record to anyone other than the client except as allowed by law.

(C) All information regarding the client's care and services must [~~shall~~] be centralized in the client's record and be protected against loss or damage.

(D) The agency must [~~shall~~] establish an area for active client record storage at the agency's place of business. The active client record must [~~shall~~] be stored at the place of business (e.g., parent agency location, branch office, or alternate delivery site) from which services are actually provided. Active client records may [~~shall~~] not be stored at an administrative support site or records storage facility.

(E) The agency must [~~shall~~] ensure that each client's record is treated with confidentiality, safeguarded against loss and unofficial use, and is maintained according to professional standards of practice.

(F) The clinical record must [~~shall~~] be an original, a microfilmed copy, an optical disc imaging system, or a certified copy. An original record includes manually signed paper records or electronically signed computer records. Computerized records must [~~shall~~] meet all requirements of paper records including protection from unofficial use and retention for the period specified in subparagraph (J) of this paragraph. Systems must [~~shall~~] assure that entries regarding the delivery of care or services may not be altered without evidence and explanation of such alteration.

(G) Each entry to the client record must [~~shall~~] be accurate, signed, and dated with the date of entry by the individual making the entry. Correction fluid or tape must [~~shall~~] not be used in the record. Corrections must [~~shall~~] be made by striking through the error with a single line and must [~~shall~~] include the date the correction was made and the initials of the person making the correction.

(H) Inactive client records may be preserved on microfilm, optical disc or other electronic means and may be stored at the parent agency location, branch office, alternate delivery site, administrative support site, or records storage facility. Security must [~~shall~~] be maintained and the record must be readily retrievable by the agency.

(I) Each client record must [~~shall~~] include:

(i) appropriate identifying information;

(ii) name of the client's practitioner;

(iii) initial assessment;

(iv) care plan or plan of care. The plan of care must [~~shall~~] include, as applicable, medication, dietary, treatment, and activities orders;

(v) clinical and progress notes, if applicable. Such notes are to be written the day service is rendered and incorporated into the client record on a timely basis;

(vi) medication list and medication administration record, if applicable;

(vii) records of supervisory visits;

(viii) documentation to show that effective interchange, reporting, and coordination of care occurs as described by the agency policy required in subsection (c)(23) of this section;

(ix) acknowledgment of the client's receipt of a copy of the Human Resources Code, Chapter 102, Rights of the Elderly;

(x) acknowledgment of the client's receipt of the agency's policy relating to the reporting of abuse, neglect or exploitation of a client;

(xi) client agreement to and acknowledgment of services by home health medication aides, if home health medication aides are used; and

(xii) discharge summary, including the reason for discharge or transfer and the agency's documented notice to the client, the client's physician, and other individuals as required in paragraph (4)(I) [~~(2)(I)~~] of this subsection.

(J) An agency must [~~shall~~] retain original client records for a minimum of five years after the discharge of the client. The agency may not destroy client records that relate to any matter that is involved in litigation if the agency knows the litigation has not been finally resolved.

(K) If an agency closes, there must [~~shall~~] be an arrangement for the preservation of inactive records to insure compliance with this subsection. The agency must [~~shall~~] send DHS [~~the department~~] written notification of the reason for closure, the location of the client records and the name and address of the client record custodian. If an agency closes with an active client roster, a copy of the active client record must [~~shall~~] be transferred with the client to the receiving agency in order to assure continuity of care and services to the client.

(7) [~~(5)~~] Financial solvency. An agency must [~~shall~~] have the financial ability to carry out its functions.

(A) An agency may [~~shall~~] not intentionally or knowingly pay employees with checks from accounts with insufficient funds.

(B) An agency must [~~shall~~] have sufficient funds to meet its payroll.

(C) The agency must [~~shall~~] make available to the department upon request financial records relating to its ability to carry out its functions. If there is a question relating to the accuracy of the records or financial ability, the department or its designee may conduct a more extensive review of the records. Any financial review by DHS will [~~the department shall~~] be conducted by an individual who has the financial qualifications to review such records.

(D) An agency must [~~shall~~] maintain business records in their original state. Each entry must [~~shall~~] be accurate and dated with the date of entry. Correction fluid or tape may [~~shall~~] not be used in the record. Corrections must [~~shall~~] be made in accordance with standard accounting practices.

(8) [~~(6)~~] Administration of medication. Administration of medication must be ordered by the client's practitioner. A current medication list and medication administration records may be incorporated into one document. Notation must [~~will~~] be made in clinical notes of medications not given and the reason. Any untoward action must [~~will~~] be reported to a supervisor and documented in the client record.

(c) Policies required. An agency must [~~shall~~] develop, adopt, implement, and enforce a written policy(ies):

(1)-(4) (No change.)

(5) for publicly known natural disaster preparedness for clients receiving services. The written policy must [~~shall~~] include a plan for the reasonable mechanism for triaging clients, the notification of appropriate personnel and clients in the event of a disaster if possible, the identification of appropriate community resources, and the identification of possible evacuation procedures. The plan need not require that the agency actually evacuate, transport, or triage the clients;

(6)-(7) (No change.)

(8) on pronouncement of death if that function is carried out by an agency registered nurse. The policy must [~~shall~~] be in compliance with the Health and Safety Code, §671.001;

(9)-(18) (No change.)

(19) to ensure a quality assurance program which provides for accountability and desired client outcomes. The policy must [~~shall~~] meet the minimum requirements in subsection (b)(4)(A) [~~(b)(2)(A)~~] of this section;

(20)-(21) (No change.)

(22) addressing compliance with out-of-hospital do-not-resuscitate orders and advance directives. The policy must [~~shall~~]:

(A) be in compliance with the Advance Directives Act, Health and Safety Code, Chapter 166. In accordance with Health and Safety Code, §142.0145, DHS will assess an administrative penalty of $500 against an agency that violates Health and Safety Code, §166.004, relating to requirements for the provision of a written statement relating to advance directives. DHS will provide notice of administrative penalty and opportunity for a hearing in accordance with §97.52(b)(5) of this title (relating to Enforcement Action); [~~be consistent with the Health and Safety Code, Chapter 674, concerning out-of-hospital do-not-resuscitate; the Natural Death Act, Health and Safety Code, Chapter 672; and Civil Practice and Remedies Code, Chapter 135, concerning durable power of attorney for health care;~~] and

(B) address the provision of information regarding advance directives to its clients and assure its clients are allowed, but not required, to formulate such directives to the extent permitted by law;

(23)-(33) (No change.)

(34) relating to the supervision of branch offices or alternate delivery sites, if established. This policy must [~~shall~~] be consistent with:

(A) for a branch office, §97.14 of this title (relating to Application and Issuance of a Branch Office License) and §97.27 of this title (relating to Standards for Branch Offices); or

(B) (No change.)

(35) relating to the agency's procedures for investigating complaints. Such procedures must [~~shall~~] require the agency to initiate a complaint investigation within ten days of the agency's receipt of the complaint and to document all components of the investigation;

(36)-(38) (No change.)

(d) Medicare certification optional.

(1) An agency which makes application for participation in the Medicare program must [~~shall~~] comply with the regulations in the Medicare Conditions of Participation for Home Health Agencies, 42 Code of Federal Regulations, Part 484, pending approval of certification granted by the Health Care Financing Administration (HCFA).

(2) Upon DHS's [~~the department's~~] receipt of written approval from HCFA, DHS [~~the department~~] will amend the licensing status of the agency to include the licensed and certified home health services category.

(e) Psychoactive services. An agency that provides skilled nursing psychoactive treatments must [~~shall~~] comply with the requirements of this subsection.

(1) Skilled nursing psychoactive treatments must [~~shall~~] be under the direction of a physician. Psychoactive treatments may only be provided by a physician or a registered nurse.

(2) A registered nurse providing skilled nursing psychoactive treatments must [~~shall~~] have one of the following qualifications:

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

(3) An agency must [~~shall~~] have written documentation that a registered nurse providing skilled nursing psychoactive treatments is qualified under paragraph (2) of this subsection.

(4) The initial assessment of a client receiving skilled nursing psychoactive treatments must [~~shall~~] include:

(A)-(E) (No change.)

(f) Home intravenous therapy. An agency furnishing intravenous therapy directly or under arrangement must [~~shall~~] comply with the following standards of care.

(1) A physician's order must [~~shall~~] be written specifically for intravenous therapy.

(2) Intravenous therapy must [~~shall~~] be provided by a licensed nurse.

(3) To insure that prescribed care is administered safely, the licensed nurse must [~~shall~~] have the knowledge and documented competency to interpret and implement the written order.

(4) Responsibilities of the licensed nurse must [~~shall~~] be clearly delineated in written policies and procedures.

(5) A registered nurse must [~~shall~~] be available 24 hours per day.

(6) The client and caregiver must [~~shall~~] be assessed for the ability to safely administer the prescribed intravenous therapy as per agency written criteria.

(7) (No change.)

(8) Actions must [~~shall~~] be implemented prior to and during all intravenous therapy to minimize the risk of anaphylaxis or other adverse reactions as stated in the agency's written policy.

(9) An ongoing assessment of client and caregiver compliance in performing therapy related procedures must [~~shall~~] be done at periodic intervals.

(10) Written policies and procedures regarding the agency's provision of intravenous therapy must [~~shall~~] include, but are not limited to, addressing initiation, medication administration, monitoring, and discontinuation.

(11) Care coordination must [~~shall~~] be provided in order to assure continuity of care.

(12) The client and caregiver must [~~shall~~] be provided with 24-hour access to appropriate health care professionals employed by or contracted with the agency.

(g) Possession of sterile water or saline, certain vaccines or tuberculin, and certain dangerous drugs.

(1) (No change.)

(2) Possession of certain vaccines or tuberculin.

(A) (No change.)

(B) An agency that purchases, stores, or transports a vaccine or tuberculin under this section must [~~shall~~] ensure that any standing order for the vaccine or tuberculin:

(i)-(v) (No change.)

(3) Possession of certain dangerous drugs.

(A)-(C) (No change.)

(D) If an agency or the agency's authorized employee administers a drug listed in subparagraph (A) of this paragraph pursuant to a physician's oral order, the agency shall ensure the physician promptly sends a signed copy of the order to the agency, and the agency must [~~shall~~]:

(i)-(ii) (No change.)

(E) A pharmacist that dispenses a sealed portable container under this subsection must [~~will~~] ensure that the container:

(i)-(iii) (No change.)

(F) If an agency or the agency's authorized employee purchases, stores, or transports a sealed portable container under this subsection, the agency must [~~shall~~] deliver the container to the dispensing pharmacy for verification of drug quality, quantity, integrity, and expiration dates not later than the earlier of:

(i)-(ii) (No change.)

(G) A pharmacy that dispenses a sealed portable container under this subsection is required to take reasonable precautionary measures to ensure that the agency receiving the container complies with subparagraph (F) of this paragraph. On receipt of a container under subparagraph (F) of this paragraph, the pharmacy must [~~will~~] perform an inventory of the drugs used from the container and will restock and reseal the container before delivering the container to the agency for reuse.

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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General Counsel, Legal Services
Texas Department of Human Services
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Subchapter D. ENFORCEMENT

40 TAC §97.51, §97.52

The amendments are proposed under the Health and Safety Code, Chapter 142, which authorizes the department to adopt rules for the licensing and regulation of home and community support services agencies.

The amendments implement the Health and Safety Code, Chapter 142.001 - 142.030.

§97.51. Survey Procedures.

(a) An on-site survey will [~~shall~~] determine if the requirements of the statute and the rules are being met.

(1) The Texas Department of Human Services (DHS) [~~Health (department)~~] or its authorized representative(s) (surveyor) may enter the premises of a license applicant or license holder at reasonable times during business hours to conduct an on-site survey incidental to the issuance of a license, and at other times as it considers necessary to ensure compliance with the statute or the rules adopted under the statute, an order of the commissioner of health (commissioner), a court order granting injunctive relief, or other enforcement action. A standard-by-standard evaluation is required before the first renewal license is issued unless waived in accordance with §97.13(b)(8) [~~§97.13(a)(1)(B)~~] of this title (relating to Change of Ownership or Services).

(2) At the discretion of DHS [~~the department~~], an on-site survey may be conducted for renewal of a license or issuance of a branch office or alternate delivery site license.

(3) If there is a question relating to the accuracy of an agency's financial records relating to the operation of the agency or the agency's financial ability to carry out its functions, DHS [~~the department~~] or its designee may conduct an extensive review of the records. Any financial review by DHS will [~~the department shall~~] be conducted by an individual who has the financial qualifications to review such records.

(4) The agency administrator, supervising nurse, or other authorized representative from the agency must [~~shall~~] be present at the time of a survey by DHS [~~the department~~].

(5) DHS [~~The department~~] or a representative of DHS [~~the department~~] is entitled to access to all books, records, or other documents maintained by or on behalf of the agency to the extent necessary to ensure compliance with the statute, this chapter, an order of the commissioner, a court order granting injunctive relief, or other enforcement action. DHS will [~~The department shall~~] maintain the confidentiality of agency records as applicable under federal or state law. Ensuring compliance includes permitting photocopying by a DHS [~~department~~] surveyor or providing photocopies to a DHS [~~department~~] surveyor of any records or other information by or on behalf of DHS [~~the department~~] as necessary to determine or verify compliance with the statute or this chapter.

(6) By applying for or holding a license, the agency consents to entry and survey of the agency by DHS [~~the department~~] or a representative of DHS [~~the department~~] in accordance with the statute and this chapter.

(b) Except for a survey conducted for the purposes of issuing a first renewal license, a survey conducted by DHS will [~~the department shall~~] be unannounced.

(c) Except for the investigation of complaints, an agency licensed by DHS [~~the department~~] is not subject to additional surveys relating to home health, hospice, or personal assistance services while the agency maintains accreditation for the applicable services from the Joint Commission on Accreditation of Healthcare Organizations, the Community Health Accreditation Program or certification as a home and community-based services or home and community-based services-OBRA agency by the Texas Department of Mental Health and Mental Retardation (TXMHMR). An initial survey after issuance of an initial license will [~~shall~~] be done by DHS [~~the department~~]:

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

(d) A DHS [~~The department's~~] surveyor will [~~shall~~] hold a conference with the person who is in charge of an agency prior to commencing the on-site survey for the purpose of explaining the nature and scope of the survey. The surveyor [~~department's representative~~] will [~~shall~~] hold an exit conference with the person who is in charge of the agency when the survey is completed, and [~~the department's representative~~] will [~~shall~~] identify any records that were duplicated. Any original agency records that are removed from an agency must [~~shall~~] be removed only with the consent of the agency.

(e) A DHS [~~The department's~~] authorized representative will [~~shall~~] hold an exit conference and fully inform the person who is in charge of the agency of the preliminary findings of the survey and will [~~shall~~] give the person a reasonable opportunity to submit additional facts or other information to DHS's [~~the department's~~] authorized representative in response to those findings. The response will [~~shall~~] be made a part of the survey for all purposes and must be received by DHS [~~the department~~] within ten calendar days of receipt of the preliminary findings of the survey by the agency.

(f) After a survey of an agency, DHS will [~~the department shall~~] provide the person in charge of the agency specific and timely written notice of the findings of the survey including:

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

(g) The surveyor will [~~shall~~]:

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

(8) obtain within ten calendar days of the survey written comments, if any, by the person in charge of the agency. Additional facts, written comments or other information provided by the agency in response to the findings will [~~shall~~] be made a part of the record of the survey for all purposes; and

(9) (No change.)

(h) The agency must [~~shall~~]:

(1) submit an acceptable written plan of correction for each deficiency no later than ten days from its receipt of a statement of deficiencies. A plan of correction date must [~~shall~~] not exceed 45 days from the date the deficiency was cited; and

(2) (No change.)

(i) If Medicare certification is denied by the Health Care Financing Administration (HCFA) or the agency withdraws from the Medicare program, the agency's license will revert to the category of and be governed by the standards for licensed home health services. The effective date of the change will [shall] be the date indicated on the final termination letter issued to the agency by HCFA. This change does not preclude DHS [the department] from taking enforcement action, if appropriate, under §97.52 of this title.

(j) If deficiencies are cited and the plan of correction is not acceptable, DHS will [the department shall] notify the agency in writing and request that the plan of correction be resubmitted no later than 30 calendar days of the agency's receipt of DHS's [the department's] written notice. Upon resubmission of an acceptable plan of correction, DHS will send written notice [will be sent by the department] to the agency acknowledging same.

(k) DHS [The department] will provide upon completion of the review and processing of the survey:

(1) information on the identity, including the signature, of each department representative conducting, reviewing, or approving the results of the survey and the date on which the DHS [department] representative acted on the matter; and

(2) if requested by the agency, copies of all documents relating to the survey maintained by DHS [the department] or provided by DHS [the department] to any other state or federal agency that are not confidential under state law.

(l) DHS will [The department shall] verify the correction of deficiencies by mail or by an on-site survey within 90 days of DHS's [the department's] receipt of an acceptable plan of correction.

(m) Acceptance of a plan of correction does not preclude DHS [the department] from taking enforcement action as appropriate under §97.52 of this title.

(n) Except as provided by subsection (b) of this section, an on-site survey will [must] be conducted within 18 months after a survey for an initial license. After that time, an on-site survey will [must] be conducted at least every 36 months.

(o) If a person is renewing or applying for a license to provide more than one category under the statute or for a branch office or alternate delivery site license, the required surveys for each of the services or location(s) the license holder or applicant seeks to provide will [shall] be completed during the same survey visit.

§97.52. Enforcement Action.

(a) License denial, suspension or revocation.

(1) The Texas Department of Human Services (DHS) [Health (department)] may deny, suspend, suspend on an emergency basis, or revoke a license issued to an applicant or agency if the applicant or agency:

(A)-(B) (No change.)

(C) has a provider agreement under the Social Security Act, Title XVIII, which has been terminated by the certifying body, Health Care Financing Administration, or if the agency withdraws its certification or its request for certification. An agency providing licensed and certified home health services that submits a request for a hearing as provided by this section is governed by the requirements of the statute and the rules relating to an agency providing licensed only home health services until suspension or revocation is finally determined by DHS [the department] or, if the license is suspended or revoked, until the last day for seeking review of the DHS [department] order or a later date fixed by order of the reviewing court;

(D) commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to DHS [the department] or required to be maintained by the agency pursuant to this chapter;

(E)-(J) (No change.)

(2) DHS [The department] may suspend or revoke an existing valid license or disqualify a person from receiving 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 licensed agency.

(A) In determining whether a criminal conviction directly relates, the department will [shall] consider the provisions of Texas Civil Statutes, Article 6252-13c.

(B) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate an agency. These offenses also relate to the holding of a home health medication aide permit or an entity approved under §97.62(o) of this title (relating to Home Health Medication Aides), to conduct a home health medication aide training program:

(i)-(xx) (No change.)

(xxi) other misdemeanors and felonies which indicate an inability or tendency for the person to be unable to own or operate an agency, hold a permit, or receive program approval under §97.62(o) of this title (relating to Home Health Medication Aides), if action by DHS [the department] will promote the intent of the statute, this chapter, or Texas Civil Statutes, Article 6252-13c.

(C) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, the license will [shall] be revoked.

(3) Before the institution of proceedings to revoke or suspend a license or deny an application for the renewal of a license, DHS will give the license holder:

(A) notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(B) an opportunity to show compliance with all requirements of law for the retention of the license by sending the director of Long Term Care-Regulatory a written request for an informal reconsideration. The request must:

(i) be postmarked within 10 days of the date of DHS's notice and be received in the state office of the director of Long Term Care- Regulatory within 10 days of the date of the postmark; and

(ii) contain specific documentation refuting DHS's allegations.

(4) If the agency requests an informal reconsideration under paragraph (3)(B) of this subsection, DHS's review will be limited to a review of documentation submitted by the license holder and information DHS used as the basis for its proposed action and will not be conducted as an adversary hearing. DHS will give the license holder a written affirmation or a reversal of the proposed action, as appropriate.

(5) [~~(3)~~] If DHS [~~the department~~] proposes to deny, suspend, or revoke a license, DHS will [~~the department shall~~] notify the agency by certified mail, return receipt requested, or personal delivery of the reasons for the proposed action and offer the agency an opportunity for a hearing. If a notice served by mail is returned undeliverable or DHS [~~the department~~] is unable to execute personal delivery of the notice, DHS [~~the department~~] will [~~may~~] publish the notice in a newspaper of general circulation serving the county in which the agency is located based upon the last address provided by the agency. Publication of the notice will [~~shall~~] be for seven consecutive calendar days. An agency which fails to claim a notice sent by certified mail or refuses to accept the notice does not make the notice null and void.

(A) The agency must request a hearing within 15 [~~20~~] calendar days of receipt of the notice. The request must be in accordance with Chapter 79, Subchapter Q of this title (relating to Formal Hearings). Receipt of the notice is presumed to occur on the tenth day after the notice is mailed to the last address known to DHS [~~the department~~] unless another date is reflected on a United States Postal Service return receipt.

[~~(B) The request for a hearing must be in writing and submitted to the Director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.~~]

(B) [~~(C)~~] A hearing will [~~shall~~] be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and DHS's [~~the department's~~] formal hearing procedures in Chapter 79, Subchapter Q (of this title (relating to Formal Hearings) [~~Chapter 1 of this title (relating to the Texas Board of Health)~~].

(C) [~~(D)~~] If the agency does not request a hearing in writing within 15 [~~20~~] calendar days of receipt of the notice, the agency is deemed to have waived the opportunity for a hearing and the proposed action will [~~shall~~] be taken.

(D) [~~(E)~~] If the agency fails to appear or be represented at the scheduled hearing, the agency has waived the right to a hearing and the proposed action will [~~shall~~] be taken.

(E) The denial, suspension, or revocation of a license will take effect when the deadline for appeal of the denial, suspension, or revocation passes, unless the agency appeals the enforcement action. If the agency appeals the enforcement action, the status of the license holder is preserved until final disposition of the contested matter.

(6) [~~(4)~~] DHS [~~The department~~] may suspend or revoke a license to be effective immediately when the health and safety of persons are threatened. DHS will [~~The department~~] shall] immediately give the chief executive officer of the agency adequate notice of the action taken, the legal grounds for the action, and the procedure governing appeal of the action. DHS will [~~The department shall~~] also notify the agency of the emergency action including the legal grounds for the action and the procedure governing appeal of the action by certified mail, return receipt requested, or personal delivery of the notice and of the date of a hearing, which will [~~shall~~] be not later than seven calendar days after the effective date of the suspension or revocation. The effective date of the emergency action will [~~shall~~] be stated in the notice. The hearing will [~~shall~~] be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and DHS's [~~the department's~~] formal hearing procedures in Chapter 79, Subchapter Q (of this title (relating to Formal Hearings [~~Chapter 1 of this title (relating to the Texas Board of Health)~~].

(7) [~~(5)~~] If an agency has had enforcement action taken by DHS [~~the department~~] against the agency, the agency, its owner(s), or its affiliate(s) may not apply for an agency license for one year following the effective date of the enforcement action. For purposes of this paragraph only, the term "enforcement action" means license revocation, suspension, emergency suspension, or denial or injunctive action but does not include administrative penalties or civil penalties. If DHS [~~the department~~] prevails in one enforcement action (e.g., injunctive action) against the agency but also proceeds with another enforcement action (e.g., revocation) based on some or all of the same violations, but DHS [~~the department~~] does not prevail in the second enforcement action (e.g., the agency prevails), the prohibition in this paragraph does not apply.

(8) [~~(6)~~] If DHS [~~the department~~] suspends a license, the suspension will [~~shall~~] remain in effect until DHS [~~the department~~] determines that the reason for suspension no longer exists. An authorized representative of DHS will [~~the department shall~~] conduct a survey of the agency prior to making a determination.

(A) During the time of suspension, the suspended license holder must [~~shall~~] return the license to DHS [~~the department~~].

(B) If a suspension overlaps a renewal date, the suspended license holder must [~~shall~~] comply with the renewal procedures in this chapter; however, DHS [~~the department~~] may not renew the license until DHS [~~the department~~] determines that the reason for suspension no longer exists.

(C) If suspension is for more than one year, the suspended license holder may apply to DHS [~~the department~~] for cancellation of the suspension only after one year following the initial date of the suspension.

(9) [~~(7)~~] If DHS [~~the department~~] revokes or does not renew a license and the one-year period described in paragraph (7) [~~(5)~~] of this subsection has passed, a person may reapply for a license by complying with the requirements and procedures in this chapter at the time of reapplication. DHS [~~The department~~] may refuse to issue a license if the reason for revocation or nonrenewal continues to exist.

(10) [~~(8)~~] Upon revocation or nonrenewal, a license holder must [~~shall~~] return the license to DHS [~~the department~~].

(b) Administrative penalties.

(1) General. DHS [~~The department~~] may assess an administrative penalty against a person who violates the statute or this chapter. A person under this subsection includes:

(A)-(E) (No change.)

(2) Assessment of a penalty.

(A) Notwithstanding any other provision of the statute, DHS [~~the department~~] may not assess an administrative penalty against an agency:

(i)-(ii) (No change.)

(B) The assessment of an administrative penalty will [~~shall~~] be in accordance with the schedule of appropriate and graduated penalties described in paragraph (4) of this subsection. The schedule of appropriate and graduated penalties for each violation is based on the following criteria:

(i)-(vi) (No change.)

(C) In determining which violation(s) warrants a penalty(ies), DHS [~~the department~~] will consider:

(i)-(ii) (No change.)

(D) (No change.)

(E) The assessment of an administrative penalty does not preclude DHS [~~the department~~] from suspending, revoking, or denying a license in accordance with subsection (a) of this section.

(3) Correction period.

(A) Following the first day of a violation, DHS will give an agency [~~shall be given~~] a reasonable period of time to correct the violation. The period of time must be reflected in and implemented through an accepted plan of correction. A reasonable period of time for purposes of this subsection will [~~shall~~] be as follows.

(i)-(ii) (No change.)

(iii) An agency may request an extension in writing. An agency may receive an extension upon DHS's approval [~~of the department~~]. An extension is only appropriate if the agency has made a good faith effort to correct the violation within the required time period but has not been able to correct due to circumstances beyond their control and if there is no serious harm or threat to clients.

(B) If an agency corrects the violation within the time periods described in subparagraph (A) of this paragraph, DHS [~~the department~~] may assess an administrative penalty only for one level II violation that occurred before the day on which the agency received written notice of the violation (e.g., statement of deficiencies). No administrative penalty would be assessed for a level I violation.

(C) A penalty(ies) assessed under this subsection may be a severity level I penalty(ies) or a severity level II penalty(ies) or a combination of a severity level I penalty(ies) and severity level II penalty(ies). If an agency does not correct the violation within the time periods described in subparagraph (A) of this paragraph, DHS [~~the department~~] may assess an administrative penalty for:

(i)-(ii) (No change.)

(4) Schedule of penalties.

(A) Minimum and maximum amount. An administrative penalty may [~~shall~~] not be less than $100 or more than $1,000 for each violation.

(B) Subject matter considered. If two or more of the rules listed in subparagraphs (C) and (D) of this paragraph relate to the same or similar subject matter, only one administrative penalty may [~~shall~~] be assessed at the higher severity level violation.

(C) Severity level I. A severity level I violation is a violation that has or has had minor or no client health or safety significance.

(i) The penalty for a severity level I violation will be [~~is~~] assessed only if the violation is of a continuing nature or the violation was not corrected in accordance with the accepted plan of correction. DHS [~~The department~~] is not required to provide the agency an opportunity to correct subsequent violations under this subsection.

(ii)-(iii) (No change.)

(D) Severity level II.

(i) The penalty for a severity level II violation will [~~shall~~] be assessed according to following schedule:

(I) for a violation that results in serious harm to or death of a client, the penalty will [~~shall~~] be $1,000;

(II) for a violation that constitutes an actual serious threat to the health or safety of a client, the penalty will [~~shall~~] be $500 to $1,000; or

(III) for a violation that substantially limits the agency's capacity to provide care, the penalty will [~~shall~~] be $500 to $750.

(ii) DHS [~~The department~~] may assess a separate level II administrative penalty for a violation of each of the rules listed in the following table.
Figure: 40 TAC §97.52(b)(4)(D)(ii)

(5) Notice of violation. After investigation of a possible violation and the facts surrounding that possible violation and the after the agency's receipt of the statement of deficiencies, if DHS [~~the department~~] determines that a violation has occurred, DHS [~~the department~~] will give further written notice (e.g., a notice of violation letter) to the person alleged to have committed the violation.

(A) The notice will [~~shall~~] include:

(i)-(iii) (No change.)

(B) Not later than the 20th calendar day after the date on which the notice is received, the person notified may accept the determination of DHS [~~the department~~] made under this subsection, including the proposed penalty amount, or may make a written request for a hearing on that determination. A person's acceptance of DHS's [~~the department's~~] determination means that the person has sent and DHS [~~the department~~] has received a written acceptance notice accompanied by remittance of the proposed penalty.

(C) If the person notified of the violation accepts the determination of DHS [~~the department~~] or if the person fails to respond in a timely manner to the notice, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

(D) If the person requests a hearing, procedures will [~~shall~~] be in accordance with the statute, §142.0172-142.0173 and DHS's [~~the department's~~] formal hearing procedures in Chapter 79, Subchapter Q (of this title (relating to Formal Hearings [~~Chapter 1 of this title (relating to the Texas Board of Health)~~]).

(c) Court action.

(1) (No change.)

(2) If a person violates the licensing requirements of the statute, DHS [~~the department~~] may petition the district court to restrain the person from continuing the violation.

(d) Surrender or expiration of license.

(1) After a survey in which deficiencies were cited by the surveyor, an agency may surrender its license before expiration or allow its license to expire in lieu of DHS [~~the department~~] proceeding with enforcement action.

(2) An agency may surrender before the expiration date by returning its original license to DHS [~~the department~~].

(3) (No change.)

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

Filed with the Office of the Secretary of State, on February 7, 2000.

TRD-200000938

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services

Earliest possible date of adoption: March 19, 2000
For further information, please call: (512) 438-3108

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 22. EXAMINING BOARDS

Part 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

Chapter 501. RULES OF PROFESSIONAL CONDUCT

Subchapter A. GENERAL PROVISIONS

22 TAC §501.52

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the new §501.52, which appeared in the December 10, 1999, issue of the *Texas Register* (24 TexReg 11063).

Filed with the Office of the Secretary of State on February 4, 2000.

TRD-200000779
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 4, 2000
For further information, please call: (512) 305-7848

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part 1. OFFICE OF THE GOVERNOR

Chapter 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor recently reviewed the rules affecting the Criminal Justice Division grant processes and procedures. As a result of this review, the Office of the governor adopts the repeal of a number of existing rules and adopts new rules to replace them. Both the repealed and the new rules relate to all aspects of Criminal Justice Division grants from community planning to grant applications to post-award management and monitoring. The new rules, §3.83 and §3.703 are adopted with changes to the proposed text as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11617).

The Office of the Governor adopts the repeal of Chapter 3, Subchapter A, §3.1, §3.5; Chapter 3, Subchapter B, §3.100, §3.105, §3.110, §3.115, §3.120, §3.130, §3.135, §3.140, §3.150, §3.160, §3.165, §3.180, §3.185, §3.190, §3.200, §3.205, §3.210, §3.215, §3.220, §3.230, §3.235, §3.240, §3.250, §3.260, §3.280, §3.285, §3.290, §3.295, §3.300, §3.305, §3.310, §3.315, §3.320, §3.330, §3.335, §3.340, §3.350, §3.380, §3.385, §3.390, §3.395, §3.400, §3.405, §3.410, §3.415, §3.420, §3.430, §3.435, §3.440, §3.450, §3.480, §3.485, §3.490, §3.495, §3.500, §3.505, §3.510, §3.515, §3.520, §3.530, §3.535, §3.540, §3.545, §3.550, §3.560, §3.570, §3.580, §3.585, §3.590, §3.600, §3.605, §3.610, §3.615, §3.620, §3.630, §3.635, §3.640, §3.645, §3.655, §3.680, §3.685, §3.690, §3.695, §3.696, §3.700, §3.705, §3.710, §3.715, §3.720, §3.730, §3.735, §3.740, §3.760, §3.770, §3.780, §3.785, §3.797, §3.900, §3.905, §3.910, §3.915, §3.920, §3.930, §3.935, §3.940, §3.945, §3.950, §3.960, §3.970, §3.980, §3.985, §3.990, §3.1000, §3.1005, §3.1010, §3.1015, §3.1020, §3.1030, §3.1035, §3.1040, §3.1050, §3.1060, §3.1080, §3.1085, §3.1090, §3.1100, §3.1105, §3.1110, §3.1115, §3.1120, §3.1130, §3.1135, §3.1140, §3.1165, §3.1180, §3.1185, §3.1190; and Chapter 3, Subchapter C, §3.2000, §3.2001, §3.2005, §3.2010, §3.2015, §3.2020, §3.3045, §3.3050, §3.3055, §3.3060, §3.3065, §3.3066, §3.3067, §3.3070, §3.3075, §3.4000, §3.4005, §3.4010, §3.4015, §3.4020, §3.4025, §3.4035, §3.4040, §3.4050, §3.4055, §3.4060, §3.4070, §3.4075, §3.4080, §3.4085, §3.4095, §3.4100, §3.4105, §3.4110, §3.4115, §3.4120, §3.4125, §3.4135, §3.4140, §3.4145, §3.4155, §3.4160, §3.4165, §3.4170, §3.4175, §3.4180, §3.5000, §3.5004, §3.5005, §3.6000, §3.6005, §3.6010, §3.6015, §3.6020, §3.6025, §3.6030, §3.6035, §3.6040, §3.6045, §3.6050, §3.6055, §3.6060, §3.6065, §3.6070, §3.6075, §3.6080, §3.6085, §3.6090, §3.6095, §3.6100, §3.6105, §3.6110, §3.6115, §3.6120, §3.7000, §3.7010, §3.7015, §3.7020, §3.8000 without changes as published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11617). Subchapter A concerns the Criminal Justice Division – General Powers. Subchapter B concerns Fund Specific Grant Policies. Subchapter C concerns General Eligibility Requirements.

The Office of the Governor adopts new Chapter 3, Subchapter A, §3.1, §3.3, §3.5, §3.7, §3.9, §3.11, §3.13, §3.15, §3.17, §3.19, §3.21; Chapter 3, Subchapter B, §3.51, §3.53, §3.55, §3.57, §3.71, §3.73, §3.75, §3.77, §3.79, §3.81, §3.85, §3.87; Chapter 3, Subchapter C, §3.101, §3.103, §3.105, §3.111, §3.201, §3.203, §3.205, §3.301, §3.303, §3.305, §3.307, §3.311, §3.401, §3.403, §3.405, §3.501, §3.503, §3.505, §3.507, §3.509, §3.511, §3.601, §3.603, §3.605, §3.609, §3.611, §3.613, §3.701, §3.705, §3.707, §3.709, §3.711, §3.713, §3.715, §3.717, §3.719, §3.721, §3.723, §3.801, §3.803, §3.805, §3.807, §3.809, §3.811, §3.901, §3.903, §3.905, §3.907, §3.1001, §3.1003, §3.1005, §3.1101, §3.1103, §3.1105, §3.1107, §3.1109, §3.1201, §3.1203, §3.1205, §3.1207, §3.1209, §3.1301, §3.1303, §3.1305, §3.1309, §3.1401, §3.1403, §3.1405, §3.1409, §3.1413, §3.1415, §3.1501, §3.1503, §3.1505, §3.1507, §3.1509; Chapter 3, Subchapter D, §3.2001, §3.2003, §3.2005, §3.2007, §3.2009, §3.2013, §3.2017, §3.2019, §3.2021, §3.2023; Chapter 3, Subchapter E, §3.2501, §3.2503, §3.2505, §3.2507, §3.2509, §3.2511, §3.2513, §3.2515, §3.2517, §3.2519, §3.2521, §3.2523, §3.2525, §3.2527, §3.2529; and Chapter 3, Subchapter F, §3.2601, §3.2603, §3.2605, §3.2607 without changes as published in the December 24, 1999, issue of the *Texas Register* and will not be republished. Subchapter A concerns General Grant Program Provisions. Subchapter B concerns General Grant Program Policies. Subchapter C concerns Fund-Specific Grant Policies. Subchapter D concerns Conditions of Grant Funding. Subchapter E concerns Administering Grants. Subchapter F concerns Program Monitoring and Audits.

The rules being repealed and the newly adopted rules relate to the processes and procedures governing all aspects of grants made through the Criminal Justice Division. The processes and procedures include but are not limited to community planning, application submission, awarding of grants, grant administration, and program monitoring and auditing. The rules being repealed had been adopted and amended over many years as new sources of funds became available, state and federal laws regulating the use of grant funds changed, and practices for awarding and monitoring grants evolved. As a result, rather than a coherent overall framework, the rules

had become fragmented and addressed issues in a piecemeal manner. These problems were identified during the rule review process and a recommendation was made to repeal the existing rules in their totality and to adopt an entirely new set of rules which were written to provide as much uniformity as possible across funding sources while still addressing fund specific differences. The newly adopted rules are the end product of this process.

Changes to the rules as proposed were non-substantive. Section 3.83(d)(2) is amended by changing the word "anyway" to the phrase "any way". Section 3.703 is amended by substituting a colon in place of the period after the word "area". These changes are merely technical in nature.

The public benefits anticipated as a result of enforcing the rules include the following:

The new rules will provide more uniformity in the grant process which will streamline the grant application, award, and administration functions as well as improving overall grant management.

The benefits to state and local governments and grant recipients include less paperwork, reduced use of clerical and administrative resources, and greater overall efficiency. The state will also benefit because it will allow more resources to be devoted to monitoring grants after they have been awarded. The result will be a more effective and responsive system of funding criminal justice projects and programs throughout Texas.

ADOPTED NEW SUBCHAPTER A

This subchapter contains the rules relating to general grant program provisions.

Section 3.1 outlines the applicability of the rules. Section 3.3 defines certain terms used throughout the rules. Section 3.5 describes the grant submission process. Section 3.7 describes the selection process. Section 3.9 addresses grant funding decisions. Section 3.11 sets out timelines and a process for grant acceptance. Section 3.13 establishes a procedure for appealing award decisions. Section 3.15 describes the appeals process. Section 3.17 sets out special requirements for grants receiving federal funds. Section 3.19 sets out adoptions by reference. Section 3.21 provides for use of the internet.

ADOPTED NEW SUBCHAPTER B

This subchapter contains rules relating to eligibility requirements.

Section 3.51 sets out the requirements for community plans. Section 3.53 establishes the parameters of juvenile justice and youth projects. Section 3.55 establishes the parameters of criminal justice projects. Section 3.57 places certain limitations on the years of funding. Section 3.71 sets out CJD's authority with regard to grant budgets. Section 3.73 establishes a matching funds policy. Section 3.75 governs personnel. Section 3.77 regulates the use of professional and contractual services. Section 3.79 sets out limitations and conditions on transportation, travel, and training. Section 3.81 addresses issues relating to equipment. Section 3.83 addresses issues relating to supplies and direct operating expenses. Section 3.85 governs the handling of indirect costs. Section 3.87 governs the use of program income.

ADOPTED NEW SUBCHAPTER C

This subchapter contains rules relating to fund-specific grant policies.

Sections 3.101 - 3.111 set out the policies relating specifically to the State Criminal Justice Planning (421) Fund including the source and purpose of the fund, project requirements, eligible applicants, and renovation and retrofitting. Sections 3.201 - 3.205 set out the policies relating to the Juvenile Justice and Delinquency Prevention Act Fund including the source and purpose, project requirements, and eligible applicants. Sections 3.301 - 3.311 set out the policies relating to Title V Delinquency Prevention including the source and purpose of the fund, project requirements, eligible applicants, matching funds policy, and years of funding. Sections 3.401 - 3.405 set out the policies relating specifically to the Safe and Drug-Free Schools and Communities Act Fund including the source and purpose of the fund, project requirements, and eligible applicants. Sections 3.501 - 3.511 set out the policies relating specifically to the Victims of Crime Act Fund including the source and purpose of the fund, project requirements, eligible applicants, matching funds policy, indirect costs, and ineligible activities and costs. Sections 3.601 - 3.613 set out the policies relating to the Crime Stoppers Assistance Fund including the source and purpose of the fund, project requirements, eligible applicants, indirect costs, ineligible expenses, and expense reimbursement. Sections 3.701 - 3.723 set out the policies relating to the Texas Narcotics Control program including the source and purpose of the fund, project requirements, eligible applicants, matching funds policy, indirect costs, years of funding, personnel, equipment, confidential funds, program income, grant officials, and responsibility for grants. Sections 3.801 - 3.811 set out the policies relating to the Local Law Enforcement Block Grant Program including the source and purpose of the fund, project requirements, eligible applicants, matching funds policy, indirect costs, and program income. Sections 3.901 - 3.907 set out the policies relating to the Violence Against Women Act Fund including the source and purpose of the fund, project requirements, eligible applicants, and matching funds policy. Sections 3.1001 - 3.1005 set out the policies relating to the Challenge Grant Program including the source and purpose of the fund, project requirements, and eligible applicants. Sections 3.1101 - 3.1109 set pit the policies relating to the Residential Substance Abuse Treatment for State Prisoners Grant Program including the source and purpose of the fund, project requirements, eligible applicants, matching funds policy, and indirect costs. Sections 3.1201 - 3.1209 set out the policies relating to the Juvenile Accountability Incentive Block Grant Program including the source and purpose of the fund, project requirements, eligible applicants, matching funds policy, and indirect costs. Sections 3.1301 - 3.1309 set out the policies relating to the enforcement of underage drinking laws including the source and purpose of the fund, project requirements, eligible applicants, and indirect costs. Sections 3.1401 - 3.1415 set out the policies relating to the Rural Domestic Violence and Child Victimization Enforcement Program including the source and purpose of the fund, project requirements, eligible applicants, indirect costs, grant period, and professional and contractual services. Sections 3.1501 - 3.1509 set out the policies relating to the Closed Circuit Televising of Testimony Program including the source and purpose of the fund, project requirements, eligible applicants, matching funds policy, and indirect costs.

ADOPTED NEW SUBCHAPTER D

This subchapter contains rules relating to conditions of grant funding.

Section 3.2001 establishes CJD's authority to set grant conditions. Section 3.2003 requires all applicants for VOCA fund to include a civil rights liaison certification. Section 3.2005 requires all grant applications under TNCP to include a signed certification of drug testing. Section 3.2007 sets out the requirements for confidential funds certification. Section 3.2009 governs cooperative working agreements. Section 3.2013 establishes pre-approval requirements for procurement. Section 3.2017 requires applications for multi-jurisdictional task forces under TNCP to include the appropriate district attorney contracts and sets out the standards for those contracts. Section 3.2019 requires all applications for multi-jurisdictional task forces under TNCP to include interagency agreements with each agency which will receive reimbursement from grant funds. Section 3.2021 mandates that all applications, except those from state agencies, must include a resolution from the governing body. Section 3.2023 requires certain nonprofit corporations to submit tax exempt and nonprofit information.

ADOPTED NEW SUBCHAPTER E

This subchapter contains rules relating to administering grants.

Section 3.2501 sets out the requirements for grant officials. Section 3.2503 addresses the issue of obligating funds. Section 3.2505 governs retention of records. Section 3.2507 sets out the requirements for expenditure reports. Section 3.2509 sets out the requirement for inventory reports. Section 3.2511 establishes the parameters for submitting requests for funds. Section 3.2513 governs grant adjustments. Section 3.2515 sets out the requirements for bonding and insurance. Section 3.2517 establishes remedies for noncompliance. Section 3.2519 establishes a procedure for grant termination. Section 3.2521 addresses the payment of outstanding liabilities. Section 3.2523 addresses the issue of violations of laws. Section 3.2525 provides for evaluating project effectiveness. Section 3.2527 mandates the submission of grantee reports. Section 3.2529 addresses the issue of grant management.

ADOPTED NEW SUBCHAPTER F

This subchapter contains rules relating to program monitoring and audits.

Section 3.2601 addresses monitoring. Section 3.2603 sets out requirements for audits not performed by CJD. Section 3.2605 establishes the process for making and appealing initial determinations. Section 3.2607 governs management decisions.

COMMENTS

No public comments were received on either the repealed or new sections.

Subchapter A. CRIMINAL JUSTICE DIVISION – GENERAL POWERS

1 TAC §3.1, §3.5

The repeals are adopted under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to adopt rules.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2000.

TRD-200000841
Claudia Nadig
Assistant General Counsel
Office of the Governor
Effective date: February 24, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 463-1955

Subchapter B. FUND-SPECIFIC GRANT POLICIES

Division 1. STATE CRIMINAL JUSTICE PLANNING (421) FUND

1 TAC §§3.100, 3.105, 3.110, 3.115, 3.120, 3.130, 3.135, 3.140, 3.150, 3.160, 3.165, 3.180, 3.185, 3.190

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Claudia Nadig
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1955

Division 2. JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FUND

1 TAC §§3.200, 3.205, 3.210, 3.215, 3.220, 3.230, 3.235, 3.240, 3.250, 3.260, 3.280, 3.285, 3.290, 3.295

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

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Claudia Nadig
Assistant General Counsel
Office of the Governor
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Division 3. TITLE V DELINQUENCY PREVENTION

1 TAC §§3.300, 3.305, 3.310, 3.315, 3.320, 3.330, 3.335, 3.340, 3.350, 3.380, 3.385, 3.390, 3.395

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

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Claudia Nadig
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1955

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Division 4. SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES ACT FUND

1 TAC §§3.400, 3.405, 3.410, 3.415, 3.420, 3.430, 3.435, 3.440, 3.450, 3.480, 3.485, 3.490, 3.495

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

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TRD-200000845
Claudia Nadig
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1955

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Division 5. VICTIMS OF CRIME ACT FUND

1 TAC §§3.500, 3.505, 3.510, 3.515, 3.520, 3.530, 3.535, 3.540, 3.545, 3.550, 3.560, 3.570, 3.580, 3.585, 3.590

The rules are repealed under Texas Government Code, Title 7, §772.006 (a) (11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

Filed with the Office of the Secretary of State on February 4, 2000.

TRD-200000846
Claudia Nadig
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1955

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Division 6. CRIME STOPPERS ASSISTANCE FUND

1 TAC §§3.600, 3.605, 3.610, 3.615, 3.620, 3.630, 3.635, 3.640, 3.645, 3.655, 3.680, 3.685, 3.690, 3.695, 3.696

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

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Claudia Nadig
Assistant General Counsel
Office of the Governor
Effective date: February 24, 2000
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For further information, please call: (512) 463-1955

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Division 7. TEXAS NARCOTICS CONTROL PROGRAM

1 TAC §§3.700, 3.705, 3.710, 3.715, 3.720, 3.730, 3.735, 3.740, 3.760, 3.770, 3.780, 3.785, 3.797

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

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Claudia Nadig
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1955

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Division 8. VIOLENCE AGAINST WOMEN ACT FUND

1 TAC §§3.900, 3.905, 3.910, 3.915, 3.920, 3.930, 3.935, 3.940, 3.945, 3.950, 3.960, 3.970, 3.980, 3.985, 3.990

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

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Claudia Nadig
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1955

Division 9. CHALLENGE GRANTS

1 TAC §§3.1000, 3.1005, 3.1010, 3.1015, 3.1020, 3.1030, 3.1035, 3.1040, 3.1050, 3.1060, 3.1080, 3.1085, 3.1090

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

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Claudia Nadig
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For further information, please call: (512) 463-1955

Division 10. RESIDENTIAL SUBSTANCE ABUSE TREATMENT

1 TAC §§3.1100, 3.1105,, 3.1110, 3.1115, 3.1120, 3.1130, 3.1135, 3.1140, 3.1165, 3.1180, 3.1185, 3.1190

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Claudia Nadig
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1955

Subchapter C. GENERAL GRANT PROGRAM POLICIES

Division 1. GENERAL ELIGIBILITY REQUIREMENTS

1 TAC §§3.2000, 3.2001, 3.2005, 3.2010, 3.2015, 3.2020

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

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Division 2. GENERAL GRANT BUDGET REQUIREMENTS

1 TAC §§3.3045, 3.3050, 3.3055, 3.3060, 3.3065, 3.3066, 3.3067, 3.3070, 3.3075

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

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Division 3. SPECIAL CONDITIONS AND REQUIRED DOCUMENTS

1 TAC §§3.4000, 3.4005, 3.4010, 3.4015, 3.4020, 3.4025, 3.4035, 3.4040, 3.4050, 3.4055, 3.4060, 3.4070, 3.4075, 3.4080, 3.4085, 3.4095, 3.4100, 3.4105, 3.4110, 3.4115, 3.4120, 3.4125, 3.4135, 3.4140, 3.4145, 3.4155, 3.4160, 3.4165, 3.4170, 3.4175, 3.4180

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

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Division 4. AWARD AND GRANT ACCEPTANCE

1 TAC §§3.5000, 3.5004, 3.5005

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Division 5. ADMINISTERING GRANTS

1 TAC §§3.6000, 3.6005, 3.6010, 3.6015, 3.6020, 3.6025, 3.6030, 3.6035, 3.6040, 3.6045, 3.6050, 3.6055, 3.6060, 3.6065, 3.6070, 3.6075, 3.6080, 3.6085, 3.6090, 3.6095, 3.6100, 3.6105, 3.6110, 3.6115, 3.6120

The rules are repealed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to repeal rules.

No other statutes, articles or codes are affected by these repealed rules.

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Division 6. PROGRAM MONITORING AND AUDITS

1 TAC §§3.7000, 3.7010, 3.7015, 3.7020

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Division 7. GOVERNING DIRECTIVES

1 TAC §3.8000

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Chapter 3. CRIMINAL JUSTICE DIVISION

Subchapter A. GENERAL GRANT PROGRAM PROVISIONS

1 TAC §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.13, 3.15, 3.17, 3.19, 3.21

The new rules are adopted under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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Subchapter B. GENERAL GRANT PROGRAM POLICIES

Division 1. ELIGIBILITY REQUIREMENTS

1 TAC §§3.51, 3.53, 3.55, 3.57

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Division 2. GRANT BUDGET REQUIREMENTS

1 TAC §§3.71, 3.73, 3.75, 3.77, 3.79, 3.81, 3.83, 3.85, 3.87

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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

§3.83. Supplies and Direct Operating Expenses.

(a) Supplies and direct operating expenses are costs directly related to the grantee's day-to-day operation of the grant project that are not included in any of the grantee's other budget categories, that have a useful life of less than one year, and that have an acquisition cost of less than $1,000 per unit. Allowable costs for supplies and direct operating expenses include office rent, utilities, office supplies, shared usage costs of office equipment, vehicle operating expenses, fidelity bonds, paper, printing, postage, classroom instructional supplies, production costs for public service announcements, educational resource materials, vehicle leases, confidential funds, and emergency clothing purchases for juveniles referred to court.

(b) Grantees may not use grant funds to promote a project through paid advertisements or for promotional gifts.

(c) CJD will not approve grant funds to purchase admission fees or tickets to any amusement park, recreational activity, or sporting event.

(d) Unless otherwise allowed by this chapter, grantees cannot use grant funds to pay for food, meals, beverages, or other refreshments unless the expense is:

(1) for a working event where full participation by participants mandates the provision of food and beverages; and

(2) not related to amusement and/or social activities in any way.

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Subchapter C. FUND-SPECIFIC GRANT POLICIES

Division 1. STATE CRIMINAL JUSTICE PLANNING (421) FUND

1 TAC §§3.101, 3.103, 3.105, 3.111

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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

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Division 2. JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FUND

1 TAC §§3.201, 3.203, 3.205

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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

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Division 3. TITLE V DELINQUENCY PREVENTION

1 TAC §§3.301, 3.303, 3.305, 3.307, 3.311

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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Division 4. SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES ACT FUND

1 TAC §§3.401, 3.403, 3.405

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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

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Division 5. VICTIMS OF CRIME ACT FUND

1 TAC §§3.501, 3.503, 3.505, 3.507, 3.509, 3.511

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Division 6. CRIME STOPPERS ASSISTANCE FUND

1 TAC §§3.601, 3.603, 3.605, 3.609, 3.611, 3.613

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Division 7. TEXAS NARCOTICS CONTROL PROGRAM

1 TAC §§3.701, 3.703, 3.705, 3.707, 3.709, 3.711, 3.713, 3.715, 3.717, 3.719, 3.721, 3.723

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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

§3.703. Project Requirements.
All projects must meet at least one of the following purpose areas:

(1) Multi-jurisdictional and multi-county task force projects that integrate federal, state and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination, acquiring intelligence information, and facilitating multi-jurisdictional investigations. TNCP task forces must use the Texas Narcotics Information System (TNIS) and provide input of task force drug intelligence information into the System;

(2) projects designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivation;

(3) projects that will improve the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator projects, and gang related and low income housing drug control projects;

(4) law enforcement and prevention projects that address problems with gangs or youth who are at risk of becoming involved in gangs;

(5) financial investigation projects that target the identification of money-laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information sharing systems;

(6) projects that improve the operational effectiveness of the court process by expanding prosecution, defender, and judicial resources and by implementing court delay-reduction programs;

(7) criminal justice information systems, including automated fingerprint identification systems, that assist law enforcement, prosecution, courts and corrections' organizations;

(8) innovative projects that demonstrate new and different approaches to the enforcement, prosecution, and adjudication of drug offenses and other serious crimes;

(9) drug control evaluation projects that state and local units of government may use to evaluate projects directed at state drug-control activities;

(10) projects to develop and implement antiterrorism training projects and to procure equipment for use by local law enforcement authorities; or

(11) improving or developing forensic laboratory capability to analyze DNA samples.

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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Division 8. LOCAL LAW ENFORCEMENT BLOCK GRANT PROGRAM

1 TAC §§3.801, 3.803, 3.805, 3.807, 3.809, 3.811

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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

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Division 9. VIOLENCE AGAINST WOMEN ACT FUND

1 TAC §§3.901, 3.903, 3.905, 3.907

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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

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Division 10. CHALLENGE GRANT PROGRAM

1 TAC §§3.1001, 3.1003, 3.1005

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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

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Division 11. RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR STATE PRISONERS GRANT PROGRAM

1 TAC §§3.1101, 3.1103, 3.1105, 3.1107, 3.1109

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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Division 12. JUVENILE ACCOUNTABILITY INCENTIVE BLOCK GRANT PROGRAM

1 TAC §§3.1201, 3.1203, 3.1205, 3.1207, 3.1209

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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

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Division 13. ENFORCEMENT OF UNDERAGE DRINKING LAWS

1 TAC §§3.1301, 3.1303, 3.1305, 3.1309

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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Division 14. RURAL DOMESTIC VIOLENCE AND CHILD VICTIMIZATION ENFORCEMENT PROGRAM

1 TAC §§3.1401, 3.1403, 3.1405, 3.1409, 3.1413, 3.1415

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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Division 15. CLOSED CIRCUIT TELEVISING OF TESTIMONY PROGRAM

1 TAC §§3.1501, 3.1503, 3.1505, 3.1507, 3.1509

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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Subchapter D. CONDITIONS OF GRANT FUNDING

1 TAC §§3.2001, 3.2003, 3.2005, 3.2007, 3.2009, 3.2013, 3.2017, 3.2019, 3.2021, 3.2023

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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Subchapter E. ADMINISTERING GRANTS

1 TAC §§3.2501, 3.2503, 3.2505, 3.2507, 3.2509, 3.2511, 3.2513, 3.2515, 3.2517, 3.2519, 3.2521, 3.2523, 3.2525, 3.2527, 3.2529

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to propose new rules.

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Subchapter F. PROGRAM MONITORING AND AUDITS

1 TAC §§3.2601, 3.2603, 3.2605, 3.2607

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Part 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Chapter 371. MEDICAID FRAUD AND ABUSE PROGRAM INTEGRITY

Subchapter C. UTILIZATION REVIEW

1 TAC §§371.200 - 371.214

Senate Bill 30, §1.07, 75th Legislative Session transferred the responsibility for utilization review in the state Medicaid program from the Texas Department of Health and the Texas Department of Human Services to the Texas Health and Human Services Commission. In accordance with this transfer, Title 25, Part 1, §§41.101 - 41.105 and 41.107 - 41.113 concerning utilization review will become Title 1, Part 15, §§371.200 - 371.211, effective September 1, 1997. Title 40, Part 1, §§19.1812, 19.2411, and 19.2412 will become Title 1, Part 15, §§371.212 - 371.214, effective September 1, 1997. The rule conversion chart is published in the Tables and Graphic section.

Figure: 1 TAC Chapter 371.

§371.200. Inpatient Hospital Utilization Review Program.

§371.201. Case Selection Process.

§371.202. Contracting for Texas Medical Review Program (TMRP) or Tax Equity and Fiscal Responsibility (TEFRA) Services.

§371.203. Texas Medical Review Program (TMRP) Review Process.

§371.204. TMRP Hospital Screening Criteria for TMRP and TEFRA Reviews.

§371.205. Acknowledgment of Penalty Notice.

§371.206. Denials and Recoupments for Texas Medical Review Program (TMRP) and Tax Equity and Fiscal Responsibility Act (TEFRA) Hospitals.

§371.207. Diagnostic Related Group (DRG) Changes and Adjustments.

§371.208. Appeals Requirements under the Texas Medical Review Program (TMRP) and Tax Equity and Fiscal Responsibility Act (TEFRA), and Hospital Notification.

§371.209. Sanctions under the TMRP and TEFRA.

§371.210. Inpatient Utilization Review for Hospitals Reimbursed under the Tax Equity and Fiscal Responsibility Act (TEFRA) Principles of Reimbursement.

§371.211. Quality of Care Review.

§371.212. Case Mix Classification.

§371.213. Utilization Review and Control Activities Performed by Texas Department of Human Services (DHS).

§371.214. Texas Index for Level of Effort (TILE) Assessments.

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TITLE 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 3. BOLL WEEVIL ERADICATION PROGRAM

Subchapter F. GENERAL PROCEDURES

4 TAC §§3.201 - 3.203

The Texas Department of Agriculture (the Department) adopts new §§3.201-3.203, concerning administrative rules for the boll weevil eradication program with changes to the proposal published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10636). The new sections are adopted to provide procedures and requirements for approval by the Commissioner of Agriculture of documents and activities required to be submitted and/or reported to the Commissioner under the Texas Agriculture Code, Chapter 74, Subchapter D. In addition, the new sections provide requirements and procedures for implementation of a cost-share program established by the 76th Legislature, 1999 by the enactment of Senate Bill 448, now codified as the Texas Agriculture Code, Chapter 74, Subchapter E. The new sections are also adopted to formalize and make more efficient the approval and reporting requirements of the Texas Agriculture Code, Chapter 74, Subchapter D, thereby strengthening the supervisory rule of the department in the implementation of the boll weevil eradication program, and to assure the financial support for boll weevil eradication programs in Texas through the use of cost-share funds.

Changes were made throughout the sections for purposes of clarification, some based on comments received on the proposal. Section 3.201 had been changed at paragraphs (1) through (5) to clarify that approvals must be obtained from the commissioner in writing. Also, §3.201 at (2)(B)(i)(I), language has been added to further clarify what agreements are required to be approved by the commissioner, at (2)(B)(ii) language has been added to clarify that bid announcements for purchases and/or leases over the amount of $10,000 and bids for the financing of such purchases and/or leases must be approved prior to distribution of the request for bids, at (2)(B)(iii), the word "short" has been deleted to allow more flexibility in providing a justification statement for purchases, and language has been added to clarify that a justification is required for both purchase and lease agreements, at (3), language has been added to clarify that the foundation's operating budget includes individual zone budgets as well as the foundation's main administrative offices operating budget, a typographical error has been corrected at subparagraph (3)(C), the word "funds", which was inadvertently omitted in the proposal, has been added to the end of (3)(D)(iii), and the word "within" has been replaced by the word "between" in the first sentence of subparagraph (3)(E). In §3.202, a new paragraph (b)(1) has been added to more specifically itemize what, at a minimum, should be included in the annual report, and other paragraphs have been renumbered accordingly. Also in §3.202(b), the word "preceding" has been inserted before the word "fiscal" for purposes of clarification, based on a comment received. In §3.203, paragraph (b)(2) has been changed, based on a comment, to correct the Agriculture Code reference from "Chapter 4" to "Chapter 74", paragraph (c)(2)(D) has been changed to add the words "the funds" between the words "how" and "will" for purposes of clarification, based on a comment received, and a comma has been added after the word "disbursed" in paragraph (e)(1), also for purposes of clarification. Also at §3.203(e)(4), the word "applicable" has been added to clarify that the foundation shall comply with only state requirements regarding the use of state money that are applicable to the foundation, which is a state agency only for limited purposes.

Comments were received on the proposal from attorneys for the Texas Boll Weevil Eradication Foundation, on behalf of the foundation. In addition to the comments received which resulted in changes to the proposal as previously noted, a comment was received requesting that proposed §3.203, concerning cost-share funding, be changed to clarify that a zone that held a referendum and election in the past, but in which a program was subsequently discontinued or eliminated by legislative action would not qualify as an active zone. The department disagrees that a clarification is necessary. The intent of SB 448 was to provide cost-share funding in zones in which boll weevil eradication activities are active. If a zone has been discontinued by grower referendum, or eliminated by legislative action, a referendum on the establishment of a program and assessment referendum would need to be held before the zone could undertake eradication activities. Moreover, there may be a situation where an inactive zone may become active again or otherwise eligible for cost-share funds based on legislative action or action by the commissioner.

The new sections are adopted under the Texas Agriculture Code (the Code), §74.120, which provides the Texas Department of Agriculture (department) with the authority to adopt rules for implementation of the Code, Chapter 74, Subchapter D, and the Code, §74.152, which authorize the department to adopt rules to implement a cost-sharing program as part of the program to eradicate the boll weevil and pink bollworm under Chapter 74, Subchapter D.

§3.201. Approval by the Commissioner of Agriculture.

The Texas Boll Weevil Eradication Foundation (foundation) is required to obtain approval from the commissioner of agriculture as follows.

(1) Approval must be obtained in writing from the commissioner for the borrowing of money to fund operations of the foundation.

(A) An approval request for the borrowing of money must first be approved by the board in open meeting.

(B) Once approved by the board, the request for approval to borrow money must be submitted to the commissioner in writing at least 30 days before the date of the actual borrowing transaction and include:

(i) name and address of lender;

(ii) amount to be borrowed;

(iii) copy of terms of agreement for borrowing and supporting documentation;

(iv) a statement of justification for choosing the lender including other options considered; and

(v) any other information requested by the commissioner.

(2) The commissioner must approve in writing the foundation's policy for the procurement of goods and/or services.

(A) A general policy must be approved by the commissioner initially and reviewed annually thereafter.

(B) The general procurement policy of the foundation shall include:

(i) a requirement in regards to purchases of goods or services:

(I) that all purchase and/or lease agreements over the amount of $10,000 entered into for the providing of goods and/or services of aerial applicators, purchases of chemicals, pheromone traps, pheromone, stakes, bar code devices and purchases or leases of vehicles or other heavy equipment be approved by the commissioner; and

(II) that the requirement does not include agreements for routine or day-to-day operating expenditures such as office supplies, payroll or utilities.

(ii) provisions for obtaining of competitive bids, including a requirement that bid announcements (request for bids) for purchases and/or leases, or financing of such purchases and/or leases, over the amount of $10,000 be approved by the commissioner prior to distribution of the announcement (request for bids) to prospective bidders; and

(iii) a requirement that a statement of justification of the need for the goods or services being purchased and/or leases be provided for each purchase and/or lease.

(3) The commissioner must review and approve the foundation's operating budget, which includes individual zone budgets as well as the foundation's operating budget for its main administrative offices, in writing, and no funds may be used to fund programs not approved by the commissioner. The budget must:

(A) be approved on an annual basis to correspond with the foundation's fiscal year;

(B) be submitted at least 30 days prior to be the end of the foundation's fiscal year;

(C) be approved by the foundation board in an open meeting prior to submission to the commissioner;

(D) include the following:

(i) a breakdown of expenses to show the budget as projected by zone;

(ii) total projected budget including expenses for goods and services to be approved by the commissioner; and

(iii) a description of programs to be implemented using budgeted funds; and

(E) Budget revisions are permitted between the approved budget line items. Prior written approval from the commissioner is required on all cumulative transfers, for the fiscal year covered by the proposed budget, of funds among budget line items when the amount transferred exceeds 5% of the total annual budget.

(4) The commissioner must approve in writing the use of a bank depository prior to the deposit of funds by the foundation.

(5) The commissioner must approve in writing or by signing cooperative agreements entered into by the foundation for carrying out the purposes of approved eradication activities:

(A) with other states;

(B) with individuals, or a group of persons involved in similar programs to carry out the purposes of Chapter 74, Subchapter D; and

(C) with other governmental entities.

§3.202. Reporting Requirements.

(a) The foundation shall provide the department with a copy of its annual audit within 30 days of the audit's completion. Included

with the audit shall be any accompanying letters to management from the auditor.

(b) The foundation shall file with the department an annual report within 45 days of the end of its preceding fiscal year. The annual report shall include, at a minimum:

(1) a balance sheet of assets, liabilities and fund equity;

(2) an itemization of income/expenditures;

(3) a statement of eradication activities carried out in the year covered by the report, by zone;

(4) information regarding the name and quantity of pesticides used in the program by zone; and

(5) copies of any resolutions adopted by the board regarding the eradication program.

§3.203. Cost-sharing Program.

(a) Statement of Purpose and Authority. In accordance with the Texas Agriculture Code, Chapter 74, Subchapter E, the department is authorized to contract with the entity named under §74.1011 to carry out boll weevil eradication to obtain boll weevil eradication services for the state of Texas as part of a cost-sharing program. The Texas Boll Weevil Eradication Foundation, Inc. (the foundation) has been designated as that entity. This section sets forth requirements and procedures for the implementation of the cost-sharing program.

(b) Zone eligibility.

(1) The department may spend money under the cost-sharing program only in a boll weevil eradication zone in which:

(A) a boll weevil eradication project authorized under the Code, Chapter 74, Subchapter D is active; or

(B) boll weevil eradication has been declared complete by the United States Department of Agriculture or its designee.

(2) A zone meets the requirement set forth in subparagraph (1)(A) of this section if a referendum of cotton growers has been held in the zone in accordance with the Code, Chapter 74, Subchapter D, and both the establishment of an eradication program and a maximum assessment have been approved by growers for that zone.

(c) Request for funding.

(1) The foundation may request funding under this section by submission to the department of a proposal to provide boll weevil eradication services which meets the requirements specified by the department.

(2) A proposal to provide boll weevil eradication services shall include:

(A) a statement that the foundation meets eligibility requirements;

(B) a statement verifying that the foundation will comply with the Uniform Grant Management Standards promulgated by the Governor's Office of Budget and Planning, under the Texas Government Code, Chapter 783 (UGMS);

(C) verification that funds provided will be used for boll weevil eradication services in eligible zones; and

(D) the specific amount of funding requested and how the funds will be used, broken down by zone, period of time covered, specific category of expenditure, and nature of activity.

(3) Additional information may be requested, if needed.

(d) Disbursement of funds.

(1) Disbursement of funds will be made after review and acceptance of the foundation's proposal by the department and execution of a written contract for services between the department and the foundation.

(2) Disbursement shall be made only in accordance with the contract.

(3) Disbursement of funds may be made in a lump sum or installments, as set forth in the contract.

(e) Reporting/Accounting Requirements.

(1) After funds have been disbursed, the foundation shall provide a written report of expenditures on a quarterly basis according to the State of Texas fiscal year, or more often, as requested by the department.

(2) Quarterly reports shall be submitted to the department within 30 days after the end of each quarter.

(3) The foundation shall establish an accounting system which identifies source of funds for programs, with separate accounting, in a manner that will enable the department and others to audit funds and verify source of funds and how they are used, for:

(A) grower assessments;

(B) state funds; and

(C) federal funds.

(4) The foundation shall comply with all applicable state requirements regarding use of state funds.

(5) The department may suspend disbursement of funds to the foundation, if:

(A) the department determines, or has reason to believe, that appropriated funds are not being used for purposes stated in the contract or the foundation is not complying with the terms of the contract, including reporting requirements, or these rules;

(B) the department determines, or has reason to believe, that the use of the appropriated funds by the foundation is not consistent with state law; and/or

(C) the department determines or has reason to believe that the foundation's use of the appropriated funds is not in the best interest of the state, cotton growers, or the eradication program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000929
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: February 27, 2000
Proposal publication date: December 3, 1999
For further information, please call: (512) 463-4075

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Chapter 19. QUARANTINES

Subchapter M. SWEET POTATO WEEVIL QUARANTINE

4 TAC §19.133

The Texas Department of Agriculture (the department) adopts amendments to §19.133, concerning the sweet potato weevil quarantine, without changes to the proposal published in the December 31,1999, issue of the *Texas Register* (24 TexReg 11841). The amendments are adopted to prevent infestation of sweet potato weevil-free areas, due to sweet potato weevil infestations detected in Van Zandt, Rains and Wood counties. The amendments add specific treatment areas to §19.133 and restrictions on the production, handling and movement of quarantined articles.

Treatment areas designated under §19.133(c) are based on the area's distance from a point of weevil detection. In addition, the proposed amendments prohibit the movement of quarantined articles from treatment areas into sweet potato weevil-free areas and prohibit the production and handling of quarantined articles in treatment areas, unless the grower or handler enters into a compliance agreement with the department to implement prescribed treatment, crop production and handling procedures. The amendments also place restrictions on the propagative use of quarantined articles in the treatment areas and provide for destruction of quarantined articles.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code, §71.003, which provides the Texas Department of Agriculture with the authority to establish quarantines in areas surrounding pest free zones; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone; and §12.020 which authorizes the department to enforce administrative penalties.

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 February 7, 2000.

TRD-200000888
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Proposal publication date: December 31, 1999
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TITLE 10. COMMUNITY DEVELOPMENT

Part 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Chapter 49. LOW INCOME TAX CREDIT RULES - 1998

10 TAC §§49.1 - 49.16

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of §§49.1 - 49.16, without changes, as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10659) concerning the Low Income Tax Credit Rules. The sections are repealed to enact new sections conforming to the requirements of regulations enacted under Section 42 of Internal Revenue Code of 1986, as amended (26 U.S.C.A.). The repeal of these rules is contingent upon the Governor's approval, rejection or modification and approval pursuant to §2306.671(c) of the Texas Government Code, Title 10.

No comments have been received regarding adoption of the repeals.

The repeals are adopted pursuant the authority of the Texas Government Code, Chapter 2306; Chapter 2001 and 2002, Texas Government Code, V.T.C.A., and §42 of Internal Revenue Code of 1986, as amended, (26 U.S.C.A.) which provides the Department with the authority to adopt rules governing the administration of the Department and its programs; and Executive Order AWR-91-4 (June 17, 1991), which provides this Department with the authority to make housing credit allocations in the State of Texas.

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 February 7, 2000.

TRD-200000933
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Effective date: February 27, 2000
Proposal publication date: December 3, 1999
For further information, please call: (512) 473-3726

Chapter 49. LOW INCOME HOUSING TAX CREDIT RULES -2000

10 TAC §§49.1 - 49.16

The Texas Department of Housing and Community Affairs adopts new §§49.1 through 49.16 concerning the Qualified Allocation Plan and Rules (the Rules), with changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10659). The adoption of these rules is contingent upon the Governor's approval, rejection or modification and approval pursuant to §2306.671(c) of the Texas Government Code, Title 10.

These rules are being adopted to provide procedures for the allocation, by the Department, of low income housing tax credits available under federal income tax laws to owners of qualified low income rental housing projects.

SUMMARY OF COMMENTS RECEIVED UPON PUBLICATION OF THE PROPOSED RULES IN THE TEXAS REGISTER ON DECEMBER 3, 1999, AND COMMENTS PROVIDED AT PUBLIC HEARINGS HELD BY THE DEPARTMENT

On December 3, 1999, the proposed 2000 Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules (QAP) was published in the Texas Register thereby commencing the

required 30 day comment period. Said comment period ended on January 2, 2000. In addition to publishing the document in the Texas Register, a copy of the QAP was published on the Department's web site and made available to the public upon request. The Department held public hearings in San Antonio, Fort Worth, Austin and Houston. In addition to the public hearings, the Department received a number of written comments.

The scope of public comments concerning the Rules pertain to the following sections:

§49.1 Scope

Comment: It was suggested that the MOU between TxRD and TDHCA should remain in the QAP. It should be further developed to avoid duplicative application requirements between TDHCA and TxRD.

Department/Committee Response: The Department agreed with these recommendations. No changes to the QAP were required to maintain the MOU.

Board Response: Department/Committee's response accepted.

§49.2(1) Ad Hoc Tax Credit Committee

Comment: A number of comments were made on the size of the Ad Hoc Tax Credit Committee. It was asserted that three committee members can not provide sufficient oversight considering the size and importance of the program. The suggested increases ranged from a four-member committee up to and including the entire Board.

Department/Committee Response: The size of the Ad Hoc Tax Credit Committee is at the Chairman of the Board's discretion. The Board's various other committees consist of three members and this number appears to be sufficient to provide the necessary oversight. While no revision to §49.2(1) was proposed it was determined that a reference to "Committee" appears in both the "Ad Hoc Tax Credit Committee" and the "Board" definition. To avoid confusion between these two terms the following change was suggested:

§49.2(15) Board - The governing Board of Directors of the Department .

Board Response: While the grammatical revision was accepted, the Board determined that the Ad Hoc Tax Credit Committee should be comprised of the entire Board. No changes to the QAP are required to meet this recommendation as §49.2(1) does not reference a specific number of committee members.

§49.2(5) Applicable Percentage

Comment: It was suggested that the applicable percentage used by the Department to determine the eligible basis credit award amount be provided in the QAP. This would allow developers to conduct a realistic evaluation of a project's feasibility in advance of the application round. It was suggested that the Department use 4% as the applicable percentage to underwrite tax exempt bond projects because it is exceedingly difficult to make projects in rural areas work using a percentage below 4%.

Department/Committee Response: The Department developed a formula that will allow applicants to calculate the Applicable Percentage to be used at the time of application. The formula is tied to historical data and changes over time to follow interest rate trends. The Department believes that this formula meets the needs of the both the 4% and 9% applicant without awarding more credits than is necessary. Due to the length and complexity of the formula it was suggested that it be presented in the Application Submission Procedures Manual and be included by reference only in the QAP. The following revision to the QAP was proposed:

§49.2(5) Applicable Percentage - The percentage used to determine the amount of the low income housing tax credit, as defined more fully in the Code, §42(b). The Applicable Percentage in the Application will be calculated using the formula provided in the Application Submission Procedures Manual.

Board Response: Department/Committee's response accepted.

§49.2(8) Application Acceptance Period and §49.12 Manner and Place of Filing Applications

Comment: It was suggested that the filing requirements for a Tax-Exempt Bond/LIHTC application be clearly described in the QAP. It was suggested that the Department consider multiple application periods with at least two rounds each year.

Department/Committee Response: The current single round application process provides a more than sufficient pool of high quality developments to which all of the credits may be allocated. Additional application rounds would severely increase the administrative requirements and associated costs of running the program. These increases would, in turn, cause the application fees to rise and would delay the issuance and processing of such items as the 8609s. Both of these issues were concerns expressed in the 2000 Public Comment Period. The Department concurs with the Tax Exempt Bond/LIHTC Application filing recommendation and believes that the application process should be referenced in the "Application Acceptance Period" definition and fully documented in the section that deals with the "Manner and Place of Filing Applications." The following revision to the QAP was proposed:

§49.2(8) Application Acceptance Period - That period of time during which Applications for either a Housing Credit Allocation from the State Housing Credit Ceiling or a Determination Notice for Tax Exempt Bond Projects may be submitted to the Department as more fully described in §49.12 of this title (relating to Manner and Place of Filing Applications).

§49.12

(a) An Application for a Housing Credit Allocation from the State Housing Credit Ceiling may be filed at any time during the Application Acceptance Periods published periodically in the Texas Register.

(b) Applications for a Determination Notice for a Tax Exempt Bond Project may be submitted to the Department as described below in paragraphs (1) and (2):

(1) Applicants which receive advance notice of a Program Year 2001 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application per the requirements of §49.6(g) of the Qualified Allocation Plan and Rules not later than 60 days after the date of the TBRB lottery.

(2) Applicants which receive advance notice of a Program Year 2001 reservation after being placed on the waiting list as a result

of the TBRB lottery for private activity volume cap must submit the Application fee along with Volume 1 of the Application prior to the Applicant's bond reservation date as assigned by the TBRB. All outstanding documentation required under §49.6(g) of the Qualified Allocation Plan and Rules must be submitted to the Department at least 60 days prior to the Ad Hoc Tax Credit Committee meeting at which the decision to issue a Determination Notice would be made.

Board Response: Department/Committee's response accepted with a reduction of the 60-day filing requirement in §49.12(b)(2) to 45 days.

§49.12(b)(2) Applicants which receive advance notice of a Program Year 2001 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit the Application fee along with Volume 1 of the Application prior to the Applicant's bond reservation date as assigned by the TBRB. All outstanding documentation required under §49.6(g) of the Qualified Allocation Plan and Rules must be submitted to the Department at least 45 days prior to the Ad Hoc Tax Credit Committee meeting at which the decision to issue a Determination Notice would be made.

§49.2(36) General Pool

Comment: It was suggested that the words "without regard to set-aside" be removed from the "General Pool" definition to enable nonprofit organizations to retain a scoring advantage during competition in the General Pool.

Department/Committee Response: It was suggested that a reference to the 10% nonprofit allocation as required by code should be made in this section to eliminate any confusion on this issue. The following revision to the QAP was proposed:

§49.2(36) General Pool - The pool of credits that have been returned or recovered from prior years' allocations or the current year's Commitment Notices after the Board has made its initial allocation of the current year's available credit ceiling. General pool credits will be used to fund Applications on the waiting list without regard to set-aside except for the 10% Nonprofit Set-Aside allocation required under §42(h)(5) of the Code.

Board Response: Department/Committee's response accepted.

§49.2(44) Ineligible Building Types

Comment: A number of comments were made on the "Ineligible Building Types" definition. Some commentators requested that the prohibition against single family, duplexes and triplexes in non-rural areas be removed so that the housing needs and preferences of the local community could be recognized. It was thought that single family developments provide a more stable environment and in the long run will provide homeownership opportunities for working class families. It was suggested that in many communities duplexes and triplexes work well either because of existing zoning or neighborhood acceptance. They can be used successfully in many developments because of site issues and can be mixed with other building types. It was suggested that the current language which provides a prohibition against expansion of federally financed developments be clarified to indicate that the number of residential units is being limited as opposed to new construction of amenities and support structures. Finally it was proposed that the definition of prison community be restricted to designate only areas which were recently (after 1989) awarded a state prison.

Department/Committee Response: The Department suggested that based on its previous experience with single family developments in non-rural areas that the restriction remain as currently stated in the QAP. The Department agreed that the size restriction associated with the federally assisted developments should be a unit-based restriction as opposed to a restriction on amenities and support structures. The list of prison communities in the Reference Manual was developed by the Department of Criminal Justice. The Department wishes to conform to that list for the sake of continuity. The following revision to the QAP was proposed:

§49.2(44)(B) An existing Rural Project that is federally assisted within the meaning of §42(d)(6)(B) of the Code and is under common ownership, management and Control shall not be considered to include an Ineligible Building Type. For qualifying federally assisted Rural Projects, construction cannot include the construction of new residential units. Rural Projects purchased from HUD will qualify as federally assisted.

Board Response: Department/Committee's response accepted.

§49.2(49), §49.4(a) and §49.6(b)(1) Relating to Material Deficiencies and Termination of Applications

Comment: Concerns over the perceived ability to submit documentation after application submission were evidenced by some of the commentary. It was suggested that selected applicants should not be allowed to change their numbers to make projects work after the submission date. If such allowances are made, then all applicants should be allowed to change the numbers to make projects feasible. It was suggested that the Department needs to reevaluate its rule for automatically rejecting projects that fail threshold. It is perceived that threshold corrections and additions are being allowed, and that, unless all applicants are allowed to make them, no applicant should be allowed to do so. It was suggested that to the extent that an Application's strict compliance with the Threshold Criteria is not required by the Qualified Allocation Plan, the Department should amend the Plan to provide a more specific definition of "material compliance" with the Threshold Criteria. It was suggested that all terminated applications be promptly returned to the owner along with a written explanation reason for the termination.

Department/Committee Response: To address the sufficiency of submitted documentation, the Department proposed a new definition for "Material Deficiencies" be added to the QAP. This definition described what omissions constitute grounds for termination and what post-application submissions can be made. Other sections of the document will reference this definition to clearly define what represents grounds for termination. The following revision to the QAP was proposed:

§49.2 (49) Material Deficiencies - The absence of information or documents from the Application which are essential for the complete review and scoring of the project and which remain uncorrected after notification of the Applicant as further described in subparagraphs (A) and (B) of this paragraph.

(A) The Department may request correction of deficiencies which are either administrative in nature or are caused by the need for clarification of information submitted at the time of Application. If such deficiencies are not corrected to the satisfaction of the Department within 5 business days from the deficiency notice date, then 2 points shall be deducted from

the Selection Criteria score for each day the deficiency remains uncorrected. If such deficiencies are not corrected within 10 business days from the deficiency notice date, the Application shall be terminated.

(B) Deficiencies caused by the omission of exhibits required in Volume 1 of the Application or associated with the Threshold Criteria shall automatically be considered Material Deficiencies and shall be cause for termination.

§49.4(a) Any Project Owner requesting a Housing Credit Allocation for a Project must submit an Application to the Department which Application shall be originally executed by the Project Owner. The Department is authorized to request the Project Owner to provide any additional information or documentation it deems relevant as clarification to the Application or items that would be considered a deficiency. Applications not submitted in the format described in the Application Submission Procedures Manual will result in the Application being deemed incomplete and not accepted for filing. The Department will require, as a part of a completed Application, information to be submitted by the Project Owner which identifies the number of HUBs to be used in the development and/or continuous operation of the Project, in a form specified within the Application Submission Procedures Manual. Further, the Department will require the Project Owner to supply sufficient documentation to describe the means by which these HUBs were or are to be selected. The Project Owner is advised that the Department will be requesting information pertaining to the use of HUBs in the actual development of the Project at the time of final allocation of tax credits, pursuant to §49.8(f) of this title (relating to Housing Credit Allocations).

§49.6(b)(1) Applications will be initially evaluated against the Threshold Criteria as they are accepted for filing in the Department during any Application Acceptance Period. Applications found to have Material Deficiencies will be terminated and returned to the Applicant without further review. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any oversight or 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. All Applicants may withdraw and subsequently re-file an Application, as well as file a new Application before the filing deadline.

Board Response: Department/Committee's response accepted with the following modification to clarify what deficiencies are considered "administrative in nature":

§49.2(49)(A) The Department may request correction of deficiencies which are either administrative in nature or are caused by the need for clarification of information submitted at the time of Application. Such deficiencies include, but are not limited to, incorrect calculation of the project's unit mix, gross and net rentable areas or the submission of exhibits that contain incomplete or conflicting information. If such deficiencies are not corrected to the satisfaction of the Department within 5 business days from the deficiency notice date, then 2 points shall be deducted from the Selection Criteria score for each day the deficiency remains uncorrected. If such deficiencies are not corrected within 10 business days from the deficiency notice date, the Application shall be terminated.

§49.2(50) Material Non-Compliance, §49.4(f), §49.6(a)(6), §49.6(c)(4)(A)(iii) and 49.6(e) Past Performance

Comment: Comment was received on the Department's criteria for excluding Applicants from participating in the program based on their previous performance. It was suggested that since the tax credits are from the federal government, the state should not promulgate rules that disqualify participation by sponsors, developers, contractors, or consultants that exceed the federal requirements for participation. When a person has been debarred or suspended by the federal government, once he/she has been released by the federal government, then the state should not continue to disqualify the person from participation in its programs. It was suggested that compliance issues should be important criteria for review and Applicants that are out of compliance should not be scored. The term "materially out of compliance" should be defined. Applicants that fail to fully document their participation in government funding should be dismissed.

Department/Committee Response: The Department will continue to monitor past performance with Federal, State, or private programs as these items should be considered in evaluating a project's risk. A revision for what constitutes "Materially Out of Compliance" was suggested. The following revision to the QAP was proposed:

§49.2(50) Materially Out of Compliance - Project with major violations of health and safety standards as documented by the local municipal authority.

Board Response: The Board requested that the Department reevaluate this issue and the following revisions were approved.

A definition for "Material Non-Compliance" was added as §49.2(50):

§49.2(50) Material Non-Compliance - A property will be classified by the Department as being in material non-compliance status so long as the non-compliance score for such property is equal to or exceeds 30 points in accordance with the methodology and point system set forth in the Application Submission Procedures Manual.

Delete present §49.4(f) and add instead §49.4(f) as follows:

§49.4(f) Ineligible and Disqualified Applications:

(1) An Application will be ineligible if a member of the Development Team has been or is:

(A) Barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or,

(B) convicted of, under indictment for, or on probation for a state or federal crime involving fraud, bribery, theft, misrepresentations of material facts, misappropriation of funds, or other similar criminal offenses; or,

(C) subject to enforcement action under state or federal securities law, or is the subject of an enforcement proceeding with any Governmental Entity unless such action has been concluded and no adverse action or finding (or entry into a consent order) has been taken with respect to such member.

(2) Additionally, the Department will disqualify an Application if it is determined by the Department that:

(A) a material misrepresentation was made in the Application or any application or other information submitted to the Department; or,

(B) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property in the state of Texas who received an allocation of tax credits in the 1999 Application Round but did not close the construction loan as required under the Carryover Allocation (including any extension period granted by the Committee) except for reasons beyond the control of the Applicant as determined by the Department; or,

(C) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property has failed to place in service buildings or removed from service buildings for which credits were allocated (either Carryover Allocation or issuance of 8609s). The Department may consider the facts and circumstances on a case-by-case basis, including whether the credits were returned prior to the expiration date for re-issuance of the credits, in its sole determination of Applicant eligibility; or,

(D) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing property in the state of Texas funded by the Department that is in Material Non-Compliance with the LURA or the program rules in effect for such property on the closing date of the Application Acceptance Period or upon the date of filing Volume I of the Application for a Tax Exempt Bond Project. The Department may take into consideration the representations of the Applicant regarding compliance violations described on Exhibit 106; however, the records of the Department are controlling; or,

(E) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing tax credit property outside of the state of Texas has incidence of non-compliance with the LURA or the program rules in effect for such tax credit property as reported on Exhibit 106 and/or as determined by the state regulatory authority for such state and such non-compliance is determined to be Material Non-Compliance by the Department.

For consistency with revised §49.4(f), §49.6(a)(6) should be revised as follows:

§49.6(a)(6) EXHIBIT 106 - Label as EXHIBIT 106 all of the following documentation:

(A) The original copy of the completed and executed Exhibit 106, Previous Participation and Background Certification Form, Exhibit 106A, which is provided in the Application Submission Procedures Manual. This form must be completed with respect to the ownership entity (including all Persons with an ownership interest), general partner, general contractor and their respective principals and Affiliates;

(B) label as Exhibit 106B, a chart which clearly illustrates the complete organizational structure of the Project Owner. This chart should provide the names and ownership percentages of all entities and sub-entities with an ownership interest in the development. The percentage ownership of all Persons in Control of these entities and sub-entities must also be clearly defined and the Articles of incorporation, corporate by-laws, and certificate of good standing for corporations or statement of partnership and partnership agreement for limited or general partnerships should be included; and

(C) if the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates is active in the ownership or control of any other low income housing tax credit property either in the State of Texas or any other state and such property was cited as in violation of any the rules or regulations by the Department or by the appropriate regulatory authority in any other state, such property should be clearly identified in Exhibit 106(A) and a copy of any corrective action plan or similar document by the appropriate regulatory entity to correct the non-compliance should be provided as Exhibit 106(C).

Delete §49.6(c)(4)(A)(iii) with the exception of moving the "(10 points) reference to the end of §49.6(c)(4)(A)(ii).

Delete §49.6(e) Past Performance in its entirety and repaginate §49.6(f), (g), (h) and (i) and all cross references in the QAP to either §49.6(f) (e), (f), (g), (h) or (i).

§49.2 Special Merit Project

Comment: It was suggested that a "Special Merit Project" definition be added to allow the funding of projects that do not meet the scoring or set-aside criteria but are deemed to be of enough merit to warrant evaluation by underwriting. The recommendation of such a project must be thoroughly documented.

Department/Committee Response: It was thought that the proposed revisions to the evaluation criteria contained in §49.6(a) sufficiently govern the allocation of credits without the need for a "Special Merit Project" that does not meet those criteria. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.2(61) Qualified Nonprofit Organization

Comment: It was proposed that the text "has a majority interest in the developer's fee" be added to the "Qualified Nonprofit Project" definition as exists in the Michigan QAP.

Department/Committee Response: The Department does not wish to participate in structuring agreements between nonprofit and for-profit developers. This is a business decision between the entities. Ensuring that these agreements were followed and maintained would be extremely difficult to monitor. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.2(68) Rural Project

Comment: It was suggested that the Board modify the Rural Project definition to distinguish those areas that presently benefit from a rural designation but are located in metropolitan areas.

Department/Committee Response: The Department developed the current Rural Project standards in conjunction with TxRD. It is thought that these guidelines work well in determining which projects should be considered to be Rural Projects. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.2(70) Small Development

Comment: A number of commentators suggested that the maximum number of units allowed under the "Small Development" definition should be changed from 35 to 36 units to allow for 9 fourplexes.

Department/Committee Response: The Department concurred with this suggestion and recommended revising references from "35" to "36" units throughout the document. It should be noted that the Small Development definition relates specifically to non-rural areas as described in §49.6(c)(3)(M). It was suggested that a reference to single family housing be removed from the Small Development Definition because this type of housing is not allowed in non-rural areas as established by the Ineligible Building Types definition. The following revision to the QAP, which clarifies that this item relates to non-Rural Projects, is proposed:

§49.2(70) Small Development - A non-Rural Project consisting of not more than 36 multifamily Units, which is not a part of, or contiguous to, a larger Project.

Board Response: Department/Committee's response accepted.

§49.4(d) Bonus Period Submissions

Comment: It was suggested that the ability to submit documentation under the bonus period be removed from the QAP. The ability of a project to receive the bonus points if the application has been withdrawn and is being resubmitted within the bonus period should be added.

Department/Committee Response: The Department will continue to allow two points for applications submitted during the Bonus Period. Applications submitted during the Bonus Period will be evaluated in the same manner with respect to deficiencies as those submitted during the regular round. However, such Applicants will not lose their two Bonus Points for administrative and clarification deficiencies which are corrected within five business days. The following revision to the QAP was proposed:

§49.4(d) A Project Owner may file an Application at any time during the Application Acceptance Period(s), as published from time to time by the Department in the Texas Register. Applications that show Material Deficiencies will be terminated per subsection (e) of this section, and the Project Owners will only have the opportunity to re-apply if the Application Acceptance Period is still open.

Board Response: Department/Committee's response accepted.

§49.4(g) Recommendations

Comment: It was suggested that the Committee should meet and discuss the merits of all projects in public prior to the commitment of credits. Members should receive information well in advance of the meeting at which commitments will be discussed. A realistic opportunity for Applicants to make appeals should be developed.

Department/Committee Response: Language relating to the Departments Commitment Notice recommendations to the Committee and Board was proposed. The description of the documents the Department shall provide the Committee and Board to assist them in reviewing the recommended Applications should be clarified. The following revision to the QAP was proposed:

§49.4(g) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department shall make its recommendations to the Committee and the Board. Such recommendation shall be made in advance of the meeting at which the issuance of Commitment Notices shall be discussed. Such recommendations will include a list of all submitted Applications and will describe why each project was or was not recommended for a Commitment Notice. Supporting documentation which the Committee and Board may use to evaluate the Application relative to the criteria provided in §49.6(b)(3) will be provided prior to the meeting.

Board Response: Department/Committee's response accepted.

§49.4(k) Carryover Allocation Document

Comment: A number of comments were made about changing the Carryover deadline to November 15th of the year in which the commitment is issued. A counter argument was presented that the Department's current October 15th date is reasonable and should not be changed because the November 15th deadline would not provide adequate time to review the documents and could jeopardize the tax credits.

Department/Committee Response: The Department noted that the Carryover deadline is not established in the QAP and should be added to §49.4(k). However, it was determined that the November 15th deadline is inadvisable. The current 75-day period is just sufficient for the Department to complete the carryover review and still allow projects receiving a Commitment Notice from the waiting list to complete their carryover before the end of the year. The following revision to the QAP was proposed:

§49.4(k) Prior to the expiration of the Commitment Notice a Project Owner who has been issued a Commitment Notice may request the Department to execute a Carryover Allocation Document. The Carryover documentation must be submitted to the Department no later than October 15 of the year in which the Commitment Notice is issued. The Carryover Allocation must be properly completed, signed, dated and notarized by the Project Owner and delivered to the Department along with any and all other documentation prescribed in the Carryover Allocation Procedures Manual, as amended.

Board Response: Department/Committee's response accepted.

§49.4(l) Waiting List

Comment: It was suggested that the issuance of credits to projects on the waiting list should be subject to the amount of returned credits and the "minimum" 10% Nonprofit Set-aside.

Department/Committee Response: It was proposed that this recommendation can be satisfied by clarifying the language contained in §49.5(a) referring to set-asides rather than adding redundant set-aside description information throughout the document. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.4(p) and §49.4(q) Application Review Updates

Comment: It was suggested that the Department publish a list that discloses the score or ranking of each application along with the development team at times that represent "adequate disclosure" regarding the competitiveness of each Applicant's proposed Project.

Department/Committee Response: It was proposed that language responding to this issue should be added as new subsections §49.4(p) and §49.4(q). The information shall be released after the Application Acceptance Period has closed and after all of the projects have been scored. The following revision to the QAP was proposed:

§49.4(p) Application submission log. The Department shall publish an Application submission log on its web site approximately 15 business days after the close of the Application Acceptance Period. Such log shall contain the project's name, address, set-aside, number of units, requested credits, requested selection criteria score and the owner contact name and phone number.

§49.4(q) Notice of Selection Criteria scoring. When all Applications have been scored, the Department shall publish the results of the scoring on its web site.

Board Response: Department/Committee's response accepted.

§49.5(a) Set-aside Percentages

Comment: A number of comments were received on the need to emphasize that the nonprofit and rural set-aside percentages are not maximum limitations. It was suggested that applications should be able to compete in any set-aside based on their score. It was suggested that the Nonprofit Set-Aside be increased to 15 or 20% to allow for more of the mission driven nonprofits to be able to participate in the program. As a counter point, it was stated that the Department is already open to awarding credits to good nonprofits under the current set-asides and that no addition to the current 10% minimum mandated by federal law should be made. It was proposed that 5% of the annual LIHTC allocation should be set-aside for counties where 60% of the applicable AMGI for a family of four is at or below $24,000. All non-metro counties would qualify. The proposed developments must be new construction to qualify for this set-aside. It was suggested that the text "and of this chapter" be added to subsection "(a)" to clarify that Nonprofit projects must meet Departmental requirements as well as Code requirements to apply under the Nonprofit Set-Aside.

Department/Committee Response: The Department believes that the current set-aside percentages are sufficient to meet the goals of the program and the nonprofit set-aside requirement established by code. The suggestions to clarify that the non-General Set-Aside percentages are not maximums were acceptable to the Department. The following revision to the QAP was proposed:

§49.5. Set-Asides, Commitments and Preferences.

(a) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Projects which meet the requirements of the Code, §42(h)(5). Applicants must apply under one of the set-asides provided in paragraphs (1) through (3) of this subsection. The State Housing Credit Ceiling shall be allocated under the set-asides provided in paragraphs (1) through (3) of this subsection.

(1) Qualified Nonprofit Projects shall account for at least 10% of the State Housing Credit Ceiling;

(2) Rural Projects/Prison Communities - 15%; or

(3) General Projects - 75%.

Board Response: Department/Committee's response accepted.

§49.5(b) Set-asides (TxRD)

Comment: It was suggested that TxRD Guaranteed MFH Programs (Section 538 and B and I) should compete in the rural set-aside category in the application. TxRD direct insured loans (Section 515 and Labor Housing) would compete in the TxRD set-aside.

Department/Committee Response: The Department concurred with this suggestion. The following revision to the QAP was proposed:

(b) The Department may redistribute the credits depending on the level of demand exhibited during the Allocation Round; provided that no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Projects which are not Qualified Nonprofit Projects. The Department will reserve 25% of the 15% Rural Projects/Prison Communities set-aside for projects financed through Rural Development (TxRD) (formerly Farmer's Home). Projects financed through TxRD's 538 Guaranteed Rural Rental Housing Program will not be considered under the 25% portion of the Rural Projects/Prison Communities set-aside. Should there not be sufficient qualified applications submitted for the TxRD set-aside, then the allocations would revert back to the Rural Projects/Prison Communities set-aside pool. Information concerning the appropriate set-aside for each Application Round will be published in the Texas Register.

Board Response: Department/Committee's response accepted.

§49.5(c) Set-asides (Developer and Contractor Fees)

Comment: It was proposed that developer and contractor fees should be limited to the average fee amounts charged for similar work in the private sector.

Department/Committee Response: The Department utilizes industry standards to analyze the construction hard costs. The allowable contractor fees tied to these hard costs are based on national standards established by NCSHA. The developer fee limits used by the Department are also based on the NCSHA standards. The Department provides these guidelines in the Application Submission Procedures Manual as referenced in the QAP. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(a)(2) Exhibit 102

Comment: It was suggested that Exhibit 102 duplicates information contained elsewhere in the application. If the exhibit is to be retained, it should be broken into new and rehabilitation forms so that the required information can be clarified.

Department/Committee Response: The Department concurred with the assessment that the exhibit contains information that is also included in the Project Cost Schedule in Volume One of the Application. As the level of detail contained in Exhibit 102 is required for underwriting the total development cost, it was suggested that the credit calculation worksheet and Exhibit 102 be combined. The work write-up will still be required as an

additional requirement for rehabilitation projects. The following revision to the QAP was proposed:

(2) EXHIBIT 102. Label as EXHIBIT 102, the completed "Project Cost Schedule" form provided in the Application Submission Procedures Manual. Rehabilitation developments must establish that the rehabilitation will be substantial and will involve at least $6,000 per unit in direct hard costs. Additionally, all rehabilitation Projects must provide a detailed work write-up/physical assessment report prepared by a registered architect, professional engineer or general Contractor. The work write-up/physical assessment report must detail the scope of work to be performed throughout the rehabilitation and must specify the estimated cost associated with each item of work to be performed.

Board Response: Department/Committee's response accepted.

§49.6(a)(11) Qualified Nonprofits

Comment: It was suggested that the Department must assure that nonprofit applicants in the nonprofit set-aside are materially participating in all fees and activities of the project.

Department/Committee Response: The Department's existing Qualified Nonprofit review process and definition of "Control" confirms that the nonprofit shall materially participate in the project. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(a)(13) Community Support

Comment: It was suggested that a point system be developed to provide points for applicants who can demonstrate a high level of local political and community support for the application.

Department/Committee Response: Evaluating and documenting a community support based scoring criteria would be extremely difficult. In documenting support, the Department could not determine the validity of the signatures provided without an extreme amount of administrative labor. Owners of existing tax credit developments might be at a distinctive advantage in that they could gather signatures from their existing tenants. Documentation might be encouraged which would not indicate a level of support in the specific community. With the high level of demand for affordable housing across the state, it is felt that points for a "popularity contest" don't need to be introduced into the process. It is felt that the current points awarded to projects in communities that recognize the importance of affordable housing via the provision of funds, special development zones and preferences in consolidated plans are sufficient. In the past, public officials have been known to change their minds about supporting a project because of public opinion. Such change could cause projects to receive credits that would otherwise not have been recommended. To stress that public comment is important to the Department, it was suggested that the public notification requirement be altered to ensure that a broad spectrum of the public receives notice of proposed applications. The following revision to the QAP was proposed:

§49.6(a)(13) EXHIBIT 113. Label as EXHIBIT 113, a copy of the public notice published in a widely circulated newspaper in the area in which the proposed development will be located. Such notice must run at least twice within a two week period, except on holidays, prior to the submission of the Application to the Department. The notice must be prepared in accordance with the guidelines established in the Application Submission Procedures Manual. Such notice can not be older than 3 months from the first day of the Application Acceptance Period. In communities located in close proximity to a larger metropolitan area and whose citizens may subscribe to a local newspaper as well as a widely circulated metropolitan newspaper, the notice should be published in both newspapers.

Board Response: Department/Committee's response accepted.

§49.4(h) and §49.6(b) Evaluation Process

Comment: The Department received a significant amount of comment on the evaluation process. Most of this comment suggested that subjective elements of the review process and the Department and Board's discretionary review criteria should be eliminated. It was suggested that the credit awards should be made based purely on the project's score. To accomplish this, it was suggested that formerly discretionary items would be scored on a sliding scale from 1 to 10 and that these points should be added to the applicant's Selection Criteria Score. These criteria include: feasibility, underwriting analysis, targeting of a specific market or submarkets, site conditions, housing type, development team experience, conformance of the project to Departmental goals, geographic dispersion, and variety of credit recipients. After the projects were scored, they would be ranked and awarded according to score and regardless of set-aside. It was thought that non-profit and rural projects should not be limited to their set-aside amount of credits if the projects were better than others in the general set-aside.

A number of comments were received that dealt with concentration of credits within certain submarkets. It was suggested that site selection and geographic distribution criteria should be items that the Board discusses. The Board should work with program staff to develop a policy on how to use tax credits to encourage private investment in hard to reach areas. Limitations based on project locations and housing types present within a given radius were proposed. It was suggested that census tracts that have been over-allocated should be identified.

It was suggested that the Board determine if it is a worthy goal to involve "as many different developers as possible" as stated in the QAP. If it is deemed a worthy goal, then non-discretionary criteria should be developed to achieve the goal.

It was suggested that the Department state all factors used to allocate low income housing tax credits in the 2000 Qualified Allocation Plan and Rules. The statement would include any relevant information in the Standard Operating Procedures, Application Submission Procedures Manual, or Application that is not already included in the QAP.

It was suggested that the QAP should specifically state what site conditions are not acceptable.

Department/Committee Response: The current QAP describes the criteria the Department and Board use to allocate the credits. It was suggested that the more technical aspects of the evaluation such as the underwriting guidelines should remain in the Reference Manual and Application Submission Procedures Manual. The Department concurred with the need to clearly identify and provide further clarification on how the discretionary items will be utilized.

1. Project feasibility shall remain a discretionary factor as the Department will not recommend a project that is determined to be infeasible. Underwriting is a subcategory of feasibility.

2. Concentration of low income Projects within a specific market or submarkets will remain a discretionary item. The criteria for using this discretionary item will be more clearly defined in the QAP.

3. Dispersion of the credits on a regional basis as is required by Senate Bill 1112 is effective September 1, 2001. Regional dispersion of the credits will remain a discretionary item until this formula is developed and submitted for public comment. Until that formula is finalized and approved, the criteria for using this discretionary item will be more clearly defined in the QAP.

4. The project's site conditions will remain a discretionary item because the Department will not recommend projects with site issues that cannot be mitigated and that would affect the health and safety of the residents. The criteria used in evaluating this discretionary item will be more clearly defined in the QAP.

5. Experience of the Development Team will remain a discretionary item as the Department will not make a credit recommendation to an Applicant that does not have the necessary experience to develop the project.

6. Housing type will remain a discretionary factor as the Department feels that in certain instances housing for persons with special needs (transitional housing, elderly housing, and housing for persons with disabilities, etc.) should be provided where it might not otherwise be possible under a purely point based system.

7. Project's impact on the Low Income Housing Tax Credit Program's goals and objectives shall remain a discretionary item.

8. The need to allocate credits among as many different entities as possible shall remain a discretionary item because this requirement is part of a Rider from the 75th legislature and is already a part of the QAP.

The following revisions to the QAP were proposed:

§49.6(b)(3) In addition to the number of points scored, the Department's decision to underwrite a Project shall be subject to considerations contained in subparagraphs (A) through (H) of this paragraph. The Department, Committee, and Board shall evaluate an Application for recommendation of a Commitment Notice on the basis of additional factors beyond scoring criteria. These additional factors include the items described in subparagraphs (A) through (H) of this paragraph.

(A) Project Feasibility.

(B) Geographic dispersion of projects statewide shall be evaluated under one or more of clauses (i) through (iv) of this subparagraph:

(i) number of tax credit and other affordable housing projects within a city and county and the number of units attributable to such projects;

(ii) population of a city and county in relation to the number of existing tax credit and affordable units created;

(iii) city and county population and employment growth trends; and

(iv) rental housing affordability trends.

(C) The concentration of tax credit developments and other affordable housing developments within specific markets and submarkets shall be evaluated under one or more of clauses (i) through (iv) of this subparagraph.

(i) occupancy levels projected for the proposed project and the occupancy level of existing projects;

(ii) market and submarket absorption levels;

(iii) the percentage of comparable affordable housing projects and units in the submarket; and

(iv) any other information (such as employer relocation) that could have an impact on the submarket.

(D) Site conditions shall be evaluated through a physical site inspection of the site by Departmental staff. Such inspection will evaluate the site and provide a site evaluation of "Excellent," "Acceptable," "Poor" or "Unacceptable." The evaluations shall be based on condition of the surrounding neighborhood and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's visibility to prospective tenants and accessibility of the site via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites would include a non-mitigable environmental factor that would impact the health and safety of the residents.

(E) Experience of the Development Team as it relates to the perceived ability to successfully complete the Project will be considered.

(F) Housing type may be considered in order to serve a broad segment of the population.

(G) Project's impact on the Low Income Housing Tax Credit Program's goals and objectives shall be considered.

(H) The need to allocate credits among as many different entities as required under the Rider from the 75th Legislature.

(4) If such evaluation warrants, the Application will be forwarded to the Committee and to the Board for approval. In making its recommendation to the Board, the Department shall enumerate the reason(s) for the Project's selection, including all discretionary factors used in making its determination. The Department may have an outside third party perform the underwriting evaluation to the extent it determines appropriate. The expense of any third party underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

Board Response: Department/Committee's response was accepted with the following revisions. It was requested that the Project Feasibility criteria be further defined. It was also requested the ability to consider comment from the public and political representatives be added to the QAP. Additional language relating to the Board's ability to consider the fact that bond projects are only feasible in certain geographical areas in making their allocation decision was also requested. The following additional revisions to the QAP were approved:

§49.4(h) The Board's decisions shall be based upon its evaluation of the Project's consistency with the criteria and requirements set forth in the QAP and the Rules. In making a determination to allocate tax credits, the Department and Board shall be authorized not to rely solely on the number of points scored by an Applicant. They shall in addition, be entitled to take into account, as appropriate, such factors as Project feasi-

bility, underwriting, concentration of low income Projects within specific markets or submarkets, geographic dispersion of multi-family housing in any particular market or submarket, as well as dispersion of the credits on a state-wide basis, site conditions, the experience of the Development Team, the type of housing being proposed and/or the Project's impact on the Low Income Housing Tax Credit Program's goals and objectives as stated in the QAP and the Rules and as otherwise provided under this chapter. The Board shall authorize the Department to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is built. In making a determination to allocate credits, the Department and the Board may also take into account the fact that Tax Exempt Bond Projects are generally not financially feasible outside of the major metropolitan areas of the state.

§49.6(b)(3)(A) Project Feasibility. A determination by the Department, pursuant to the Internal Revenue Code, that the amount of credits recommended for allocation to a project is necessary for the financial feasibility of the project and its long-term viability as a qualified low income housing property. In making this determination, the Department will take into account:

(i) the project's total development costs;

(ii) actual or projected operating expenses and reserves for replacement;

(iii) project's sources of financing;

(iv) proceeds from the syndication of the tax credits;

(v) the project's debt coverage ratio and break-even occupancy; and

(vi) the project's overall conformance with the Department's underwriting guidelines as stated in the Application Submission Procedures Manual.

§49.6(b)(3)(G) Project's impact on the Low Income Housing Tax Credit Program's goals and objectives including, but not limited to, the project's inconsistency with local needs or its impact as part of a revitalization or preservation plan.

§49.6(b)(3) Underwriting Process

Comment: A number of comments related to the Department's determination of which projects should be underwritten. One suggestion was that all projects that meet threshold requirements and rank in the top half of the scoring range in a set-aside category must be underwritten. A second suggestion was to establish a score prior to the application process that would govern which projects were underwritten. It was thought that by reducing the number of applications via notification of what will fail underwriting consideration, the remaining applicants can have their projects underwritten. The applicants have paid a significant fee to TDHCA and incurred significant expenses in preparing the application and deserve to have their project underwritten if they meet the pre-published score. A third suggestion was that the applications would then be recommended for underwriting based on the highest score, the ability to satisfy a set-aside requirement, or status as a Special Merit Project, in that order, regardless of the credit ceiling. Applications recommended for underwriting solely based on the ability to satisfy a set-aside must have the highest score of the applications remaining in the set-aside. Finally, it was suggested that all applications that pass threshold should be eligible for underwriting regardless of whether a sufficient amount of the State Housing Credit Ceiling is available.

Department/Committee Response: The decision to underwrite will be based on score and other evaluation criteria provided in §49.6(b)(3). Currently over 50% of all applications are underwritten, whereas less than 25% of all applications are awarded. Stretching existing resources further to underwrite all or significantly more applications would significantly diminish the quality of the underwriting review. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c) Selection Criteria

Comment: The Department should reevaluate the system for scoring Selection Criteria to ensure that there are no inequalities within that point system and to limit any discretion contained in the awarding of points. Another comment recommended that the current point system be maintained.

Department/Committee Response: The Department believes that the scoring criteria and other evaluation factors described in §49.6(b)(3) are adequate to accomplish the goals of the program. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c) Department Head Committee

Comment: It was suggested that an additional Selection Criteria item be added for Department Head Recommendations. The compliance monitoring director and any other department head who is involved in the administration of a program directly related to the provision of affordable housing should evaluate each application that is underwritten. A point would be awarded for each department head that provides a written statement recommending a project for an award. It was suggested that the allocation process be overseen by a team of senior level TDHCA employees. This team would include: the Directors of Compliance, Multifamily Finance, Bond Finance, Housing Programs and the Program Manager of HOME, Housing Trust Fund, LIHTC, and the Executive Director.

Department/Committee Response: The Department did not recommend adding additional points to the Scoring Criteria for a newly created category. The Executive Director is charged with making staff assignments to cover the functions of the Department, and is accountable for the day-to-day operations of the agency. All appropriate staff input into decision-making processes regarding lending decisions is reflected in the current staff assignment structure. Specific to the allocation process, this structure accommodates a cross-section of department staff's involvement in the process, e.g., housing programs, legal, underwriting, compliance, etc. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c) Developer Fees

Comment: It was suggested that a point system be developed to allow developers to compete on the basis of the amount of the fee they will charge, risk involved or geographical location. One suggested way of accomplishing this competition was to award points for reduction in developer fee to below 10%.

Department/Committee Response: The Department did not recommend that points be awarded for this item because it penalizes developers of smaller projects where the profit margin is small. It would be extremely difficult to monitor the amount of developer fees that were actually collected. This would particularly be the case where related parties are involved. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c) Local Nonprofits

Comment: It was suggested that a point system be developed to score or otherwise give an advantage to non-profit with local community and resident led boards over organizations not tied to the community. It was stated that out of state nonprofits do not have the same local community commitment or accountability to maintain their properties for 30 plus years, as do local non-profit organizations.

Department/Committee Response: The Department believes that the program should obtain the best applicants possible and should not show a preference for one type of developer over another. The quality of work by an entity is based on the experience and commitment of the entity as opposed to the location of its headquarters. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c) Site Quality

Comment: It was requested that the Department consider including a category that awards points for the applicant's site, taking into consideration such factors as proper zoning, proximity to amenities, desirability of neighborhood, availability of utilities and so forth.

Department/Committee Response: The site evaluation will be based on the evaluation criteria contained in §49.6(b)(3). It is therefore suggested that additional points are not required. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c)(1) QCT Points

Comment: It was suggested that the scoring for projects in QCTs and DDAs should be reduced or eliminated. Projects in these areas are already eligible for a 30% increase in tax credits. The 30% increase and 10 points awarded has led to over-concentration of properties in the lowest income census tracts. It was suggested that the points for mixed income developments not be allowed for projects located in QCTs because, in truly needy QCTs, one probably cannot obtain market rents at much, if anything, above the LIHTC rents. If acceptable market rents can be obtained in a QCT, then the census data is probably no longer valid and, thus, the neighborhood no longer deserving of the QCT points and/or the mixed income points.

Department/Committee Response: It is thought that QCTs should remain a scoring item as they help to encourage the development of housing in areas that may be the focus of redevelopment efforts or that might not otherwise be served. It was suggested that the points should remain available for projects in areas that meet the market versus program rent differentials required by the mixed income criteria. The Department will emphasize in the Application Procedures Manual and in its training seminars that applicants should carefully evaluate the concentration issues inherent in these areas. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c)(3)(G) Mixed Income Developments

Comment: It was suggested that the criteria penalizes certain areas which are grouped in a larger region such as an MSA but which do not share the characteristics of the MSA. This is especially the case in larger MSAs such as Dallas and Houston which contain many counties and a very large expanse of area. In areas such as these, the smaller towns surrounding the metropolitan areas do not have the same economic base and therefore do not have the ability to charge the same rents as the MSAs. A modification whereby the market rate rents could be 10 percent higher than the applicant's tax credit rents, rather than the maximum tax credit rents, would help overcome this problem.

Department/Committee Response: The mixed-income points were designed to facilitate the development of additional units in submarkets where a significant rent differential exists between the program rents and market rents. Areas that do not meet this requirement will not qualify for those points. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c)(3)(I) Units for Households at or below 50% of AMGI

Comment: It was suggested that the criteria be changed to allow points for setting aside units for persons at 30% or less of AMGI. A counter argument was made that the Department should not award points for targeting units at 30% of AMGI because this would have a negative effect in attracting projects outside the major metropolitan areas. It was suggested that applications that receive points as mixed income developments should not be eligible to receive points for provision of units to households with incomes at or below 50% of AMGI.

Department/Committee Response: It was suggested that awarding points for rents set below 50% of AMGI would place some areas of the state at a distinct point disadvantage because many areas experience extreme difficulty in making the rents at 50% and 60% feasible. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c)(3)(J) Fourplexes and Townhomes

Comment: It was suggested that points should be allowed for eight-plexes as they would allow developers to provide additional green space and would utilize construction economies as well as facilitating higher quality site planning. It was suggested that doing so would enable developers to develop more expensive tracts in areas that are not QCTs.

Department/Committee Response: The Department believes the existing criteria works well to provide low density developments that give the tenants a feeling of "ownership." If eight-plexes are desired, then a townhome configuration may be used. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c)(4)(B) HUB Points

Comment: A number of comments were made on the desire to have points awarded to CHDOs. It is felt that the nonprofit developers are competing at a disadvantage because they can not receive HUB points. To remedy that perceived problem, it was suggested that points be awarded to nonprofit CHDOs which have a local headquarters in addition to those points awarded to HUBs. It was suggested that the Department needs to more closely evaluate the HUBs to eliminate the potential for developers to name a wife or a "name only" minority partner solely to collect points. One commentator suggested that because CHDOs can utilize a property tax law that exempts them from paying local property taxes, applications which involve CHDOs should be encouraged as they should be able provide more affordable (at and below the 50% AMGI level) units. The exemption would make developments possible in areas where development might not other wise occur without a 30% increase in eligible basis. A counter argument was made that points awarded to developers who qualify as HUBs are made to encourage women and minority participation in the tax credit program pursuant to state law. The statute applies only to for-profit organizations and not to nonprofits. Therefore, CHDOs should not receive any additional points as nonprofits.

Department/Committee Response: The HUB points are part of the Department's consistency with state legislative requirements. The Department believes that the program should obtain the best applicants that it possibly can and should not show a preference for one type of developer over another. The quality of work by an entity is based on the experience and commitment of the entity as opposed to whether it is a CHDO or not. The comment that they can receive tax breaks is not considered a sufficient enough reason to give them a scoring preference but will be evaluated in the underwriting process. The tax breaks are not an automatic exemption and have to be approved at the local level. It is thought that the exemption would not provide enough savings to offset the loss of rent at the 50% level. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c)(5) Supportive Services

Comment: A number of comments were received on the provision of supportive services. It was suggested that the supportive services criteria should be modified to eliminate the perceived subjectivity involved in scoring this item which has a sliding point scale. It was suggested that the points should not be easy to receive, or else the services will have little impact. It was presented that under the current QAP there is no incentive to offer superior services. Some suggestions as to how the points could be determined included:

1. The QAP should specify the supportive services to be provided.

2. Developments that provide long term contracts should be scored higher.

3. It was suggested that the QAP should give meaningful weight to direct resident services and physical facilities as the best measure of an organization's commitment is the direct service built into the project, not a promise to provide services which are hard to enforce after the fact.

4. A minimum cost for the provision of the services should be established.

Department/Committee Response: The Department will provide additional guidance on how this item shall be evaluated. The following revision to the QAP was proposed:

§49.(c)(5) PARTICIPATION OF LOCAL TAX EXEMPT ORGANIZATIONS. EXHIBIT 210. Evidence that the Property owner has an executed agreement with a Local Tax Exempt Organization for the provision of special supportive services for the tenants. The supportive service will be included in the Declaration of Land Use Restrictive Covenants ("LURA").

(A) The services must provide a benefit that would not be readily available to the tenants if they were not residing in the development.

(B) Evidence of each organization's tax exempt status is required.

(C) The supportive services will be evaluated based upon the criteria provided in clauses (i) through (v) of this subparagraph.

(i) Cost of Services - The cost of the service to the Project Owner is included in the Project's operating budget and proforma and the costs are reasonable for the benefit derived by the tenants.

(ii) Availability - Services provided on site or services provided with transportation to another location.

(iii) Duration of Contract - All services must be fully described (including cost, duration, provider, experience of provider, benefit to tenants, and anticipated tenant population served) in a fully executed contract between the service provider and the project owner with a duration of no less than five years.

(iv) Experience of Service Provider - The Department will evaluate the experience of the organization as well as the professional and educational qualifications of the individuals delivering the services.

(v) Appropriateness - Services must be appropriate and provide a tangible benefit in enhancing the standard of living of a majority of tenants.

Board Response: Department/Committee's response accepted.

§49.6(c)(6)(A) Elderly Developments

Comment: It was suggested that the HUD definition of senior housing as created by the Fair Housing Act be utilized rather than the more restrictive tax credit definition. It was suggested that the HUD definition improves marketing and provides consistency among the programs. While the Selection Criteria is not a required submission item for tax exempt bond developments there is some ambiguity as to whether they must satisfy the elderly development design and leasing requirements as provided in §49.6(c)(6)(A) which currently are different from the Fair Housing Act.

Department/Committee Response: The Department concurred with this suggestion to return to the Fair Housing Act's age requirements. The following revision to the QAP was proposed:

§49.6(c)(6) TENANT POPULATIONS WITH SPECIAL HOUSING NEEDS.

(A) This criterion applies to elderly Projects which must provide significant facilities and services specifically designed to meet the physical and social needs of the residents. Significant services may include congregate dining facilities, social and recreation programs, continuing education, welfare information and counseling, referral services, transportation and recreation. Other attributes of such Projects include providing hand rails along steps and interior hallways, grab bars in bathrooms, routes that allow for barrier free travel, lever type doorknobs and single lever faucets. All multistory buildings (two or more floors) must be served by an elevator. Individual Units shall not be multistory. Elderly Projects must not contain any Units with three or more bedrooms. Such a Project must conform to the Federal Fair Housing Act and must be a Project which:

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

(ii) is intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one person who is 55 years of age or older; and

(iii) adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for persons 55 years of age or older (10 points).

Board Response: Department/Committee's response accepted.

§49.6(c)(6)(B) Provision of Units for Persons with Disabilities

Comment: It was suggested that §504 standards should be used as the threshold standard for all tax credit projects. §504 standards would provide consistent standards with projects that are developed using HOME, CDBG or other federal funding supports.

Department/Committee Response: This was an item that the Department discussed to a great extent with advocacy groups to develop the existing language in the QAP. The Department believes that the current standards in the QAP work well to provide units for persons with disabilities. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c)(6)(C) Transitional Housing

Comment: It was suggested that a point system be developed for projects that set-aside a small percentage of units for use as transitional housing.

Department/Committee Response: The Code is set up so that the entire building must be established for transitional housing and appropriate supportive services must be offered to the tenants. While projects could accomplish this by concentrating the transitional tenants in specific buildings, the Department suggested that points should only be awarded to developments that focus entirely on providing transitional housing. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c)(8) Readiness to Proceed

Comment: It was suggested that the current readiness to proceed criteria need to be modified to allow FHA 221(d)(4) loans to qualify. It was stated that the FHA insured 221(d)(4) loan program provides for 40 year amortization and 1:1.1 debt coverage ratio, the most lenient terms in the industry. While lending money is the primary business of all FHA-approved mortgagees, very few of them are federally regulated. The 221(d)(4) program provides the most leverage available, yet this program is rarely utilized for tax credits because developers don't receive points allocated for this section of the QAP. It was thought that the reason for the regulated institution requirement is to prevent commitment letters from entities that don't have the financial capacity to deliver the commitment. This issue could be satisfied by requiring that FHA-approved Mortgagees be an approved Ginnie Mae issuer. In addition to other requirements, Ginnie Mae issuers must maintain a net worth of at least $500,000.

Department/Committee Response: The Department does not have the resources to determine the viability of lenders and must rely on state and federal regulatory institutions to accomplish this function. However, tax credit recipients have the option of replacing a proposed lender if better can be obtained elsewhere. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(c)(9) Right of First Refusal

Comment: It was suggested that an applicant should receive additional points for identifying a specific Qualified Nonprofit Organization to administer the program under the right of first refusal. A counter argument was provided that suggested that applicants receiving tax credits have up to 14 years to enter into a right of first refusal with a Qualified non-profit organization and should not be required to do that at the time of application or project completion. They should be given time to search for the best nonprofits to work with in order to ensure the long-term viability of the project.

Department/Committee Response: The Department believes that finding a nonprofit at application for an event that will occur 15 years in the future is not enforceable and points should not be awarded. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(d) Final Ranking

Comment: It was suggested that in the event of a tie score additional points could be added based on the final ranking criteria contained in the existing QAP. In the event that these items did not break the tie, the award would go to the lowest tax credit request.

Department/Committee Response: The final ranking criteria in the existing QAP are presented in an order based on programmatic goals. Therefore, it was suggested that this straightforward method of breaking ties should be maintained without having a more complicated specific point system provided for each item. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(e) Credit Amount

Comment: It was suggested that because high AMGI urban centers will receive the benefit of rapidly expanding availability of private activity bond financing, the Department should avoid competition with the private activity bonds by rewarding devel-

opment in areas that cannot use private activity money. It was suggested that by doing so more 9% credits could be allocated to poor, rural or lower AMGI metropolitan markets. It was suggested that to encourage participation by a wide variety of developers the maximum credit award over a three year period should be limited to $2 million per applicant. This would prevent more recent developers from receiving very large awards prior to establishing a compliance and program performance.

Department/Committee Response: With the utilization of the geographic distribution and submarket concentration discretionary items provided in §49.6(b)(3), the direct competition between the "9%" and "4%" credits will be reduced. The Department feels the current limit provides an effective way of providing that the credits are awarded to a variety of applicants. The current annual limit:

1. allows applicants to apply for developments that allow for economies of scale and

2. does not prohibit awards to highly competitive applicants who provide quality developments solely because they may have received an award in previous years. No revision to the QAP was proposed.

Board Response: The Board recommended changing the per Applicant award limit to $1.8 million.

§49.6(e) Credit Amount.

(1) The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Project throughout the Compliance Period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Project by the Department. The Department will limit the allocation of tax credits to no more than $1.2 million per Project or $1.8 million per Applicant. For these purposes this limitation will apply to all Affiliates of any Applicant, developer, Project Owner, general partner, sponsor or their Affiliates or related entities unless otherwise provided for by the Department. Tax Exempt Bond Project Applications are not subject to the per Project and per Applicant credit limitations.

§49.6(f) Limitations on the Size of Projects

Comment: It was suggested that the Department reevaluate the unit and credit limitations to increase the number of communities that benefit from low income housing tax credits and to enable participation by a wide variety of Project Owners.

Department/Committee Response: The unit and credit limitations are in line with the size and type of developments that the Department would like to have built and which allow some economies of scale. No revision to the QAP was proposed.

Board Response: Department/Committee's response accepted.

§49.6(g)

Comment: It was suggested that protection for private activity bond applications where TDHCA is not the issuer needs to be included so that the Department could not turn down an application receiving a lottery selection to move a TDHCA client up the list. It was suggested that the Department should review the application no later than 20 days after the submission date. It was suggested that TEFRA hearings are mandatory requirements of the bond process. As the LIHTC program does not hold a duplicative set of hearings, the evidence that the TEFRA hearing has been held and a summary of the results of the hearing should be a condition of issuance of the Determination Notice. It was suggested that because of the importance and value of the provision of supportive services to the tenants that these be included as a required condition of tax exempt bond determination notices. It was suggested that the language relating to the tax exempt bond applications need to demonstrate consistency with the bond issuer's local Consolidated Plan may not be an option for applicants as such a document may not exist. It was suggested that bond applicants should demonstrate consistency with the issuer's or the local municipality's Consolidated Plan, Comprehensive Plan, State Low Income Housing Plan or other similar planning document, if any such document exists.

Department/Committee Response: The Department suggested that additional language is not required to "protect" non-TDHCA issuers. All applications will be evaluated under the same standards as defined by the QAP. The timing issue with regard to tax-exempt bonds has more to do with incomplete or preliminary bond pricing than with the lack of Department timeliness. Because of the complexities of the Bond Issuer's scheduling of the TEFRA hearing, it was suggested that this issue be addressed on a case by case basis. In those instances where such documentation cannot be provided prior to the issuance of the Determination Notice than such documentation can be made a condition of the notice. The Department concurred with the supportive services and consolidated plan comments. The following revision to the QAP was proposed:

§49.6(g) Tax Exempt Bond Financed Projects.

(1) Tax Exempt Bond Project Applications are subject to evaluation under the QAP and Rules and the requirements and underwriting review criteria described in the Application Submission Procedures Manual. Such projects must meet all Threshold Criteria requirements stipulated in the most recently approved QAP and Rules. Tax Exempt Bond Financed Projects are not subject to the Selection Criteria and related items and are not required to submit such documentation. Tax Exempt Bond Project Applications must demonstrate the Project's consistency with the bond issuer's consolidated plan or other similar planning document. Consistency with the local municipality's consolidated plan or similar planning document must also be demonstrated in those instances where the city or county has a consolidated plan.

(2) Tax Exempt Bond Project Applications are subject to the size restrictions specified in §49.6(f).

(3) Tax Exempt Bond Project 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 such services will be included in the Declaration of Land Use Restrictive Covenants ("LURA").

Board Response: Department/Committee's response accepted.

§49.8(d)(1)

Comment: A number of comments were made regarding programmatic deadlines. It was suggested that the construction loan closing requirement should be changed from 150 days to June 15th of the year after the Carryover is executed.

Department/Committee Response: The Department agreed with this deadline. The following revision to the QAP was proposed:

§49.8(d)(1) the Project Owner's closing of the construction loan shall occur not later than June 15th of the year after the execution of the Carryover Allocation Document with the possibility of a one-time 30 day extension. All requests for extensions by Applicants shall be submitted to the Department for review. The Committee may grant extensions, in its sole discretion, on a case-by-case basis. The Committee may, in its sole discretion, waive related fees. Copies of the closing documents must be submitted to the Department within two weeks after the closing. The Carryover Allocation will automatically be revoked if the Project Owner fails to meet the aforementioned closing deadline, and all credits previously allocated to that Project will be returned to the general pool for reallocation; and

Board Response: Department/Committee's response accepted.

§49.8(d)(2)

Comment: The commencement of construction should be changed from within a year of the Carryover execution to November 15th of the year after the Carryover is executed.

Department/Committee Response: The Department agreed with this deadline. The following revision to the QAP was proposed:

§49.8(d)(2) the Project Owner must commence and continue substantial construction activities not later than November 15th of the year after the execution of the Carryover Allocation Document and evidence such activity in a format prescribed by the Department, (as more fully defined in the Carryover Allocation Procedures Manual), outlining progress towards placing the Project in service in an expeditious manner. All requests for extensions by Applicants shall be submitted to the Department for review, and the Committee may grant extensions, in its sole discretion, on a case-by-case basis.

Board Response: Department/Committee's response accepted.

PUBLIC COMMENT AND DEPARTMENTAL RESPONSE ON ITEMS OUTSIDE OF THE DRAFT RULES

This section discusses items that are not specifically addressed in the version of the Rules submitted for public comment.

Application

Comment: It was suggested that the Department work to remove duplicative or unnecessary requirements for information during the application process. It was suggested that the Department streamline the application to remove unnecessary information requirements.

Department/Committee Response: The Department concurred with this suggestion and will work to make the application form more "user friendly."

Board Response: Department/Committee's response accepted.

Application Process

Comment: It was suggested that the Department include a clearly defined schedule of the entire process from application to funding award.

Department/Committee Response: The Department concurred with this comment and will include such a schedule in the Application Submission Procedures Manual.

Board Response: Department/Committee's response accepted.

Clarity of the QAP

Comment: It was suggested that the QAP be re-written with less legal language and more practical language. Review MA, MI and CA's QAPs for ideas on how to accomplish this.

Department/Committee Response: The Department will address any questions which relate to the application through the Application Submission Procedures Manual and its Application Training Seminars.

Board Response: Department/Committee's response accepted.

Developer Experience

Comment: It was suggested that staff visit projects currently under construction to ensure that the quality is high. It is not enough to base developer experience on past performance with compliance and reject only the extreme violators.

Department/Committee Response: The Department inspects all projects throughout the construction and operation of the development. Any problem developers will be identified.

Board Response: Department/Committee's response accepted.

Issuance of 8609s

Comment: A number of comments were made on the need to issue the IRS Form 8609 in a more timely manner. It was suggested that the owner be notified of any cost certification deficiencies within 15 days of submitting the cost certification manual. The Department shall issue the 8609s within 60 days of receiving the cost certification manual. Another suggested timeline was that the 8609s be issued no later than 90 days after submission of the cost certification manual. Notifications of deficiencies should occur no later than 30 days after the manual's submission. It was suggested that the 77th Legislature authorize additional FTE funds to provide staff to process and issue the IRS Form 8609 to participants in the tax credit program. It was suggested that the Department identify at least one person who will be responsible for processing and issuing the 8609s.

Department/Committee Response: The Department agreed that the timely issuance of the 8609s is of great importance. However the ability to issue the 8609s is dependent on the timely submission of the document to the Department and the completeness of the submission. The tax credit program will modify its SOP to assign specific staff members to review each file and to notify each project owner of the staff member's name when the cost certification is submitted. A timeline requiring a 30 day deficiency response after the cost certification manual has been submitted and a 90 day 8609 issuance upon receipt of a complete cost certification manual will be specified in the SOP.

Board Response: Department/Committee's response accepted.

Lottery System

Comment: It was suggested that the Department adopt a lottery system to award the credits.

Department/Committee Response: It was thought that a lottery system does not represent a method of allocating the credits which ensures that the best, most feasible developments receive an allocation. It certainly does not represent a method that would achieve an ideal geographic distribution of credits. The state of California recently abandoned its lottery system.

Board Response: Department/Committee's response accepted.

Maintenance of the Affordable Housing Portfolio

Comment: It was suggested that the QAP should be used to more strongly encourage the maintenance of the affordable housing portfolio over the long term. Affordable housing must be viewed and maintained in the same way as any other fixed asset the state owns because, for the foreseeable future, the Texas economy will depend upon a workforce that cannot afford the fair market rates across the state. Developers should be strongly encouraged through a point system or upper tier to increase the long term affordability of the properties. At the same time, loopholes that may exist to allow owners to "short-circuit" this commitment should be eliminated.

Department/Committee Response: The Department is developing a preservation policy to address long term affordability issues in its programs. This policy will be subject to public comment before it is implemented. It was suggested that the right of first refusal criteria encourages long term affordability in providing nonprofit organizations with the ability to exercise a right of first refusal at the end of the compliance period.

Board Response: Department/Committee's response accepted.

Pre-Application Process

Comment: A number of comments were made on the institution of a pre-application process in 2001 to reduce the time and money that is being invested in completing full applications that do not have a realistic chance of being awarded. It was suggested that a pre-application could consist of the project location, development team, and market study. The Department would review the documentation and site and would publish a list of the locations, development teams and site review analyses which would allow the applicants to determine if they wished to proceed with a full application.

Department/Committee Response: The Department will consider this item for the 2001 QAP. Such an application process would have to conform with the required July commitment deadline.

Board Response: Department/Committee's response accepted.

Public Comment

Comment: It was suggested that time limits should not be placed on those persons providing public comment. It was suggested that the Department hold public hearings outside of the larger metropolitan areas.

Department/Committee Response: The time limits are determined by the Committee members and are based on the number of attendees at the meeting. The Department will consider holding public hearings in non-metropolitan communities.

Board Response: Department/Committee's response accepted.

Retribution

Comment: It was suggested that the Department should eliminate the perceived practice of retribution toward critics of the Department or of the tax credit allocation procedure. Developers who have dared to criticize the process are essentially eliminated from the field for possible tax credits.

Department/Committee Response: The Department carefully documents all of its award decisions and none are based on retribution. Public input on the program and its activities is highly valued.

Board Response: Department/Committee's response accepted.

Ethics

Comment: It was recommended that the governing Board of Directors of the Department of Housing and Community Affairs establish a "revolving door" policy in which former members of the Board and former Department employees are prohibited from participating in or benefiting from the Low Income Housing Tax Credit Program for two years following the date the Board member or employee leaves the Department. It was perceived that allowing former employees and Board members to participate in or benefit from the program represents an appearance of impropriety that should be avoided in a program.

Department/Committee Response: The Department will continue to adhere to the provisions of Chapter 572 of the Texas Government Code which defines the revolving door policy.

Board Response: Department/Committee's response accepted.

TxRD Developments

Comment: It was suggested that the TxRD 515 program has reached a stage where a large percentage of the portfolio is over 10 years old and much of it is approaching 20 years. No matter how well operated and maintained, properties of this age need rehabilitation and updating to remain acceptable living quarters. Tax credits can be used to maintain this important housing stock for predominantly low income residents in rural areas. The Agency needs to realize that it will receive this type of application, the purpose of application, and not deny the application simply because it does not increase the affordable housing stock. Rather tax credits are the only way to bring needed private funds into rehabilitating housing for the rural poor.

Department/Committee Response: The Department recognizes the importance of the TxRD developments in the rural communities. The Department has established a set-aside specifically for these TxRD developments. The Department will continue to recommend those projects which it believes are in need of rehabilitation, financially feasible and represent a worthwhile use of the tax credits.

Board Response: Department/Committee's response accepted.

Underwriting, Ancillary Income

Comment: It was suggested that ancillary income for apartment properties has increased over the last few years for several reasons. Late fees and deposit forfeitures have become much more frequent and even standard in some cases. In addition, income from cable, telephone and internet connections has accelerated. Collectively, this has resulted in significantly higher ancillary income than is currently being underwritten today. It is recommended that the ancillary income category be underwritten by TDHCA in accordance with the recommendations and comparables provided by market studies and analysts, which are based on actual current operating results.

Department/Committee Response: The Underwriting Division takes into account well documented ancillary income above the $10/unit guideline. This increase must be reasonable and must be well documented by a market study that demonstrates that such ancillary income is obtained by the comparable projects in the submarket.

Board Response: Department/Committee's response accepted.

Underwriting, Debt Coverage Ratio

Comment: It was suggested that the Department maintain its current flexibility on evaluating project's DCRs on a case by case basis and not to instill a required minimum standard 1.15 DCR as suggested by the Affordable Housing Investor Council. As the loan terms are affected by a variety of factors other than the DCR, the decision of what DCR is acceptable for the lender should remain with the lender.

Department/Committee Response: TDHCA accepts DCRs from 1.1 through 1.25 when underwriting the projects and will continue to maintain this flexibility.

Board Response: Department/Committee's response accepted.

Underwriting, Developer Fees

Comment: One commentator expressed concerns over the 15% developer fee limitation and a perceived tendency by the Department to require greater levels of deferred developer fees. Large developments can possibly defer fees prudently without affecting the financial viability of the project; however smaller deals should not be done when a significant amount of the developer fee is deferred. This in effect tends to lower the developer fee as many projects will not be able to repay developer fees loans in the early years of the project's life. With this trend we should be concerned about the following:

1. Lower developer fees provide less cushion against lease-up and construction risk, thereby increasing construction lenders' project risk and project financing costs.

2. Lower developer fees result in less money available to fund reserves.

3. Many social and tenant services will suffer where these programs are initially funded from developer fees.

One solution might be to increase the developer fee above 15% in cases of smaller project size, location in difficult to develop areas, or where a higher fee would encourage development of difficult to develop or socially desirable projects.

Another commentator requested that developer fees should be limited to 10%.

Department/Committee Response: Developer and contractor fee limits are national standards that have been accepted by a preponderance of state allocating agencies. TDHCA's recommendation for a particular project to increase deferred developer's fees is only done as a way to make the project financially feasible. Without such action, more projects would be declined for lack of sufficient financing.

Board Response: Department/Committee's response accepted.

Underwriting, Elderly Housing Underwriting Guidelines

Comment: It was suggested that the Department develop underwriting criteria for senior housing. One of the main concerns was over the 105% limitation on common space which does not provide enough space to provide the supportive services and communal areas required in senior developments. The industry standards are 110% for independent living elderly and 115 to 130% for assisted living. (As housing is designed for a more frail population, the individual space in units is decreased and the space in common/service areas is increased.) It was suggested that the state adopt similar standards, e.g., 110% for housing serving independent elderly and 120% if the sponsor is providing a service-enriched environment for frail elderly. Alternatively, the Department could limit the total square footage to a reasonable standard (e.g., gross square footage of 800 per unit) that allows the sponsor to make the choice of whether the space goes into the unit or into the supportive service areas. It was suggested that the Department's point preference for small one story structures is not in keeping with the needs of elderly developments in that it requires lengthy walking distances between facilities.

Department/Committee Response: The 105% limitation has not limited congregate care or similar projects in the past since it is a guideline and not an absolute limit for such projects. Underwriting has in the past year accounted for all documented common area and has not penalized assisted living projects by reducing project costs or eligible basis on this account. Additional guidelines for assisted living projects for common area not to exceed 30% of the net rentable square footage would be reasonable. The underwriting guidelines in the Application Submission Procedures Manual will be reviewed to make sure they provide an adequate guideline for these developments.

Board Response: Department/Committee's response accepted.

Underwriting, Land Cost

Comment: It was suggested that land cost be removed from the maximum cost per square foot calculation since it is not part of basis, is not funded by the tax credits, and unjustly penalizes higher cost sites. It was suggested that land value should not be included in calculating the total cost of the project because the land value's inclusion in that calculation often has a negative effect on the Applicant's choice of site location. It was felt that the Applicant should be encouraged to choose the best site for a project without being limited indirectly by the development cost limits.

Department/Committee Response: Land cost and location selection are significant components of the development plan and should be considered by the Department in its underwriting review. Moreover, the land cost can become a factor in determining the credit amount when the gap method is used.

Thus, a high land cost could lead to more gap-calculated credits than would otherwise be awarded. Excluding land costs could increase speculation on multifamily sites in areas where such properly zoned sites are limited. Finally, the total cost guideline serves only as a guideline, not as an absolute cap and therefore a total cost in excess of the guideline could reasonably be explained by higher than normal but otherwise acceptable land costs.

Board Response: Department/Committee's response accepted.

Underwriting, Per Square Foot Costs

Comment: It was suggested that the maximum project cost per square foot allowable data is outdated and should be increased to establish a maximum cost base that reflects current affordable housing development costs. This updated maximum cost base should be adjusted annually with the Consumer Price Index (CPI) to stay current in future years. Additionally, separate maximum cost factors should be established for high rise buildings, congregate care products, assisted living projects and structured parking, to allow for the necessary higher costs of these improvements.

Department/Committee Response: The cost estimation reference material used by the Department, Marshall and Swift, is updated quarterly so national and statewide cost trends will be accounted for in the underwriting review of the construction costs.

Board Response: Department/Committee's response accepted.

Underwriting, Per Unit Tax Credit Limitation

Comment: It was suggested that if staff has determined to cap the amount of tax credits allowed per unit in the QAP based on location, number of units or other objective data, make that information known prior to the application process. It was specifically suggested that a maximum credits/unit limitation of $5,500 and a maximum credits/sq. ft. limitation of $55 be utilized. This would avoid investing in projects that were too expensive, prevent undue rewards and disparity between the selected projects, and use credits more efficiently.

Department/Committee Response: The Department does not employ a credit cap per unit. Because of each project's unique characteristics and needs, such a limitation could adversely limit special purpose projects and/or cause the product being developed to be too homogeneous.

Board Response: Department/Committee's response accepted.

Underwriting, Publishing Underwriting Criteria

Comment: It was suggested that all underwriting criteria be published.

Department/Committee Response: All general underwriting criteria are currently published in the LIHTC Application and Submission Procedures Manual. TDHCA has developed database information sources which are updated regularly and are available upon request. Other sources of comparison such as the Marshall and Swift development costs are proprietary and cannot be copied freely but may be obtained through the publishers.

Board Response: Department/Committee's response accepted.

Underwriting, Related Party Underwriting Guidelines

Comment: It was commented that there is a perceived bias by TDHCA against applications where related parties are involved in the development and construction process and that the fees charged by these parties are considered excessive because related parties are involved. The related party developer should not be penalized because he may be a one-stop shop. Each one of the identified interests earns its fees. These companies deserve the same opportunities as others and should be allowed to charge reasonable and customary fees for the work that they perform.

Department/Committee Response: The Department does not have a bias against "one stop shop" developers and does not underwrite them any differently than other applicants.

Board Response: Department/Committee's response accepted.

Underwriting, Use of Appraisals by the Department

Comment: It was suggested that the Department's Underwriting Division should not use property tax values that would result in a reduction of the tax credits awarded.

Department/Committee Response: Property tax values or current loan amounts have only been used in identity of interest acquisitions where the seller and developer were related and a significant profit on the sale would have otherwise resulted. The Department will work closely with TxRD to ensure that the appraisals are received in a timely manner so that they may be used in the underwriting analysis.

Board Response: Department/Committee's response accepted.

Underwriting, Use of the Market Study by the Department

Comment: It was suggested that the Department's Underwriting Division should not stipulate increased initial rents that conflict with the Market Study as a basis for lowering the amount of tax credits proposed for a Project. It was suggested that one market study could be generated for geographical regions which could be shared among the applicants. TDHCA's underwriting should utilize realistic market values for rent and appraisal of property.

Department/Committee Response: The Department currently does not increase initial rents unless they are significantly below the prescribed rent limits and the revised rents are within the comparable limits as defined in the market study or market studies of nearby projects. TDHCA is charged with providing not more funds than are necessary, and when an applicant is not required to maintain below-market and below-rent limit rents, an excess subsidy exists. The market study provides validation of the specific project's submarket, project operating expenses, and specific project development costs and as such would lose some of its effect if it were more generic and shared by larger geographic regions.

Board Response: Department/Committee's response accepted.

The proposed new sections are adopted pursuant the authority of the Texas Government Code, Chapter 2306; Chapter 2001 and 2002, Texas Government Code, V.T.C.A., and Section 42 of Internal Revenue Code of 1986, as amended, (26 U.S.C.A) which provides the Department with the authority to adopt rules governing the administration of the Department and its programs; and Executive Order AWR-91-4 (June 17, 1991),

which provides this Department with the authority to make housing credit allocations in the State of Texas. Section 42 of Internal Revenue Code of 1986, as amended, (26 U.S.C.A), provides for credits against federal income taxes for owners of qualified low income rental housing projects. That section provides for the allocation of available tax credit amount by state housing credit agencies. As required by the Internal Revenue Code, Section 42 (m)(1), the Department developed a Qualified Allocation Plan which was adopted by the governing board of the Department and submitted to the Governor in accordance with Texas Government Code Section 2306.671(b) and is contingent upon the Governor's approval in accordance with Texas Government Code Section 2306.671(c).

§49.1. Scope.

The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of certain low income 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 Projects. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order AWR-91-4 (June 17, 1991), the Department was authorized to make housing credit allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed a Qualified Allocation Plan (QAP) which is set forth in §49.3 through §49.8 of this title (relating to State Housing Credit Ceiling, Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments, Set-Asides, Commitments and Preferences, Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; Compliance Monitoring, Housing Credit Allocations). Sections in this chapter establish procedures for applying for and obtaining an allocation of the low income housing tax credit, along with insuring that the proper Threshold Criteria, Selection Criteria, priorities and preferences are followed in making such allocations. 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 to promote maximum utilization of the available tax credit amount. The criteria utilized to realize this goal shall include, but are not limited to, evaluation of geographic location within the state of developments applying for tax credits, concentration of tax credit developments and other affordable housing developments within specific markets and submarkets, site conditions of the developments, and a development's impact on and conformance with the goals and objectives as stated in the QAP and the Rules. The foregoing shall be implemented to be consistent with ensuring that the tax credits are allocated to owners of Projects that will serve the Department's public policy objectives and federal requirements to provide housing to persons and families of very low and low income. It is the policy of the Department to encourage the use of Historically Underutilized Businesses (HUBs) in all of the Department's programs. In response to this policy, the Department has established a minimum goal of 30% participation of HUBs in the low income housing tax credit program. Project Owners are encouraged to achieve these minimum goals. To assure maximum utilization and optimum geographic distribution of tax credits in rural areas, although not mandated to do so, the Department is developing Memorandums of Understanding (MOU) with the TxRD-USDA. Such MOUs will seek to achieve increased sharing of information, reduction of processing procedures, and fulfillment of project compliance requirements involving existing, rehabilitated, and new construction housing projects financed by TxRD-USDA.

§49.2. Definitions.

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

(1) Ad Hoc Tax Credit Committee - That Committee comprised of members of the Board of the Department charged with the direct oversight of the Low Income Housing Tax Credit Program, also referred to as the "Committee."

(2) Adaptable Dwelling Unit - As described in the Fair Housing Act, a unit which meets the minimal accessibility requirements specified in the Act (i.e. usable doors, an accessible route, accessible environmental controls, and usable kitchens and bathrooms) and the "adaptable" structural feature or reinforced bathroom walls for later installation of grab bars.

(3) 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.

(4) Agreement and Election Statement - A document in which the Project Owner elects, irrevocably, to fix the applicable credit percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Project Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings, which Agreement and Election Statement shall be executed by the Project Owner no later than five days after the end of the month of execution of the agreement as to housing credit dollar amount.

(5) Applicable Percentage - The percentage used to determine the amount of the low income housing tax credit, as defined more fully in the Code, §42(b). The Applicable Percentage in the Application will be calculated using the formula provided in the Application Submission Procedures Manual.

(6) Applicant - Any Person and any Affiliate of such Person, corporation, a partnership, joint venture, association, or other that submits an Application to the Department requesting a tax credit allocation pursuant to the Rules and the QAP. The Applicant is also the Project Owner unless the Applicant transfers or assigns its interest in the Project (which assignment can only occur with the consent of the Department). Each Project Owner, and each of the Project Owner's successors in interest, shall be obligated to carry out the commitments made to the Department by the Applicant.

(7) Application - An Application in the form prescribed by the Department, including any required exhibits or other supporting materials, filed with the Department by a Project Owner requesting a low income housing tax credit allocation.

(8) Application Acceptance Period - That period of time during which Applications for either a Housing Credit Allocation from the State Housing Credit Ceiling or a Determination Notice for Tax Exempt Bond Projects may be submitted to the Department as more fully described in §49.12 of this title (relating to Manner and Place of Filing Applications).

(9) Application Round - The period beginning with the start of the Application Acceptance Period and lasting until such time as all available credits from the State Housing Credit Ceiling (as stipulated by the Department) are allocated, provided that the Application Round not extend beyond the last day of the calendar year.

(10) Application Submission Procedures Manual - That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of Applications for low income housing tax credits, which manual may be amended from time to time by the Department.

(11) Appraiser - A real estate professional certified or licensed by the Texas Appraiser Licensing and Certification Board who has satisfied continuing education requirements. The appraiser must have, at a minimum, five (5) years appraisal experience, preferably in the geographic area of the property to be appraised. It is desirable, but not required, that the appraiser have a professional designation or be an active member of a professional accredited appraisal institution.

(12) Area Median Gross Income (AMGI) - The tenant income requirements pursuant to the qualified low income housing project requirements of the Code, §42(g).

(13) 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, as defined more fully in the Code, §42(c)(1).

(14) Beneficial Owner - A "Beneficial Owner" means:

(A) Any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares;

(i) voting power which includes the power to vote, or to direct the voting as any other Person or the securities thereof; and/or

(ii) investment power which includes the power to dispose, or direct the disposition of, any Person or the securities thereof.

(B) Any Person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such Person of Beneficial Ownership (as defined herein) of a security or preventing the vesting of such Beneficial Ownership as part of a plan or scheme to evade inclusion within the definitional terms contained herein; and

(C) Any Person who has the right to acquire Beneficial Ownership during the Compliance Period, including but not limited to any right to acquire any such Beneficial Ownership;

(i) through the exercise of any option warrant or right,

(ii) through the conversion of a security,

(iii) pursuant to the power to revoke a trust, discretionary account or similar arrangement, or

(iv) pursuant to the automatic termination of a trust, discretionary account, or similar arrangement.

(D) Provided, however, that any Person who acquires a security or power specified in subparagraph (C)(i), (ii) or (iii) of this paragraph, with the purpose or effect or changing or influencing the control of any other Person, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition is deemed to be the Beneficial Owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to options, warrants, rights or conversion privileges as deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such Person but are not deemed to be outstanding for the purpose of computing the percentage of the class by any other Person.

(15) Board - The governing Board of Directors of the Department.

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

(17) Carryover Allocation Document - A document issued by the Department to a Project Owner pursuant to §49.4(k) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments).

(18) Carryover Allocation Procedures Manual - That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of request for Carryover Allocations for low income housing tax credits, which said manual may be amended from time to time by the Department.

(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 relating to the Low Income Housing Tax Credit Program authorized by the Code, §42, and as may be amended from time to time.

(20) Commitment Notice - A notice issued by the Department to a Project Owner pursuant to §49.4(h) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) and also referred to as the "commitment".

(21) Compliance Period - With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1).

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

(23) Cost Certification Procedures Manual - That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of requests for IRS Form 8609s for Projects placed in service under the Low Income Housing Tax Credit Program, which said manual may be amended from time to time by the Department.

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

(25) Declaration of Land Use Restrictive Covenants (LURA) - An agreement between the Department, the Project Owner and all successors in interest in the Project Owner which encumbers the Project with respect to provisions stipulated in the Code, §42, and this chapter (relating to Low Income Housing Tax Credit Qualified Allocation Plan and Rules), and the Texas Government

Code, Chapter 2306 as may be amended from time to time. The LURA includes an Extended Low Income Housing Commitment Agreement.

(26) Department - The Texas Department of Housing and Community Affairs, a public and official governmental Department of the State of Texas created and organized under the Texas Department of Housing and Community Affairs Act, Texas Government Code, Chapter 2306 and Texas Civil Statutes, Article 4413(501) as amended by the 73rd Legislature, Chapter 725 and 141.

(27) Determination Notice - A notice issued by the Department to the Owner of a Tax Exempt Bond Project which states that the Project may be eligible to claim low income housing tax credits without receiving an allocation of credits from the State Housing Credit Ceiling, sets forth conditions which must be met by the individual project before the Department will issue the IRS Form(s) 8609 to the project owner, and specifies the amount of tax credits necessary for the financial feasibility of the project and its viability as a qualified low income housing project throughout the credit period.

(28) Development Team - All Persons or Affiliates thereof which play(s) a material role in the development, construction, rehabilitation, management and/or continuing operation of the subject Property, which will include any consultant(s) hired by the Applicant for the purpose of the filing of an Application for low income housing tax credits with the Department.

(29) Difficult Development Area - Any area which is so designated by the Secretary of the United States Department of Housing and Urban Development (HUD) as an area which has high construction, land, and utility costs relative to area median family income.

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

(31) Equity Gap - The difference between the total sources of financing for the Project and the total Project costs that is to be filled with the proceeds of the credit.

(32) Extended Low Income Housing Commitment Agreement - An agreement between the Department, the project owner and all successors in interest to the project owner concerning the extended low income housing use of buildings within the project throughout the extended use period as provided in the Code, §42(h)(6).

(33) Financial Statement - Document(s) which provides information about the Applicant's economic resources, claims against those resources, and the interests of owners at specific dates as more fully described in subparagraphs (A) through (D) of this paragraph.

(A) Statement of Financial Position/Balance Sheet - a listing, as of a particular date, of all assets and claims against those assets (liabilities). The difference is equity.

(B) Income Statement - a listing that relates to a specific period of time, presenting an entity's results of operations.

(C) Statement of Retained Earnings - reports all changes in retained earnings during the accounting period, reconciles beginning and ending retained earning balances and provides a connecting link between the income statement and the balance sheet.

(D) Cash Flow Statement - a report listing the changes in an entity's cash and cash equivalents, classified by principal sources and uses, for a given period.

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

(35) General Projects - Any project which is not a Qualified Nonprofit Project or is not under consideration in the Rural/ Prison set-aside as such terms are defined by the Department.

(36) General Pool - The pool of credits that have been returned or recovered from prior years' allocations or the current year's Commitment Notices after the Board has made its initial allocation of the current year's available credit ceiling. General pool credits will be used to fund Applications on the waiting list without regard to set-aside except for the 10% Nonprofit Set-Aside allocation required under §42(h)(5) of the Code.

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

(38) Historically Underutilized Businesses - Pursuant to Texas Civil Statutes, Article 601b, §§1.02, 1.03, and 1.04, entitled State Purchasing and General Services Act which is codified at Chapter 2161, Texas Government Code, entitled Historically Underutilized Businesses, a business in the form of a corporation, partnership or joint venture which is at least 51% owned, or a sole proprietorship which is 100% owned by a person or persons who have been historically underutilized due to their identification as a member of a certain group. The following are the groups which will be considered pursuant to this definition:

(A) African Americans - persons having origins in any of the Black racial groups of Africa;

(B) Hispanic Americans - persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(C) Asian-Pacific Americans - persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Philippines, Samoa, Guam, U.S. Trust Territories of the Pacific and the Northern Marianas;

(D) Native Americans - persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or

(E) Women - includes all women of any ethnicity.

(39) Homeless Person - An individual or family that lacks a fixed, regular, and adequate nighttime residence as more fully defined in 24 Code of Federal Regulations, § 841.1, and as may be amended from time to time.

(40) Housing Credit Agency - A governmental entity charged with the responsibility of allocating low income housing tax credits pursuant to the Code, §42. For the proposes of these Rules, the Department is the sole "Housing Credit Agency" of the State of Texas.

(41) Housing Credit Allocation - An allocation by the Department to a Project Owner of low income housing tax credit in accordance with §49.8 of this title (relating to Housing Credit Allocations).

(42) Housing Credit Allocation Amount - With respect to a Project or a building within a Project, that amount the Department determines to be necessary for the financial feasibility of the Project

and its viability as a qualified low income housing Project throughout the Compliance Period and allocates to the Project.

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

(44) Ineligible Building Types - Single family detached housing, duplexes, and triplexes shall not be included in tax credit developments (except as provided for in this definition). Fourplexes are also prohibited unless they are developed in clusters of four or more contiguous property under common ownership, management and Control. The only exceptions to this definition are:

(A) Any project comprised of single family detached homes, duplexes or triplexes of 36 units or less that is located within a city or county with a population of not more than 20,000 or 50,000, respectfully, shall not be considered to include an Ineligible Building Type. The proposed units must be located on contiguous property under common ownership, management and Control or dispersed within an existing residential subdivision.

(B) An existing Rural Project that is federally assisted within the meaning of §42(d)(6)(B) of the Code and is under common ownership, management and Control shall not be considered to include an Ineligible Building Type. For qualifying federally assisted Rural Projects, construction cannot include the construction of new residential units. Rural Projects purchased from HUD will qualify as federally assisted.

(45) Intermediary Costs - Costs associated with the sale or use of tax credits to raise equity capital. 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, environmental site assessment, etc.

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

(47) Local Tax Exempt Organization - An entity which is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, and which is registered or qualified to conduct business in the State of Texas and/or the governmental unit wherein the Project will be situated.

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

(49) Material Deficiencies - The absence of information or documents from the Application which are essential for the complete review and scoring of the project and which remain uncorrected after notification of the Applicant as further described in subparagraphs (A) and (B) of this paragraph.

(A) The Department may request correction of deficiencies which are either administrative in nature or are caused by the need for clarification of information submitted at the time of Application. Such deficiencies include, but are not limited to, incorrect calculation of the project's unit mix, gross and net rentable areas or the submission of exhibits that contain incomplete or conflicting information. If such deficiencies are not corrected to the satisfaction of the Department within 5 business days from the deficiency notice date, then 2 points shall be deducted from the Selection Criteria score for each day the deficiency remains uncorrected. If such deficiencies are not corrected within 10 business days from the deficiency notice date, the Application shall be terminated.

(B) Deficiencies caused by the omission of exhibits required in Volume 1 of the Application or associated with the Threshold Criteria shall automatically be considered Material Deficiencies and shall be cause for termination.

(50) Material Non-Compliance - A property will be classified by the Department as being in material non-compliance status so long as the non-compliance score for such property is equal to or exceeds 30 points in accordance with the methodology and point system set forth in the Application Submission Procedures Manual.

(51) Persons with Disabilities - A person who:

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

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

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

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

(B) has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001-6007).

(52) Prison Community - A city or town which is located outside of a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) and was awarded a state prison as set forth in the Reference Manual.

(53) Project - A low income rental housing Property the owner of which represents that it is or will be a qualified low income housing Project within the meaning of the Code, §42(g). With regards to this definition, the "Project" is that Property which is the basis for the Application for low income housing tax credits. May also be referred to as the subject "property."

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

(55) Project Owner - Any Person or Affiliate thereof that owns or proposes to develop the Project or expects to acquire Control of the Project pursuant to a purchase contract satisfactory to the Department.

(56) 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.

(57) Qualified Allocation Plan - An allocation plan executed by the Governor of the State of Texas which sets forth the Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring as provided in the Code, §42(m)(1) and as further provided in §49.3 through §49.8 of this title (relating to State Housing Credit Ceiling, Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments, Set-Asides, Commitments and Preferences, Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; Compliance Monitoring, Housing Credit Allocations).

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

(59) Qualified Census Tract - Any census tract which is so designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, in which 50% or more of the households have an income which is less than 60% of the area median family income for such year.

(60) Qualified Market Analyst - A real estate appraiser certified or licensed by the Texas Appraiser or Licensing and Certification Board or a real estate consultant or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's experience and educational background will provide the general basis for determining competency as a Market Analyst. Such determination will be at the sole discretion of the Department. The Qualified Market Analyst must not be related to or Affiliated with the Project Consultant, or the independent CPA employed for certifying the 10% test and/or the final Project cost certification.

(61) 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).

(62) Qualified Nonprofit Project - A Project in which a Qualified Nonprofit Organization has Control (directly or through a partnership or wholly-owned subsidiary) and materially participates (within the meaning of the Code, §469(h), as may be amended from time to time) in its development and operation throughout the Compliance Period.

(63) Real Estate Owned (REO) Projects - Any existing residential development that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property owned by HUD, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), federally chartered bank, savings bank, savings and loan association, Federal Home Loan Bank or a federally approved mortgage company or any other federal agency.

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

(65) Rehabilitation Expenditure - Amounts incurred in connection with the rehabilitation which the Project Owner represents to be "Rehabilitation Expenditures" within the meaning of the Code, §42(e)(2).

(66) Residential Development - Any Project that is comprised of at least one "Unit" as such term is defined in paragraph (79) of this subsection.

(67) Rules - The Department's low income housing tax credit Rules as presented in this title (relating to Low Income Housing Tax Credit Qualified Allocation Plan and Rules) excluding §49.3 through §49.8 of this title (relating to State Housing Credit Ceiling, Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments, Set-Asides, Commitments and Preferences, Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; Compliance Monitoring, Housing Credit Allocations).

(68) Rural Project - A Project located within an area which:

(A) is situated outside the boundaries of a PMSA or MSA; or

(B) is situated within the boundaries of a PMSA or MSA if it has a population of not more than 20,000 and does not share boundaries with an urbanized area; or

(C) is located in an area that is eligible for funding by TxRD.

(69) Selection Criteria - Criteria used to determine housing priorities of the State under the Low Income Housing Tax Credit Program.

(70) Small Development - A non-Rural Project consisting of not more than 36 multifamily Units, which is not a part of, or contiguous to, a larger Project.

(71) Special Housing Project - Any Project developed specifically for Special Housing Need Groups, including mental health/mental retardation Projects, group homes, housing for the homeless, transitional housing, elderly Projects, congregate care facilities, projects for persons with HIV/AIDS, or as otherwise defined in the State Consolidated Plan.

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

(73) Sustaining Occupancy - The figure at which occupancy income is equal to all operating expenses and mandatory debt service requirements for a Project.

(74) Tax Exempt Bond Project - A Project which receives at least 50% of its financing from the proceeds of Tax Exempt bonds which are subject to the state volume cap as described in the Code, §42(h)(4)(B).

(75) Threshold Criteria - Criteria used to determine the Project's qualifications which are the minimum level of acceptability for consideration under the Low Income Housing Tax Credit Program.

(76) Total Housing Development Cost - The total of all costs incurred or to be incurred by the Project Owner in acquiring, constructing, rehabilitating and financing a Project, as determined by the Department based on the information contained in the Project Owner's Application. Such costs include Intermediary Costs, reserves and any expenses attributable to commercial areas. Projects which include commercial space must allocate the relative portion of all applicable expenses to the commercial space and exclude the same from Total Housing Development Costs. In determining the Equity Gap calculation, the Department will not deduct from the Project's sources of funds the amount of financing associated with the commercial use, unless such financing specifically identifies in its terms that it is being provided for the commercial use.

(77) Town Home - Each Town Home living unit is one of a group of no less than four units that are adjoined by common walls. Town Homes shall not have more than two walls in common with adjacent units. Town Homes shall not have other units above

or below another unit. Town Homes shall not share a common back wall. Town Homes shall have individual exterior entries.

(78) TxRD - The Rural Development (RD) services of the United States Department of Agriculture (USDA) serving the State of Texas (formerly known as TxFmHA) or its successor.

(79) Unit - Any residential rental unit in a Project consisting of an accommodation containing separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation. The term "Unit" includes a single room occupancy housing unit used on a non-transient basis.

§49.3. State Housing Credit Ceiling.

(a) The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C).

(b) The Department shall publish each such determination in the Texas Register within 30 days after notification by the Internal Revenue Service.

(c) The aggregate amount of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. Housing Credit Allocations made to Tax Exempt Bond Developments are not included in the State Housing Credit Ceiling

§49.4. Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments.

(a) Any Project Owner requesting a Housing Credit Allocation for a Project must submit an Application to the Department which Application shall be originally executed by the Project Owner. The Department is authorized to request the Project Owner to provide any additional information or documentation it deems relevant as clarification to the Application or items that would be considered a deficiency. Applications not submitted in the format described in the Application Submission Procedures Manual will result in the Application being deemed incomplete and not accepted for filing. The Department will require, as a part of a completed Application, information to be submitted by the Project Owner which identifies the number of HUBs to be used in the development and/or continuous operation of the Project, in a form specified within the Application Submission Procedures Manual. Further, the Department will require the Project Owner to supply sufficient documentation to describe the means by which these HUBs were or are to be selected. The Project Owner is advised that the Department will be requesting information pertaining to the use of HUBs in the actual development of the Project at the time of final allocation of tax credits, pursuant to §49.8(f) of this title (relating to Housing Credit Allocations).

(b) As part of the complete Application the Applicant must submit the most current Phase I Environmental Assessment of the subject Property, dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Assessment on the Project is older than 12 months, the Project Owner may supply the Department with an update letter from the Person or organization which prepared the initial assessment; provided, however, that the Department will not accept any Phase I Environmental Assessment which is more than 24 months old. An environmental report that is not submitted with the Application will result in the Application being deemed incomplete and not accepted for filing.

(1) This environmental assessment should be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM) 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 an environmental or professional engineer and be prepared at the expense of the Project Owner. The report must include, but is not limited to:

(A) a review of records, interviews with people knowledgeable about the Property;

(B) a certification that the environmental engineer has conducted an inspection of the Property, the building(s), and adjoining Properties, as well as any other industry standards concerning the preparation of this type of environmental assessment;

(C) a noise study is recommended for developments located in close proximity to industrial zones, major highways, active rail lines and civil and military airfields;

(D) a copy of the current FEMA Flood Map encompassing the site and a determination of the flood risk for the proposed development; and

(E) the report should include a statement that clearly states that the person or company preparing the environmental assessment will not materially benefit from the development in any other way than receiving a fee for the environmental assessment.

(2) 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 Project Owner must act on such a recommendation or provide either a plan for 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.

(3) Projects which have had a Phase II Environmental Assessment performed and hazards identified, the Project Owner is required to maintain a copy of said assessment on site available for review by all persons which either occupy the Property or are applying for tenancy.

(4) Projects whose funds have been obligated by TxRD will not be required to supply this information; however, the Project Owners of such Projects are hereby notified that it is their responsibility to ensure that the Property is maintained in compliance with all state and federal environmental hazard requirements.

(5) Those Projects 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.

(c) The Market Study required by the Department shall comply with the Uniform Standards of Professional Appraisal Practice, paragraphs (1) through (2) of this subsection and, the Market Analysis and Appraisal Policy provided in the Application Submission Procedures Manual. The Market Study shall be prepared for the Department at the expense of the Project Owner. The Market Study shall follow the format of and contain at a minimum, the information required by the Market Analysis and Appraisal Policy. If any of the required information in the Market Analysis and Appraisal Policy is not obtainable, the Market Analyst shall provide a statement to such effect and offer an alternative analysis intended to address the applicable question.

(1) A Market Study (must be prepared by a Qualified Market Analyst as described in this QAP and Rules and in the Market Analysis and Appraisal Policy). This Qualified Market Analyst shall be independent of the Project Owner. A Market Study, is required as part of the complete Application, unless the Project has an obligation

of TxRD funds. Projects whose funds have been obligated by TxRD are not required to provide the Department with a market study; provided that the Department may request information with respect to the operating expenses, proposed new construction or rehabilitation cost or other information. The market study should not be updated more than six months prior to the first day of the Application Acceptance Period. In the event that a Market Study on a Project is older than six months, a Project Owner may supply the Department with an updated Market Study from the entity or organization which prepared the initial report. The Department will not accept any Market Study more than 12 months old.

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

(3) A written opinion is required from the Qualified Market Analyst who prepared the Market Study required under paragraph (1) of this subsection, stating that:

(A) the projected Total Housing Development Costs of the proposed Project do or do not appear to be reasonable. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusion with regards to the reasonableness of the projected development costs;

(B) the projected Total Operating Costs of the proposed Project do or do not appear to be reasonable. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusions with regards to the reasonableness of the projected operating costs;

(C) the proposed Project, in light of the vacancy and absorption rates for the applicable market area and/or any applicable submarket area, is or is not likely to result in an unreasonably high vacancy rate for comparable Units within the market area and/or any applicable submarket area (i.e., standard, well maintained Units within such market area that are reserved for occupancy by low and very low income tenants). The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusion with regard to the effects of the Project's development on the vacancy rates for comparable Units within the market area and/or any applicable submarket area;

(D) the projected initial rents for the Project are or are not below the rental range for comparable Projects within the market area. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusion with respect to the data on comparable rents in the Project's market area; and

(E) Project reserves are or are not adequate to cover operating shortfalls until the Project achieves Sustaining Occupancy. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusions with regards to the adequacy of the Project reserves.

(4) All Applicants shall acknowledge by virtue of filing an Application that the Department shall not be bound by any such opinion or the Market Study itself, and may substitute its own analysis and underwriting conclusions for those submitted by the Qualified Market Analyst.

(d) A Project Owner may file an Application at any time during the Application Acceptance Period(s), as published from time to time by the Department in the Texas Register. Applications that show Material Deficiencies will be terminated per subsection (e) of this section, and the Project Owners will only have the opportunity to re-apply if the Application Acceptance Period is still open.

(e) An Application that does not fulfill the requirements of this Qualified Allocation Plan and Rules and the current Application Submission Procedures Manual will be deemed not to have been timely filed and the Department shall not be deemed to have accepted the Application. The Department may, at its sole discretion, request supplemental information from an Applicant to clarify information contained in previously submitted documentation. The department may place additional time constraints for the timely filing of such documentation.

(f) Ineligible and Disqualified Applications:

(1) An Application will be ineligible if a member of the Development Team has been or is:

(A) Barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or,

(B) convicted of, under indictment for, or on probation for a state or federal crime involving fraud, bribery, theft, misrepresentations of material facts, misappropriation of funds, or other similar criminal offenses; or,

(C) subject to enforcement action under state or federal securities law, or is the subject of an enforcement proceeding with any Governmental Entity unless such action has been concluded and no adverse action or finding (or entry into a consent order) has been taken with respect to such member.

(2) Additionally, the Department will disqualify an Application if it is determined by the Department that:

(A) a material misrepresentation was made in the Application or any application or other information submitted to the Department; or,

(B) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property in the state of Texas who received an allocation of tax credits in the 1999 Application Round but did not close the construction loan as required under the Carryover Allocation (including any extension period granted by the Committee) except for reasons beyond the control of the Applicant as determined by the Department; or,

(C) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property has failed to place in service buildings or removed from service buildings for which credits were allocated (either Carryover Allocation or issuance of 8609s). The Department may consider the facts and circumstances on a case-by-case basis, including whether the credits were returned prior to the expiration date for re-issuance of the credits, in its sole determination of Applicant eligibility; or,

(D) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing property in the state of Texas funded by the Department that is in Material Non-Compliance with the LURA or the program rules in effect for such property on the closing date of the Application Acceptance Period or upon the date of filing Volume I of the Application for a Tax

Exempt Bond Project. The Department may take into consideration the representations of the Applicant regarding compliance violations described on Exhibit 106; however, the records of the Department are controlling; or,

(E) the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing tax credit property outside of the state of Texas has incidence of non-compliance with the LURA or the program rules in effect for such tax credit property as reported on Exhibit 106 and/or as determined by the state regulatory authority for such state and such non-compliance is determined to be Material Non-Compliance by the Department.

(g) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department shall make its recommendations to the Committee and the Board. Such recommendation shall be made in advance of the meeting at which the issuance of Commitment Notices shall be discussed. Such recommendations will include a list of all submitted Applications and will describe why each project was or was not recommended for a Commitment Notice. Supporting documentation which the Committee and Board may use to evaluate the Application relative to the criteria provided in §49.6(b)(3) of this title will be provided prior to the meeting.

(h) The Board's decisions shall be based upon its evaluation of the Project's consistency with the criteria and requirements set forth in the QAP and the Rules. In making a determination to allocate tax credits, the Department and Board shall be authorized not to rely solely on the number of points scored by an Applicant. They shall in addition, be entitled to take into account, as appropriate, such factors as Project feasibility, underwriting, concentration of low income Projects within specific markets or submarkets, geographic dispersion of multifamily housing in any particular market or submarket, as well as dispersion of the credits on a state-wide basis, site conditions, the experience of the Development Team, the type of housing being proposed and/or the Project's impact on the Low Income Housing Tax Credit Program's goals and objectives as stated in the QAP and the Rules and as otherwise provided under this chapter. The Board shall authorize the Department to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is built. In making a determination to allocate credits, the Department and the Board may also take into account the fact that Tax Exempt Bond Projects are generally not financially feasible outside of the major metropolitan areas of the state.

(1) If the Board approves the Application, the Department will issue a Commitment Notice to the Project Owner which:

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

(B) shall state the Department's commitment to make a Housing Credit Allocation to the Project Owner in a specified amount, subject to the feasibility determination described at §49.8(a) of this title (relating to Housing Credit Allocations), compliance by the Project Owner with the remaining requirements of this chapter, and any other conditions set forth therein by the Department. This Commitment Notice shall expire on the date specified therein, unless the commitment has been accepted and the conditions to receipt of an allocation set forth therein shall have been met.

(2) The Department shall 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 Boards issuance of a Commitment Notice.

(3) If the Board disapproves or fails to act upon the Application, the Department shall issue to the Project Owner a written notice stating the reason(s) for the Board's disapproval or failure to act.

(i) A Project Owner may request that the Department extend the expiration date of a Commitment Notice which has not expired or the date for the submission of the Carryover Allocation Document by submitting a written request for such action, accompanied by the extension fee specified in §49.11 of this title (relating to Program Fees). The request shall specify the term of the extension requested and the reason(s) why the Project Owner has been unable to satisfy the requirements of this chapter prior to the original expiration date. The Department, in its sole discretion, may consider and grant such extension requests; provided, however, that in no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

(j) A Project Owner must indicate acceptance of the Department's offer of a commitment of tax credit authority or determination of eligibility to claim tax credits by executing the Commitment Notice or Determination Notice and paying the commitment fee specified in §49.11 of this title (relating to Program Fees) prior to the expiration date set forth in the notice. Together with or following the Project Owner's acceptance of the commitment or determination, the owner may request the Department to execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the applicable credit percentage for the Project as that for the month in which the commitment was accepted (or the month the bonds were issued for Tax Exempt Bond Projects), as provided in the Code, §42(b)(2). Upon receipt of a duly dated and executed Agreement and Election Statement and the accepted Commitment Notice or Determination Notice, if the Project Owner is in compliance with the Rules of this chapter, the Department shall execute the Agreement and Election Statement and return a copy to the Project Owner. For non Tax Exempt Bond Projects, the Agreement and Election Statement shall be executed by the Project Owner no later than five days after the end of the month in which the offer of commitment was accepted. Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Project Owner to make an effective election to fix the applicable credit percentage for a Project, the Commitment Notice must be executed by the Department and the Project Owner in the same month. The Department will cooperate with a Project Owner, as needed, to assure that the Commitment Notice can be so executed.

(k) Prior to the expiration of the Commitment Notice a Project Owner who has been issued a Commitment Notice may request the Department to execute a Carryover Allocation Document. The Carryover documentation must be submitted to the Department no later than October 15 of the year in which the Commitment Notice is issued. The Carryover Allocation must be properly completed, signed, dated and notarized by the Project Owner and delivered to the Department along with any and all other documentation prescribed in the Carryover Allocation Procedures Manual, as amended. The commitment fee as specified in §49.11 of this title (relating to Program Fees) must be received by the Department prior to the processing of any Carryover Allocation Documentation.

(l) If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Department shall place all remaining Applications which have satisfied all Threshold Criteria on a waiting list. All such waiting list Applications will be weighed one against the other and a priority list shall be developed by the Department and approved by the Ad Hoc Tax Credit Committee. 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 Department shall issue a Commitment Notice to Applications on the waiting list in order of priority subject to the amount of returned credits and the 10% Nonprofit Set-Aside allocation required under §42(h)(5) of the Code. In the event that the Department makes a Commitment Notice or offers a commitment within the last month of the calendar year, it will require immediate action by the Applicant to assure that an allocation or Carryover Allocation can be issued before the end of that same calendar year.

(m) Within 15 business days of the date an Application is received, the Department shall notify in writing the mayor or other equivalent chief executive officer of the municipality, if the Project or a part thereof is located in a municipality; otherwise the Department shall notify the chief executive officer of the county in which the Project or a part thereof is located, to advise such individual that the Project or a part thereof will be located in his/her jurisdiction and request any comments which such individual may have concerning such Project. Such comments shall be part of the documents required to be reviewed by the Board under this subsection if received by the Department within 30 days after receipt of such certified mail notification to said individual; otherwise, if comments are received by the Department after 30 days, same may be reviewed at the discretion of the Board under this subsection. If the local municipal authority expresses opposition to the Project, the Department will give consideration to the objections raised and will visit the proposed site or Project within 30 days of notification.

(n) The Department shall give notice of a proposed project to the state representative and state senator representing the area where a project would be located. The state representative or senator may hold a community meeting at which the Department shall provide appropriate representation.

(o) Prior to the Department's issuance of the IRS Form 8609 declaring that the Project has been placed in service for purposes of the Code, §42, Project Owners must date, sign and acknowledge before a notary public a LURA and send the original to the Department for execution. The Project Owner shall then record said LURA, along with any and all exhibits attached thereto, in the real Property records of the county where the Project is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Project and/or the Property prior to the recording of the LURA, the Project 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 following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department shall physically inspect the Property for compliance with the Application and the representatives, warranties, covenants, agreements and undertakings contained therein before the IRS Form 8609 is issued.

(p) Application submission log. The Department shall publish an Application submission log on its web site approximately 15 business days after the close of the Application Acceptance Period. Such log shall contain the project's name, address, set-aside, number of units, requested credits, requested selection criteria score and the owner contact name and phone number.

(q) Notice of Selection Criteria scoring. When all Applications have been scored, the Department shall publish the results of the scoring on its web site.

§49.5. Set-Asides, Commitments and Preferences.

(a) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Projects which meet the requirements of the Code, §42(h)(5). Applicants must apply under one of the set-asides provided in paragraphs (1) through (3) of this subsection. The State Housing Credit Ceiling shall be allocated under the set-asides provided in paragraphs (1) through (3) of this subsection.

(1) Qualified Non Profit Projects shall account for at least 10% of the State Housing Credit Ceiling

(2) Rural Projects/Prison Communities -15%; or

(3) General Projects - 75%.

(b) The Department may redistribute the credits depending on the level of demand exhibited during the Allocation Round; provided that no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Projects which are not Qualified Nonprofit Projects. The Department will reserve 25% of the 15% Rural Projects/Prison Communities set-aside for projects financed through Rural Development (TxRD) (formerly Farmer's Home). Projects financed through TxRD's 538 Guaranteed Rural Rental Housing Program will not be considered under the 25% portion of the Rural Projects/Prison Communities set-aside. Should there not be sufficient qualified applications submitted for the TxRD set-aside, then the allocations would revert back to the Rural Projects/Prison Communities set-aside pool. Information concerning the appropriate set-aside for each Application Round will be published in the Texas Register. Applicants may submit only one Application for each site.

(c) Unless the Department makes a recommendation to the Board based on the need to fulfill the goals of the Program as expressed in this QAP and Rules and the Board grants a waiver, a Commitment Notice shall not be issued with respect to any Project 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 as more specifically provided in the Application Submission Procedures Manual. The Department's recommendation to the Board shall be clearly documented. The Department will reduce the Applicant's estimate of developer's and/or Contractor fees in instances where these fees are considered excessive, as more specifically provided for within the Application Submission Procedures Manual, as amended. In the instance where the Contractor is an Affiliate of the Project Owner and both parties are claiming fees, Contractor's overhead, profit, and general requirements, the Department will reduce the total fees estimated to a level that it deems appropriate. Further, the Department shall deny or reduce the amount of low income housing tax credits on any portion of costs which it deems excessive or unreasonable. The Department also may require bids in support of the costs proposed by any Applicant.

(d) The Department may, at any time and without additional administrative process, determine to award credits to projects 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. To the maximum extent feasible, the Department will use credits carried forward from the prior year or recovered during the current year to make awards pursuant to subsections (a) through (d) of this section.

§49.6. Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects.

(a) Threshold Criteria. To have an Application considered for Selection Criteria, a Project Owner must first supply all required information and demonstrate that the Project meets all of the

requirements of the Threshold Criteria set forth as follows and as more specifically provided for in the Application Submission Procedures Manual, as amended. Applications not meeting Threshold Criteria may be terminated as otherwise provided under this chapter. No Ineligible Building Types will be considered for allocation of tax credits under this QAP and the Rules, and thus Ineligible Building Types do not satisfy Threshold Criteria. Project Owners whose Applications do not meet Threshold Criteria will be so informed in writing. The following are the Threshold Criteria that are mandatory requirements at the time of Application submission:

(1) EXHIBIT 101. Label as EXHIBIT 101, the following documents:

(A) A letter from the Project Owner specifying the type of amenities proposed for the development. If fees in addition to rent are charged for amenities reserved for an individual tenant's use (i.e. covered parking, storage, etc.), then the amenity may not be included among those provided to satisfy this exhibit. Therefore, the letter must clearly indicate those amenities for which fees may be collected. Projects larger than 36 units must provide at least four of the amenities provided in clauses (i) through (x) of this subparagraph. Small Developments (36 Units or less) and Special Housing Projects must provide at least two of the amenities provided in clauses (i) through (x) of this subparagraph.

(i) full perimeter fencing with controlled gate access;

(ii) designated playground and equipment;

(iii) community laundry room/laundry hook-up in Units;

(iv) furnished community room;

(v) recreation facilities;

(vi) public telephone(s) available to tenants 24 hours a day;

(vii) on-site day care, senior center, or community meals room;

(viii) storage areas;

(ix) computer facilities; or

(x) covered parking.

(B) All of the architectural drawings requested in clause (i) through (iii) of this subparagraph must be submitted. While full size design or construction documents are not required, the drawings should have a scale and/or show the dimensions.

(i) a site plan;

(ii) typical floor plans for each residential and common area building configuration and typical unit floor plans for each type of unit. The net rentable area as calculated in Section 9 of the Application provided in the Application Submission Procedures Manual should be clearly stated on each unit floor plan; and

(iii) typical elevations of residential and common area buildings. Elevations should include a percentage estimate of exterior composition, i.e. 50% brick, 50% siding.

(C) Original photographs of the development site and the surrounding area. Rehabilitation Projects must also submit original photographs of the existing signage, buildings, amenities, and interior photographs. The photos for Rehabilitation Projects should clearly document the typical areas and building components which exemplify the need for rehabilitation.

(D) A letter from the Project Owner stating that the Project will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies.

(2) EXHIBIT 102. Label as EXHIBIT 102, the completed "Project Cost Schedule" form provided in the Application Submission Procedures Manual. Rehabilitation developments must establish that the rehabilitation will be substantial and will involve at least $6,000 per unit in direct hard costs. Additionally, all rehabilitation Projects must provide a detailed work write-up/physical assessment report prepared by a registered architect, professional engineer or general Contractor. The work write-up/physical assessment report must detail the scope of work to be performed throughout the rehabilitation and must specify the estimated cost associated with each item of work to be performed.

(3) EXHIBIT 103. There shall exist evidence of readiness to proceed in the form of at least one of the items under each of subparagraphs (A) through (E) of this paragraph:

(A) Label as EXHIBIT 103(A), evidence of site control through one of the following:

(i) a recorded warranty deed in the name of the ownership entity, or entities which comprise the Applicant;

(ii) a contract for sale or lease (the minimum term of the lease must be at least 45 years) in the name of the ownership entity, or entities which comprise the Applicant which is valid for the entire period the development is under consideration for tax credits or at least 90 days, whichever is greater; or

(iii) an exclusive option to purchase in the name of the ownership entity, or entities which comprise the Applicant which is valid for the entire period the development is under consideration for tax credits or at least 90 days, whichever is greater.

(B) Label as EXHIBIT 103(B), evidence of current and appropriate zoning in the form of a letter from the appropriate municipal authority. In lieu of such documentation the Applicant must submit evidence that a rezoning request has been filed with the appropriate municipal authority as of the date of submission of the Application. Any commitment of tax credits to the Applicant will be contingent upon proper rezoning prior to Carryover Allocation. If zoning is not required, the Applicant must submit a letter from the local municipal/county authority so stating. If the Property is currently a non-conforming use as presently zoned, provide the following:

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

(ii) the applicable destruction threshold;

(iii) owners rights to reconstruct in the event of damage; and

(iv) penalties of noncompliance.

(C) Label as EXHIBIT 103(C), evidence of the availability of all necessary utilities/services to the development site. Exhibits must be in the form of a letter from the appropriate municipal provider/local service provider, or in the form of the last monthly bill which must clearly identify the development by name and address. If utilities are not already accessible, then the letter must clearly state an estimated time frame for provision of the utilities and an estimate of the infrastructure cost that will be borne by the developer. Letters

from the appropriate provider must not be older than 12 months from the first day of the Application Acceptance Period. If utilities are not already accessible (undeveloped areas), the letter should not be older than three months from the first day of the Application Acceptance Period. Necessary utilities are GAS/ELECTRIC, TRASH, WATER, and SEWER.

(D) Label as EXHIBIT 103(D), evidence of permanent financing in only one of the following forms:

(i) bona fide permanent financing in place as evidenced by a valid and binding loan agreement and a deed(s) of trust in an amount not less than the projected liens to be placed upon the Project upon completion of construction in the name of the ownership entity which identifies the mortgagor as the Applicant or entities which comprise the general partner;

(ii) bona fide commitment or term sheet 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 ownership entity, or entities which comprise the Applicant and which has been executed and accepted by both parties (the term of the loan must be for a minimum of 15 years with at least a 25 year amortization); or

(iii) if the development will be financed through owner contributions, provide a letter from an independent CPA verifying the capacity of the Applicant to provide the proposed financing and that funds are committed solely for such purpose with a letter from the Applicant's bank or banks confirming that such funds have been provided for or deposited in a separate account at said bank(s).

(E) Label as EXHIBIT 103(E), either:

(i) a copy of the current title policy which shows that the ownership of the land/Project is vested in the exact name of the Applicant, or entities which comprise the Applicant; or

(ii) a copy of a current title commitment with the proposed insured matching exactly the name of the Applicant or entities which comprise the Applicant and the title of the land/Project vested in the name of the exact name of the seller as indicated on the sales contract.

(4) EXHIBIT 104. Label as EXHIBIT 104, evidence of pre-Application notification by the Applicant to the local chief executive officer(s) (i.e., mayor and county judge), state senator, and state representative of the locality of the development. The pre-Application notification will consist of a letter which at least includes the text described in Exhibit 113. Evidence of such notification shall be a copy of the letter sent to the official and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said official. Proof of notification should not be older than three months from the first day of the Application Acceptance Period.

(5) EXHIBIT 105. Label as Exhibit 105, all of the following documentation (As instructed in the Application Submission Procedures Manual, this documentation should be filed separately from the volume containing the Threshold Criteria.):

(A) Using Exhibit 105(A) in the Application Submission Manual, provide a current financial statement for each Applicant (as defined in the QAP). Applicant's statement must not be older than 12 months from the first day of the Application Acceptance Period. If submitting partnership and corporate financials in addition to the individual statements, the certified financial statements should not be older than 90 days; and

(B) the Authorization to Release Credit Information, Exhibit 105(B) (which is provided as part of the Application Submission Procedures Manual), must be completed by all Persons in Control of the Applicant.

(6) EXHIBIT 106 - Label as EXHIBIT 106 all of the following documentation:

(A) The original copy of the completed and executed Exhibit 106, Previous Participation and Background Certification Form, Exhibit 106A, which is provided in the Application Submission Procedures Manual. This form must be completed with respect to the ownership entity (including all Persons with an ownership interest), general partner, general contractor and their respective principals and Affiliates;

(B) label as Exhibit 106B, a chart which clearly illustrates the complete organizational structure of the Project Owner. This chart should provide the names and ownership percentages of all entities and sub-entities with an ownership interest in the development. The percentage ownership of all Persons in Control of these entities and sub-entities must also be clearly defined and the Articles of incorporation, corporate by-laws, and certificate of good standing for corporations or statement of partnership and partnership agreement for limited or general partnerships should be included; and

(C) if the Applicant or any Person, general partner, general contractor and their respective principals or Affiliates is active in the ownership or control of any other low income housing tax credit property either in the State of Texas or any other state and such property was cited as in violation of any the rules or regulations by the Department or by the appropriate regulatory authority in any other state, such property should be clearly identified in Exhibit 106(A) and a copy of any corrective action plan or similar document by the appropriate regulatory entity to correct the non-compliance should be provided as Exhibit 106(C).

(7) EXHIBIT 107. Label as EXHIBIT 107, a current rent roll for occupied Projects undergoing rehabilitation. The rent roll must disclose terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, dates of first occupancy and expiration of lease. Vacant and proposed new construction Projects are exempt from this requirement.

(8) EXHIBIT 108. Label as EXHIBIT 108, for new construction and rehabilitation developments, a 15-year proforma estimate of operating expenses and supporting documentation used to generate projections (excerpts from the market study, operating statements from comparable properties, etc.). Rehabilitation developments must also submit historical monthly operating statements of the subject development for 12 consecutive months ending not more than 45 days prior to the first day of the Application Acceptance Period. In lieu of the monthly operating statements, two annual operating statement summaries may be provided. If 12 months of operating statements or two annual operating summaries can not be obtained, then the monthly operating statements since the date of acquisition of the development and any other supporting documentation used to generate projections may be provided.

(9) EXHIBIT 109. Label as EXHIBIT 109 on the cover page only, a Market Study addressing all items listed in §49.4(c) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) and/or required by the Application Submission Procedures Manual.

(10) EXHIBIT 110. Label as EXHIBIT 110 on the cover page only, a Phase I Environmental Study prepared in accordance

with §49.4(b) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments).

(11) EXHIBIT 111. Label as EXHIBIT 111, for Applicants seeking credits from the Non Profit Set-Aside, all of the following documents that confirm that the Applicant is a Qualified Nonprofit Organization pursuant to Code, §42(h)(5)(C):

(A) an IRS determination letter which states that the Qualified Nonprofit Organization is a 501(c)(3) or (4) entity;

(B) if the Project involves a joint-venture between a Qualified Nonprofit Organization and a for-profit entity, an agreement which shows that the nonprofit organization Controls the Project (directly or indirectly) and will materially participate (within the meaning of the Code §469(h) in the development and operation of the Project throughout the Compliance Period;

(C) a current list of all directors and officers of the nonprofit organization, along with information pertaining to their primary occupations and disclosing any relationship; as an Affiliate or otherwise, with other members of the Applicant and/or any members or Affiliate of the Development Team, including any market analyst, CPA, appraiser, or other professional performing any services with respect to the Project and/or the subject Property; and

(D) a copy of the articles of incorporation of the nonprofit organization which specifically states the fostering of affordable housing is one of the entities exempt purposes.

(12) EXHIBIT 112. Label as EXHIBIT 112, for Applicants applying for acquisition credits or if the Applicant is affiliated with the seller, all of the following documentation:

(A) an appraisal, which complies with the Market Analysis & Appraisal Policy provided in the Application Submission Procedures Manual, of the Property separately stating the value of the land and the improvements where applicable;

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

(C) a bona fide valid contract verifying the acquisition cost and clearly identifying the selling Persons or entities, and details any relationship between the seller and the Applicant or any Affiliation with the Development Team, Qualified Market Analyst or any other professional or other consultant performing services with respect to the Project.

(13) EXHIBIT 113. Label as EXHIBIT 113, a copy of the public notice published in a widely circulated newspaper in the area in which the proposed development will be located. Such notice must run at least twice within a two week period, except on holidays, prior to the submission of the Application to the Department. The notice must be prepared in accordance with the guidelines established in the Application Submission Procedures Manual. Such notice can not be older than three months from the first day of the Application Acceptance Period. In communities located in close proximity to a larger metropolitan area and whose citizens may subscribe to a local newspaper as well as a widely circulated metropolitan newspaper, the notice should be published in both newspapers.

(14) EXHIBIT 114. This exhibit must be the original copy of the completed and executed General Contractor Certification Form provided as part of the Application Submission Procedures Manual.

(b) Evaluation Factors. The Department will consider Applications for a housing credit allocation using the evaluation and point system described in this subsection and in the Application Submission Procedures Manual.

(1) Applications will be initially evaluated against the Threshold Criteria as they are accepted for filing in the Department during any Application Acceptance Period. Applications found to have Material Deficiencies will be terminated and returned to the Applicant without further review. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any oversight or 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. All Applicants may withdraw and subsequently refile an Application, as well as file a new Application before the filing deadline.

(2) Applications will then be ranked according to the points scored under the Selection Criteria in accordance with the Rules and the Application Submission Procedures Manual. Applications not scored by the Department's staff shall be deemed to have the points allocated through self-scoring by the Applicants until actually scored. This shall apply only for ranking purposes.

(3) In addition to the number of points scored, the Department's the decision to underwrite a Project shall be subject to considerations contained in subparagraphs (A) through (H) of this paragraph. The Department, Committee, and Board shall evaluate an Application for recommendation of a Commitment Notice on the basis of additional factors beyond scoring criteria. These additional factors include the items described in subparagraphs (A) through (H) of this paragraph.

(A) Project Feasibility. A determination by the Department, pursuant to the Internal Revenue Code, that the amount of credits recommended for allocation to a project is necessary for the financial feasibility of the project and its long-term viability as a qualified low income housing property. In making this determination, the Department will take into account:

(i) the project's total development costs;

(ii) actual or projected operating expenses and reserves for replacement;

(iii) project's sources of financing;

(iv) proceeds from the syndication of the tax credits;

(v) the project's debt coverage ratio and break-even occupancy; and

(vi) the project's overall conformance with the Department's underwriting guidelines as stated in the Application Submission Procedures Manual.

(B) Geographic dispersion of projects statewide shall be evaluated under one or more of clauses (i) through (iv) of this subparagraph:

(i) number of tax credit and other affordable housing projects within a city and county and the number of units attributable to such projects;

(ii) population of a city and county in relation to the number of existing tax credit and affordable units created;

(iii) city and county population and employment growth trends; and

(iv) rental housing affordability trends.

(C) The concentration of tax credit developments and other affordable housing developments within specific markets and submarkets shall be evaluated under one or more of clauses (i) through (iv) of this subparagraph.

(i) occupancy levels projected for the proposed project and the occupancy level of existing projects;

(ii) market and submarket absorption levels;

(iii) the percentage of comparable affordable housing projects and units in the submarket; and

(iv) any other information (such as employer relocation) that could have an impact on the submarket.

(D) Site conditions shall be evaluated through a physical site inspection of the site by Departmental staff. Such inspection will evaluate the site and provide a site evaluation of "Excellent," "Acceptable," "Poor" or "Unacceptable". The evaluations shall be based on condition of the surrounding neighborhood and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's visibility to prospective tenants and accessibility of the site via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites would include a non-mitigable environmental factor that would impact the health and safety of the residents.

(E) Experience of the Development Team as it relates to the perceived ability to successfully complete the Project will be considered.

(F) Housing type may be considered in order to serve a broad segment of the population.

(G) Project's impact on the Low Income Housing Tax Credit Program's goals and objectives including, but not limited to, the project's inconsistency with local needs or its impact as part of a revitalization or preservation plan.

(H) The need to allocate credits among as many different entities as required under the Rider from the 75th Legislature.

(4) If such evaluation warrants, the Application will be forwarded to the Committee and to the Board for approval. In making its recommendation to the Board, the Department shall enumerate the reason(s) for the Project's selection, including all discretionary factors used in making its determination. The Department may have an outside third party perform the underwriting evaluation to the extent it determines appropriate. The expense of any third party underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(5) Applications which have not received a Commitment Notice at the end of the Application Round may be placed on a waiting list to be established by the Department and approved by the Committee and the Board. At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated, unless the Department shall determine to retain or act upon such Applications as provided in §49.15 of this title (relating to Forward Reservations; Binding Commitments). The Applicant may re-apply to the Department during the next Application Acceptance Period.

(c) Selection Criteria. Pursuant to subsection (b) of this section, Applications receiving the highest number of points in each set aside category, in each Application Acceptance Period, if a sufficient amount of the State Housing Credit Ceiling is available, will be eligible for an evaluation by an Underwriter subject to §49.4(h) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments). All Applications will be ranked according to the Selection Criteria listed in paragraphs (1) through (9) of this subsection. If no additional set-aside credits are available, the Application shall be scored and evaluated in the General Pool using the criteria to which such General Pool Applications are subject, without special set-aside scoring points being considered.

(1) DEVELOPMENT LOCATION. EXHIBIT 201. Label as EXHIBIT 201, evidence that the subject Property is located within:

(A) a Qualified Census Tract (QCT) as defined by the Secretary of HUD and qualifies for the 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C), a Difficult Development Area (DDA) or a Targeted Texas County (TTC). Developments in a QCT should submit a copy of the census map must clearly show 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. Applicants for Projects in a Difficult Development Area or a Targeted Texas County must indicate this designation in the space provided in the Application Submission Procedures Manual;

(B) a designated state or federal empowerment/enterprise zone. 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 90 days from the first day of Application Acceptance Period; or

(C) a city-sponsored Tax Increment Financing Zone (TIF), Public Improvement District (PIDs), or other neighborhood preservation/redevelopment district organized under the Texas Local Government code. Such developments must submit all of the following documentation: a letter from a city/county official verifying that the proposed development is located within the city sponsored zone or district; a map from the city/county official which clearly delineates the boundaries of the district; and a certified copy of the appropriate resolution or documentation from the mayor, local city council, county judge, or county commissioners court which documents that the designated area was:

(i) created by the local city council/county commission,

(ii) targets a specific geographic area which was not created solely for the benefit of the Applicant, and

(iii) offers tangible and significant area-specific incentives or benefit over and above those normally provided by the city or county (5 points).

(2) HOUSING NEEDS CHARACTERISTICS.

(A) The proposed development is located in a county in which 10% or more of the households are below the poverty level as set forth in the Department's "County Data Elements Guide" incorporated into the Reference Manual. Utilize the percentages in clauses (i) through (iv) of this subparagraph to assess the appropriate score:

(i) 10% to 20% of households are below the poverty level (3 points);

(ii) 21% to 31% of households are below the poverty level (5 points);

(iii) 32% to 42% of households are below the poverty level (7 points); or

(iv) 42% + of households are below the poverty level (9 points).

(B) The proposed development is located in a county in which 20% or more of the rental units have a cost burden as set forth in the County Data Elements guide. Utilize the following percentages to assess the appropriate score:

(i) 20% to 30% of rental units have a cost burden (4 points);

(ii) 31% to 41% of rental units have a cost burden (6 points); or

(iii) 42% + of rental units have a cost burden (8 points).

(3) PROJECT CHARACTERISTICS.

(A) EXHIBIT 202. Label as EXHIBIT 202, evidence that the proposed development to be purchased qualifies as a federally assisted building within the meaning of the Code, §42(d)(6)(B), and is in danger of having the mortgage assigned to HUD, TxRD, or creating a claim on a federal mortgage insurance fund (such evidence must be a letter from the institution to which the development is in danger of being assigned); OR evidence that the Applicant is purchasing(ed) a Property owned by HUD, an insured depository institution in default, or a receiver or conservator of such an institution, or is an REO Property. Such evidence must be in the form of a binding contract to purchase from such federal or other entity as described in this paragraph, closing statements, or recorded warranty deed (5 points).

(B) EXHIBIT 203. Label as EXHIBIT 203, evidence that the proposed development is a low income building with mortgage prepayment eligibility as provided for in the Code, §42(d)(6)(C). Such evidence must be a copy of the HUD regulatory agreement which evidences the prepayment clause (5 points).

(C) The proposed development's composition offers a Unit mix which is conducive to housing large families. To qualify for these points, these Units must have at least 1000 square feet of net rentable area for three bedrooms or 1200 square feet of net rentable area for four bedrooms. Unless the building is served by an elevator, the 3 or 4 bedroom Units should not be located above the building's second floor. If the Project is a mixed-income development, only tax credit Units should be used in computing the percentage of qualified Units for this selection item.

(i) 15% of the Units in the development are three or four bedrooms (5 points); and

(ii) an additional point will be awarded for each additional 5% increment of Units that are three or four bedrooms up to 30% of the Units (a maximum of three points) (3 points).

(D) EXHIBIT 204. Label as Exhibit 204, a letter from the design architect which certifies that at least four of the following energy saving devices will be utilized in the construction of each tax credit Unit. The devices selected must be certified as included in each tax credit Unit of the Project upon Cost Certification. Letter must specify where the items will be used and what efficiency standards will be met (R-values, SEER rating, flue efficiencies, etc.) (3 Points):

(i) ceiling fans in living room and each bedroom;

(ii) insulation of at least R-19 for walls and R-30 for ceilings;

(iii) solar screens;

(iv) gas heating system with a minimum 80% flue efficiency;

(v) energy efficient air conditioning system with a 12 SEER or above rating;

(vi) dual pane insulating, low-e windows;

(vii) evaporative cooling system; or

(viii) utilization of appliances and residential light fixtures that qualify for the US EPA and the US Department of Energy's Energy Star Label. At a minimum, this shall include the installation of programmable thermostats, water heaters, refrigerators and dishwashers in each unit.

(E) The proposed development provides low density housing of less than 16 Units per acre or as follows:

(i) 16 Units or less per acre (6 points); or

(ii) 17 to 20 Units per acre (4 points).

(F) The subject Project is an existing Residential Development without maximum rent limitations or set-asides for affordable housing seeking rehabilitation credits. If maximum rent limitations had existed previously, then the restrictions must have expired at least one year prior to the date of Application to the Department (8 points).

(G) The subject Project is a mixed-income development comprised of both market rate Units and qualified tax credit Units. To qualify for these points, the project must be located in a submarket where the average rents for comparable market rate units are at least 10% higher on a per net rentable square foot basis than the maximum allowable rents under the Program. Additionally, the proposed rents for the market rate units in the project must be at least 5% higher on a per net rentable square foot basis than the maximum allowable rents under the Program.

(i) Project's Applicable Fraction is no greater than 75% (6 points).

(ii) Project's Applicable Fraction is no greater than 60% (10 points).

(H) EXHIBIT 205. Label as EXHIBIT 205, evidence that the proposed historic residential development has received an historic property designation by a federal, state or local governmental entity. Such evidence must be in the form of a letter from the designating entity identifying the development by name and address and stating that the project is:

(i) listed in the National Register of Historic Places under the U.S. Department of the Interior in accordance with the National Historic Preservation Act of 1966;

(ii) located in a registered historic district and certified by the U.S. Department of the Interior as being of historic significance to that district;

(iii) identified in a city, county, or state historic preservation list; or

(iv) designated as a state landmark (6 points).

(I) Property Owner will set-aside Units for households with incomes at 50% or less of Area Median Gross Income (AMGI). The rents for these Units must not be higher than the allowable tax credit rents at the 50% AMGI level. The property owner will set aside Units at 50% AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period

as specified in the LURA. For the purposes of this subparagraph (maintaining the promised percentage of set aside 50% AMGI Units), if at re-certification the tenant's household income exceeds 140% of the 50% AMGI level, then the Unit remains a 50% AMGI Unit until the next available Unit of comparable or smaller size is designated to replace this Unit. Once the over 50% AMGI Unit is replaced, then the rent for the previously qualified 50% AMGI Unit may be increased under the LIHTC requirements. Rent increases, if any, should comply with lease provisions and local tenant-landlord laws. If the Project is a mixed-income development, only tax credit Units should be used in computing the percentage of qualified Units for this selection item. Utilize the percentages in clause (i) through (ii) of this subparagraph to assess the appropriate score.

(i) four points will be awarded for the first 10% of the Units in the development that are set-aside for tenants with incomes at 50% or less of AMGI (4 points);and

(ii) an additional point will be awarded for every 5% of additional Units set-aside for tenants with incomes at 50% or less of AMGI up to a maximum of four points (4 points).

(J) Proposed development is comprised of fourplexes in clusters of four or more buildings or Town Home development of at least 16 Units. To qualify for these points the development must be on contiguous property under common ownership, management, and Control and must have a density of no more than 16 Units per acre (5 points).

(K) EXHIBIT 206. Label as EXHIBIT 206, for rehabilitation evidence that a majority of the development's residential Units, as of the end of the Application Acceptance Period, are vacant and uninhabitable. Such evidence must be in the form of a letter and report from the local municipal authority citing substantial code violations. To qualify for these points, the Applicant or its Affiliates must not have owned a significant interest in, or have had Control of the Project during the period in which such Units were rendered uninhabitable (4 points).

(L) EXHIBIT 207. Label as EXHIBIT 207, evidence from the local municipal authority stating that the proposed development fulfills a need for additional affordable rental housing as evidenced in a local Consolidated Plan, Comprehensive Plan, State Low Income Housing Plan or other planning document and is supported by the local municipal authority. If the State Low Income Housing Plan is utilized for this exhibit, then a letter from the local municipal authority stating that there is no local plan and that the city supports the state plan must be submitted with the letter from the state (5 points).

(M) The Project is a Small Development. A Small Development is defined as a Project consisting of not more than 36 multifamily Units, which is not a part of, or contiguous to, a larger Project. A Project may not receive points for this characteristic if it would otherwise qualify as a Rural Project (5 points).

(4) SPONSOR CHARACTERISTICS.

(A) EXHIBIT 208. Label as EXHIBIT 208, evidence that the Project Owner's general partner, General Contractor or their principals have a record of successfully constructing or developing residential units or comparable commercial property (i.e. dormitory and hotel/motel). Evidence must be one of the following documents: AIA Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other appropriate documentation verifying that the general partner, General Contractor or their principals have the required experience. While points may be awarded for experience under this subsection during the application process, the criteria and conditions related to a General Contractor as outlined in §49.8(c) of this title (relating to Housing Credit Allocations) must be met in order to receive a final allocation of credits. If the General Contractor or its principals is shown not to have the required experience upon review of documents required pursuant to §49.8(c) of this title, then the conditions of the Commitment Notice or carryover agreement will not have been met and the final allocation of credits may be denied. 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.

(i) The evidence must clearly indicate:

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

(II) that the names on the forms and agreements tie back to the ownership entity, general partner, general contractor and their respective principals as listed in the Application; and

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

(ii) The term "successfully" is defined as acting in a capacity as the general contractor or developer of:

(I) at least 100 residential units or comparable commercial property; or

(II) at least 36 residential units or comparable commercial property if the project applying for credits is a Rural Project. (10 points).

(B) EXHIBIT 209. Label as EXHIBIT 209, evidence that a Historically Underutilized Business ("HUB") as certified by the General Services Commission is the Project Owner or Controls the Project Owner. With respect to the filing of an Application and the development, operation and ownership of a Project, the historically underutilized person or persons whose ownership interests comprise a majority of a corporation, partnership, joint venture or other business entity, must maintain this majority and must demonstrate regular, continuous, and substantial participation in the operation and management activities of the entity. Likewise, with regard to a sole proprietorship, the individual who comprises the sole proprietorship must demonstrate regular, continuous, and substantial participation in the development, operation and ownership of the Project. The Department shall, during and after the Application Round, monitor those individuals whose purported ownership interest(s) and participation form the basis upon which the designation of HUB is being claimed and may require the submission of additional documentation as required to verify said evidence. The Department's goal is to have substantive participation by those individuals whose purported ownership interest(s) and participation form the basis which the designation as a HUB is claimed. A determination by the Department that there has been a material misrepresentation as to such participation or that insufficient evidence has been provided to substantiate such participation will be final and points awarded for HUB participation will be withdrawn accordingly. The following documentation must be provided to qualify for these points:

(i) certification from the General Services Commission that the Person is a HUB; and

(ii) evidence of regular, continuous and substantial participation. This evidence shall include, but not be limited to,

the agreement to personally guarantee the interim construction loan secured relative to the development of a Project (and to personally provide all other guarantees to the equity investor) by the person or persons whose purported ownership interest(s) and participation form the basis upon which the designation of a HUB is being claimed. Any such guarantee wherein an Affiliate, partner and or Beneficial Owner of the guarantor agrees to indemnify, in whole or in part, the guarantor from the liability arising from the guarantee, shall not constitute said evidence (5 points).

(5) PARTICIPATION OF LOCAL TAX EXEMPT ORGANIZATIONS. EXHIBIT 210. Evidence that the Property owner has an executed agreement with a Local Tax Exempt Organization for the provision of special supportive services for the tenants. The supportive service will be included in the Declaration of Land Use Restrictive Covenants ("LURA"). (Up to 5 points)

(A) The services must provide a benefit that would not be readily available to the tenants if they were not residing in the development.

(B) Evidence of each organization's tax exempt status is required.

(C) The supportive services will be evaluated based upon the criteria provided in clauses (i) through (v) of this subparagraph.

(i) Cost of Services - The cost of the service to the Project Owner is included in the Project's operating budget and proforma and the costs are reasonable for the benefit derived by the tenants.

(ii) Availability - Services provided on site or services provided with transportation to another location.

(iii) Duration of Contract - All services must be fully described (including cost, duration, provider, experience of provider, benefit to tenants, and anticipated tenant population served) in a fully executed contract between the service provider and the project owner with a duration of no less than five years.

(iv) Experience of Service Provider - The Department will evaluate the experience of the organization as well as the professional and educational qualifications of the individuals delivering the services.

(v) Appropriateness - Services must be appropriate and provide a tangible benefit in enhancing the standard of living of a majority of tenants.

(6) TENANT POPULATIONS WITH SPECIAL HOUSING NEEDS.

(A) This criterion applies to elderly Projects which must provide significant facilities and services specifically designed to meet the physical and social needs of the residents. Significant services may include congregate dining facilities, social and recreation programs, continuing education, welfare information and counseling, referral services, transportation and recreation. Other attributes of such Projects include providing hand rails along steps and interior hallways, grab bars in bathrooms, routes that allow for barrier-free travel, lever type doorknobs and single lever faucets. All multistory buildings (two or more floors) must be served by an elevator. Individual Units shall not be multistory. Elderly Projects must not contain any Units with three or more bedrooms. Such a Project must conform to the Federal Fair Housing Act and must be a Project which:

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

(ii) is intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one person who is 55 years of age or older; and

(iii) adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for persons 55 years of age or older (10 points).

(B) EXHIBIT 211. Label as EXHIBIT 211, evidence which establishes that Units will be provided for persons with physical or mental disabilities as described in clause (i) or (ii) of this subparagraph. The points for clause (i) and (ii) of this subparagraph are mutually exclusive.

(i) The Project Owner agrees to set aside Units for Persons with Disabilities. The Department will require a minimum of nine months during which the set aside Units must either be occupied by tenants who are physically or mentally disabled or held vacant while being marketed to such tenants. The nine month period will begin on the date that each building receives its certificate of occupancy. For buildings which do not receive a certificate of occupancy, the nine month period will begin on the placed in service date as provided in the Cost Certification Procedures Manual. When a qualified tenant is located, the Project Owner will be responsible for adapting the Unit per the tenant's requirements. The cost of adapting the Unit will be borne by the Project Owner. If the Project Owner is unable to locate qualified Persons with Disabilities following a good-faith effort throughout the nine month set aside period, then the Units may be rented to tenants without disabilities, provided that the next available Unit (from among those set aside for Persons with Disabilities) shall first be made available to Persons with Disabilities. To comply with this provision, the Project Owner must maintain a waiting list of qualified tenants with disabilities throughout the Compliance Period. Each time a Unit set aside for Persons with Disabilities becomes available, the Project Owner must contact an individual on the waiting list and/or provide notice to local service providers that the Unit is available. If the waiting list or the local service provider cannot locate a qualified tenant for the next available Unit, then the Unit may be rented to a tenant without disabilities. The documentation requirements at the time of Application and the point system for this clause are contained in subclauses (I) through (IV) of this clause (documentation for all three subclauses, (I) through (III) of this clause, must be provided):

(I) evidence verifying that Adaptable Dwelling Units will be specifically set aside for persons with physical or mental disabilities. Such evidence for physical disabilities must be in the form of a certification from an accredited architect stating the number of Units which are/will be designed to meet American National Standards for buildings and facilities providing accessibility and usability for Persons with Disabilities (ANSI A117.1 - 1986) and will conform to the Fair Housing Act. Such evidence for persons with mental disabilities must be in the form of a contract to provide appropriate supportive services for persons with mental disabilities between the Project Owner and an experienced service provider;

(II) a copy of the section from the market study which clearly establishes that there is a demand for the percentage of Units being set aside for Persons with Disabilities; and

(III) a copy of the Project Owner's marketing plan for Persons with Disabilities which conforms to the guidelines provided in the Application Submission Procedures Manual.

(IV) The point system for this clause is:

(-a-) at least 7% of the Units are set-aside for persons with physical or mental disabilities (5 points); or

(-b-) at least 10% of the Units are set-aside for persons with physical or mental disabilities (8 points).

(ii) Submit evidence verifying that the Project provides Units specifically accessible to persons with physical, visual or hearing disabilities as required by §504 of the Rehabilitation Act of 1973. As required by §504, a one time inspection and corresponding accessibility transition plan will be required upon completion of construction. Project Owners making this election must also comply with the Fair Housing Act. The documentation requirements at the time of Application and the point system for this clause are contained in subclauses (I) through (IV) of this clause (documentation for all three subclauses, (I) through (III) of this clause, must be provided):

(I) a certification from an accredited architect stating the number of Units which are/will be accessible per the requirements of §504 as governed by the Uniform Federal Accessibility Standards (UFAS); and

(II) a copy of the section from the market study which clearly establishes that there is a demand for the percentage of Units being set aside for Persons with Disabilities; and

(III) a copy of the Project Owner's marketing plan for Persons with Disabilities which conforms to the guidelines provided in the Application Submission Procedures Manual.

(IV) The point system for this clause is:

(-a-) At a minimum, 5% of the Units must be usable for persons with mobility impairments and 2% of the Units shall be made accessible for people with hearing or visual impairments (5 points); or

(-b-) At a minimum 10% of the Units must be usable for persons with mobility impairments and 2% of the Units shall be made accessible for people with hearing or visual impairments (8 points).

(C) EXHIBIT 212. Label as EXHIBIT 212, evidence that the Project is designed solely for transitional housing for homeless persons on a non-transient basis, with supportive services designed to assist tenants in locating and retaining permanent housing. Such evidence must include a detailed narrative describing the type of proposed housing; a referral agreement with an established organization which provides services to the homeless; and a marketing plan designed to attract qualified tenants and housing providers, as well as a list of supportive services (15 points).

(7) PUBLIC HOUSING WAITING LISTS. EXHIBIT 213. Label as EXHIBIT 213, evidence that the Property owner has committed in writing to the local public housing authority (PHA) the availability of Units and that the Property owner agrees to consider households on the PHA's waiting list as potential tenants. Evidence of this commitment must include all of the following documentation:

(A) a copy of the Property owner's letter to the PHA. If no PHA is within the locality of the development, the Property owner must utilize the nearest authority or office responsible for administering Section 8 programs;

(B) a copy of the marketing plan submitted with letter to the local PHA;

(C) verification of receipt by the PHA in the form of certified return receipt or overnight mail receipt; and

(D) a letter received from an appropriate municipal authority or local PHA stating the need for additional affordable housing Units within its jurisdiction (3 points).

(8) SUBSTANTIAL READINESS TO PROCEED. EXHIBIT 214. Label as EXHIBIT 214, evidence of substantial readiness to proceed. Such evidence must be in the form of an enforceable construction financing commitment from a regulated financial institution that is actively and regularly engaged in the business of lending money. Such a commitment must be a written approval of a loan or grant (i.e., preliminary approval by the lender's loan committee) and be subject only to conditions fully under the control of the Applicant to satisfy (excluding the allocation of tax credits) (4 Points).

(9) BONUS POINTS.

(A) EXHIBIT 215. Label as Exhibit 215, evidence that Sponsor agrees to provide a right of first refusal to purchase the Project 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; and an individual tenant with respect to a single family building or a tenant cooperative and/or a resident management corporation in the Project or other association of tenants in the Project with respect to multifamily developments (together, including the tenants of a single family building, a "Tenant Organization"). Sponsor may qualify for this bonus by agreeing that the LURA with respect to the Project will, in substance, contain the following terms.

(i) Upon the earlier to occur of:

(I) the Sponsor's determination to sell the Project, or

(II) the Sponsor's request to the Department, pursuant to §42(h)(6)(I) of the Code, to find a buyer who will purchase the Project pursuant to a "qualified contract" within the meaning of §42 (h)(6)(F) of the Code, the Sponsor shall provide a notice of intent to sell the Project ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Sponsor determines that it will sell the Project 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.

(ii) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Project 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.

(iii) After the later to occur of:

(I) the end of the Compliance Period; or

(II) two years from delivery of a Notice of Intent, the Sponsor may sell the Project without regard to any right of first refusal established by the LURA if no offer to purchase the Project 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 such offer without the sale having occurred, provided that the failure to close within such 120-day period shall not have been caused by the Sponsor or matters related to the title for the Project.

(iv) At any time prior to the giving of the Notice of Intent, the Sponsor 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 Project for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Project by such organization in accordance with and subject to the priorities set forth in clause (ii) of this subparagraph.

(v) The Department shall, at the request of the Sponsor, 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 Project at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in clause (ii) of this subparagraph (5 points).

(B) Application is received within the first ten working days of the Application Acceptance Period (2 points).

(d) Final Ranking. The Department will evaluate Projects according to the strength of the Project in meeting the Threshold and Selection Criteria. In the event that two or more Applications receive the same number of points in any given set-aside category, the Department in addition to factors outlined in §49.4(h) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) will utilize the following factors in the order presented in paragraphs (1) through (7) of this subsection in making a determination as to which Project will receive a preference in consideration for a tax credit commitment:

(1) which serve the lowest income tenants;

(2) which serve low income tenants for the longest period of time, in the form of a longer Compliance Period and/or extended low income use period (as set forth in the Extended Low Income Housing Commitment Agreement);

(3) which is a Special Housing Project as defined in §49.2 of this title (relating to Definitions);

(4) which have substantial community support as evidenced by the commitment of local public funds toward the construction, rehabilitation and acquisition and subsequent rehabilitation of the Project;

(5) which demonstrates the highest substantial readiness to proceed as evidenced by the Selection Criteria, more specifically provided for in subsection (c)(8) of this section;

(6) which provide for the most efficient usage of the low income housing tax credit on a per Unit basis; and

(7) whose Unit composition provides the highest percentage of three bedrooms or greater sized Units.

(e) Credit Amount.

(1) The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Project throughout the Compliance Period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Project by the Department. The Department will limit the allocation of tax credits to no more than $1.2 million per Project or $1.8 million per Applicant. For these purposes this limitation will apply to all Affiliates of any Applicant, developer, Project Owner, general partner, sponsor or their Affiliates or related entities unless otherwise provided for by the Department. Tax Exempt Bond Project Applications are not subject to the per Project and per Applicant credit limitations.

(2) In making determinations with respect to the limitation the Department may take into account such factors as the percentage of interest held by a particular individual or any Affiliate thereof in a Project, the amount of fees or other compensations paid to a particular individual or any Affiliate thereof with respect to a Project, any other financial benefits, either directly or indirectly through Beneficial Ownership received by a particular individual or any Affiliate thereof with respect to a Project. The Committee, in its sole discretion, may allocate credits to a Project 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 Project's financial viability as a qualified low income Project. The limitation does not apply:

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

(B) to the provision by an entity of "qualified commercial financing" within the meaning of the Code, §49(a)(1)(D)(ii) (without regard to the 80% limitation thereof);

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

(D) to a Project Consultant with respect to the provision of consulting services.

(f) Limitations on the Size of Projects.

(1) Minimum Project size will be limited to 16 units unless otherwise provided for under the Ineligible Building Types definition.

(2) Rural Projects involving new construction must not exceed 76 Units. All other Projects involving new construction or requesting a combination of rehabilitation and new construction tax credits will be limited to 250 Units. (248 Units if four-plexes).

(g) Tax Exempt Bond Financed Projects.

(1) Tax Exempt Bond Project Applications are also subject to evaluation under the QAP and Rules and the requirements and underwriting review criteria described in the Application Submission Procedures Manual. Such projects must meet all Threshold Criteria requirements stipulated in the most recently approved QAP and Rules. Tax Exempt Bond Financed Projects are not subject to the Selection Criteria and related items and are not required to submit such documentation. Tax Exempt Bond Project Applications must demonstrate the Project's consistency with the bond issuer's consolidated plan or other similar planning document. Consistency with the local municipality's consolidated plan or similar planning document must

also be demonstrated in those instances where the city or county has a consolidated plan.

(2) Tax Exempt Bond Project Applications are subject to the size restrictions specified in subsection (f) of this section.

(3) Tax Exempt Bond Project 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 such services will be included in the Declaration of Land Use Restrictive Covenants ("LURA").

(4) The issuer (if other than the Department) may, at its discretion, enter into a contractual agreement to allow the Department to underwrite the Project for financial feasibility If the Department is not the issuer and does not have such an agreement, it will require evidence that the issuer has underwritten the Project for financial feasibility in accordance with the Department's guidelines contained in the Application Submission Procedures Manual. The Department will review the issuer's feasibility determination and may make such changes in the amount of credits to be taken as are appropriate under those guidelines. In the absence of a contractual agreement between the issuer and the Department or evidence that the issuer has underwritten the Project, the Department will underwrite the Project and may make such changes in the amount of credits to be taken as are appropriate under the Department's guidelines.

(5) Tax Exempt Bond Project Applications are subject to review and approval by the Ad Hoc Tax Credit Committee of the concentration of low income Projects within specific markets or submarkets, geographic dispersion of multifamily housing in any particular market or submarket and site conditions.

(6) If the Department determines that all requirements have been met, the Ad Hoc Tax Credit Committee, without further action, shall authorize the Department to issue an appropriate notice to the Sponsor that the Project satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

(h) Adherence to Obligations. All representations, undertakings and commitments made by an Applicant in the applications process for a Project, 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 Project, 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 Project, shall be reflected in the LURA. All such representations are enforceable by the Department, including enforcement by administrative penalties for failure to perform as stated in the representation and enforcement by inclusion in deed restrictions to which the Department is a party.

§49.7. Compliance Monitoring.

(a) The Code, §42 (m)(1)(B)(iii), requires each State Allocating Agency to include in its "Qualified Allocation Plan" a procedure that the agency (or an agent or other private Contractor of such agency) will follow in monitoring Projects for noncompliance with the provisions of the Code, §42 and in notifying the Internal Revenue Service (the "Service"), or its successor, of such noncompliance of which such agency becomes aware. This procedure does not address forms and other records that may be required by the Service on examination or audit.

(b) The Department will also monitor compliance with any additional covenants made by the Project Owner in the Extended Low Income Housing Commitment Agreement.

(c) The owner of a low income housing Project must keep records for each qualified low income building in the Project showing:

(1) the total number of residential rental Units in the building (including the number of bedrooms and the size in square feet of each residential rental Unit);

(2) the percentage of residential rental Units in the building that are low income Units;

(3) the rent charged on each residential rental Unit in the building including documentation to support the utility allowance;

(4) the number of occupants in each low income Unit;

(5) the low income Unit vacancies in the building and information that shows when, and to whom, the next available Units were rented;

(6) the annual income certification of each low income tenant per Unit, in the form designated by the Department in the Compliance Reference Guide, as may be amended;

(7) documentation to support each low income tenant's income certification, consistent with the verification procedures required by HUD under §8 of the United States Housing Act of 1937 (§8). In the case of a tenant receiving housing assistance payments under §8, the documentation requirement is satisfied if the public housing authority provides a statement to the Project Owner declaring that the tenant's income does not exceed the applicable income limit under the Code, §42(g) as described in the Compliance Reference Guide;

(8) the Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period;

(9) the character and use of the nonresidential portion of the building included in the building's Eligible Basis under the Code, §42(d), (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project); and

(10) additional information as required by the Department.

(d) Record retention provision. The owner of a low income housing Project is required to retain the records described in subsection (c) of this section for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the tax 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.

(e) Certification and Review.

(1) On or before February 1st of each year, the Department will send each Project Owner of a completed Project an Owner's Certification of Program Compliance to be completed by the Owner and returned to the Department on or before the first day of March of each year in the Compliance Period. Any Project for which the certification is not received by the Department, is received past due, or is incomplete, improperly completed or not signed by the Project Owner, will be considered not in compliance with the provisions of the Code. The Owner Certification of Program Compliance shall cover the proceeding calendar year and shall include the following statements of the Owner:

(A) the Project met the minimum set-aside test which was applicable to the Project;

(B) there was no change in the Applicable Fraction of any building in the Project, or that there was a change, and a description of the change;

(C) the owner has received an annual income certification from each low income tenant and documentation to support that certification;

(D) each low income Unit in the Project was rent-restricted under the Code, §42(g)(2) and Internal Revenue Service Final Regulation §1.42 - 10 regarding utility allowances;

(E) all Units in the Project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under the Code, §42(i)(3)(B)(iii));

(F) each building in the Project was suitable for occupancy, taking into account local health, safety, and building codes;

(G) either there was no change in the Eligible Basis (as defined in the Code, §42(d)) of any building in the Project, or that there has been a change, and the nature of the change;

(H) all tenant facilities included in the Eligible Basis under the Code, §42(d), of any building in the Project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(I) if a low income Unit in the Project became vacant during the year, reasonable attempts were, or are being, made to rent that Unit or the next available Unit of comparable or smaller size to tenants having a qualifying income before any other Units in the Project were, or will be, rented to tenants not having a qualifying income;

(J) if the income of tenants of a low income Unit in the Project increased above the limit allowed in the Code, §42(g)(2)(D)(ii), the next available Unit of comparable or smaller size in the Project was, or will be, rented to tenants having a qualifying income;

(K) a LURA including an extended low income housing commitment agreement as described in the Code, §42(h)(6)(B), was in effect for buildings subject to the Revenue Reconciliation Act of 1989, §7106(c)(1) (generally any building receiving an allocation after 1989);

(L) no change in the ownership of a Project has occurred during the reporting period;

(M) the Project Owner has not been notified by the Internal Revenue Service that the Project is no longer "a qualified low income housing project" within the meaning of the Code, §42; and

(N) the Project met all terms and conditions which were recorded in the LURA, or if no LURA was required to be recorded, the Project met all representations of the Project Owner in the Application for credits.

(2) Review.

(A) The Department will review each Owner's Certification of Program Compliance for compliance with the requirements of the Code, §42.

(B) Each year, the Department will perform monitoring reviews of at least 20% of the low income housing Projects. A monitoring review will include an inspection of the income certification, the documentation the Project Owner has received to support that certification, the rent record for each low income tenant, and any additional information that the Department deems necessary, for at least 20% of the low income Units in those Projects. The Department shall give reasonable notice to the Project Owner that an inspection will occur; however, the Projects and records to be reviewed will be selected by the Department in its discretion. Monitoring reviews will be performed at the location of the Project, unless the Project is required to have fewer than ten low income Units.

(C) The Department may, at the time and in the form designated by the Department, require the Project Owners to submit for compliance review, information on tenant income and rent for each low income Unit, and may require a Project Owner to submit for compliance review a copy of the income certification, the documentation the Project Owner has received to support that certification and the rent record for any low income tenant.

(3) Exception. The Department may, at its discretion, enter into a Memorandum of Understanding with the TxRD, whereby the TxRD agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed by the TxRD under its §515 program. Owners of such buildings may be excepted from the review procedures of paragraph (2)(B) or (C) of this subsection or both; however, if the information provided by TxRD is not sufficient for the Department to make a determination that the income limitation and rent restrictions of the Code, §42(g)(1) and (2), are met, the Project Owner must provide the Department with additional information.

(f) Inspection provision. The Department retains the right to perform an on site inspection of any low income housing Project including all books and record pertaining thereto through either the end of the Compliance Period or the end of the period covered by any Extended Low Income Housing Commitment Agreement, whichever is later. An inspection under this subsection may be in addition to any review under subsection (e)(2) of this section.

(g) Notices to Owner. The Department will provide prompt written notice to the owner of a low income housing Project if the Department does not receive the certification described in subsection (e)(1) of this section or discovers through audit, inspection, review or any other manner, that the Project is not in compliance with the provisions of the Code, §42. The notice will specify a correction period which will not exceed 90 days, during which the owner may respond to the Department's findings, bring the Property into compliance, or supply any missing certifications. The Department may extend the correction period for up to six months if it determines there is good cause for granting an extension. If any communication to the Project Owner under this section is returned to the Department as unclaimed or undeliverable, the Project may be considered not in compliance without further notice to the Project Owner.

(h) Notice to the Internal Revenue Service.

(1) Regardless of whether the noncompliance is corrected, the Department is required to file IRS Form 8823, Low Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service. IRS Form 8823 will be filed not later than 45 days after the end of the correction period specified in the Notice to Owner, but will not be filed before the end of the correction period. The Department will explain on IRS Form 8823 the nature of the noncompliance and will indicate whether the Project Owner has corrected the noncompliance or has otherwise responded to the Department's findings.

(2) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective IRS Form 8823. In all other cases, the Department will retain the certification and records described in this section for three years from the end of the calendar year the Department receives the certifications and records.

(i) Notices to the Department.

(1) A Project Owner must notify the Department in writing prior to any sale, transfer, exchange, or renaming of the Project or any portion of the Project, and this notification requirement shall be included in a LURA with respect to each Project. For Rural Projects that are federally assisted or purchased from HUD, the Department shall not authorize the sale of any apportionment of the entire tax credit development.

(2) A Project Owner must notify the Department in writing of any change of address to which subsequent notices or communications shall be sent.

(j) Liability. Compliance with the requirements of the Code, §42 is the sole responsibility of the owner of the building for which the credit is allowable. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the owner including the owner's noncompliance with the Code, §42.

(k) These provisions apply to all buildings for which a low income housing credit is, or has been, allowable at any time. The Department is not required to monitor whether a building or Project was in compliance with the requirements of the Code, §42, prior to January 1, 1992. However, if the Department becomes aware of noncompliance that occurred prior to January 1, 1992, the Department is required to notify the Service in a manner consistent with subsection (g) of this section.

§49.8. Housing Credit Allocations.

(a) 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 Project throughout the Compliance Period. Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a housing credit allocation; and/or the date the building 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 dependent 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 PROJECT OWNER, SPONSOR, INVESTOR, LENDER OR OTHER ENTITY THAT THE PROJECT IS, IN FACT, FEASIBLE OR VIABLE.

(b) When the Project Owner is in full compliance with the QAP and the Rules in this chapter, the Commitment Notice, the Carryover Allocation Procedures Manual and all fees as specified within §49.11 of this title (relating to Program Fees) have been received by the Department, the Department, if requested, shall execute a Carryover Allocation Document which has been properly completed, executed and notarized by the Project Owner. The Department shall return one executed copy to the Project Owner. Requirements for Carryover Allocations apply only to projects which receive an allocation from the State Housing Credit Ceiling.

(c) The General Contractor hired by the Project Owner must meet specific criteria as defined by the Seventy-fifth Legislature. A general contractor hired by an applicant or an applicant , if the applicant serves as general contractor must demonstrate a history of constructing similar types of housings without the use of federal tax credits. Evidence must be submitted to the Department which sufficiently documents that the general contractor has constructed some housing without the use of low income housing 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) All Carryover Allocations will be contingent upon the following:

(1) the Project Owner's closing of the construction loan shall occur not later than June 15th of the year after the execution of the Carryover Allocation Document with the possibility of a one-time 30 day extension. All requests for extensions by Applicants shall be submitted to the Department for review. The Committee may grant extensions, in its sole discretion, on a case-by-case basis. The Committee may, in its sole discretion, waive related fees. Copies of the closing documents must be submitted to the Department within two weeks after the closing. The Carryover Allocation will automatically be revoked if the Project Owner fails to meet the aforementioned closing deadline, and all credits previously allocated to that Project will be returned to the general pool for reallocation; and

(2) the Project Owner must commence and continue substantial construction activities not later than November 15th of the year after the execution of the Carryover Allocation Document and evidence such activity in a format prescribed by the Department, (as more fully defined in the Carryover Allocation Procedures Manual), outlining progress towards placing the Project in service in an expeditious manner. All requests for extensions by Applicants shall be submitted to the Department for review, and the Committee may grant extensions, in its sole discretion, on a case-by-case basis.

(e) The Department shall not allocate additional credits to a Project Owner who is unable to provide evidence, satisfactory to the Department, of progress towards placements in service for a Project(s) that is in carryover or that has received a Determination Notice. An allocation will be made in the name of the Applicant identified in the related Commitment Notice or Determination Notice. If an allocation is made in the name of the party expected to be the general partner in an eventual owner partnership, the Department may, upon request, approve a transfer of allocation to such owner partnership in which such party is the sole general partner. Any other transfer of an allocation will be subject to review and approval by the Department. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete documentation regarding the new owner including all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant

(f) 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 Project Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §49.11 of this title (relating to Program Fees), have been received by the Department. For Tax Exempt Bond Projects, 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 Project 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 Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Project 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 only occur only after the Project 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 low income housing tax credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification requests. A separate housing credit allocation shall be made with respect to each building within a Project which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a project basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Project until the issuance of IRS Form 8609s with respect to such buildings.

(g) 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).

(h) Project inspections shall be required to show that the Project is built or rehabilitated according to required plans and specifications. At a minimum, all Project 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 Project is placed in service. All such Project inspections shall be performed by the Department or by an independent, third party inspector acceptable to the Department. The Project Owner shall pay all fees and costs of said inspections.

(i) After the entire Project is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document, the Project Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. A newly constructed or rehabilitated building is not placed in service until all units in such building have been completed and certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire project, 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 Project as well as for the closing of all interim and permanent financing for the Project. If the Applicant does not fulfill all representations made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609 or may withhold issuance of the IRS Form 8609s until these representations are met.

§49.9. Department Records; Certain Required Filings.

(a) 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 reserved pursuant to reservation notices during such calendar year;

(2) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(3) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(4) the cumulative amount of housing credit allocations made during such calendar year; and

(5) the remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) Not less frequently than quarterly during each calendar year, the Department shall publish in the Texas Register each of the items of information referred to in subsection (a) of this section.

(c) 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 Project Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low Income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of IRS Form 8609 will be mailed or delivered to the Project 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.

§49.10. Department Responsibilities.

In making a housing credit allocation under this chapter, the Department shall rely upon information contained in the Project Owner's Application to determine whether a building is eligible for the credit under the Code, §42. The Project Owner shall bear full responsibility for claiming the credit and assuring that the Project complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a Project Owner who receives a housing credit allocation from the Department will qualify for the housing credit. The Department will reject, and consider barring the Project Owner from future participation in the Department's tax credit program as a consequence thereof, any Application in which fraudulent information, knowingly false documentation or other misrepresentation has been provided. The aforementioned policy will apply at any stage of the evaluation or approval process.

§49.11. Program Fees.

(a) Each Project Owner that submits an Application shall submit to the Department, along with such Application, a non refundable Application fee, as set forth in the Application Submission Procedures Manual.

(b) For each Project that is to be evaluated by an independent third party underwriter in accordance with §49.6(b)(3) of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed

Projects), the Project Owner will be so informed in writing prior to the commencement of any reviews by said underwriter. The cost for the third party underwriting will be set forth in the Application Submission Procedures Manual, and must be received by the Department prior to the engagement of the underwriter. The fees paid by the Project Owner to the Department for the third party underwriting will be credited against the commitment fee established in subsection (c) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Project Owner.

(c) Each Project Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the commitment billing notice, a non refundable commitment fee, as set forth in the Application Submission Procedures Manual. The commitment fee shall be paid by cashier's check. Projects located within one of the targeted Texas counties, as indicated in the Reference Manual, will be exempt from the requirement to pay a commitment fee, in the event that Commitment Notice is issued.

(d) Each Project Owner that requests an extension of the expiration date of a Commitment Notice, or an extension of the documentation submission date for Carryover, Closing of Construction Loan, Substantial Construction Commencement, Placed in Service and Cost Certification, shall submit to the Department, along with such request, a non refundable extension fee. The amount of the extension fee shall be set forth in the Application Submission Procedures Manual. This fee shall be paid by cashier's check and shall be submitted as discussed in §49.12 of this title. All extensions shall be granted at the discretion of the Department.

(e) Upon the Project being placed in service, the Project Owner will pay a compliance monitoring fee in the form of a cashier's check, as set forth in the Application Submission Procedures Manual. The compliance monitoring fee must be received by the Department prior to the release of the IRS Form 8609 on the Project.

(f) Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The General Services Commission determines the cost of copying, and other costs of production.

(g) The amounts of the Application fee, commitment fee, compliance monitoring fee, administrative fees, extension fee, and other applicable fees as specified in the Application Submission Procedures Manual 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.

§49.12. Manner and Place of Filing Applications.

(a) An Application for a Housing Credit Allocation from the State Housing Credit Ceiling may be filed at any time during the Application Acceptance Periods published periodically in the Texas Register.

(b) Applications for a Determination Notice for a Tax Exempt Bond Project 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 2001 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application per the requirements of §49.6(g) of this title not later than 60 days after the date of the TBRB lottery.

(2) Applicants which receive advance notice of a Program Year 2001 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit the Application fee along with Volume 1 of the Application prior to the Applicant's bond reservation date as assigned by the TBRB. All outstanding documentation required under §49.6(g) of this title must be submitted to the Department at least 45 days prior to the Ad Hoc Tax Credit Committee meeting at which the decision to issue a Determination Notice would be made.

(c) All Applications, letters, documents, or other papers filed with the Department will be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(d) All Applications and related documents submitted to the Department shall be mailed to the Low Income Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941 or be delivered by hand or courier to 507 Sabine, Suite 300, Austin, Texas 78701.

§49.13. Withdrawals, Cancellations, Amendments.

(a) A Project Owner 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.

(b) The Department may consider an amendment to a Commitment Notice, Determination Notice or Carryover Allocation or other requirement with respect to a Project if the revisions:

(1) are consistent with the Code and the tax credit program;

(2) do not occur while the Project is under consideration for tax credits;

(3) do not involve a change in the number of points scored (unless the Project's ranking is adjusted because of such change);

(4) do not involve a change in the Project's site; or

(5) do not involve a change in the set-aside election.

(c) The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Project if:

(1) the Project Owner or any member of the Development Team, or the Project, 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 Project Owner in the applications process for the Project;

(2) any statement or representation made by the Project Owner or made with respect to the Project Owner, the Development Team or the Project is untrue or misleading;

(3) an event occurs with respect to any member of the Development Team which would have made the Project's Application ineligible for funding pursuant to §49.4(f) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments), if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

(4) the Project Owner, any member of the Development Team, or the Project, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

§49.14. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules in cases of natural disasters such as fires, hurricanes, tornadoes, earthquakes, or other acts of nature as declared by Federal or State authorities.

(b) The Department may amend this chapter and the Rules contained herein at any time in accordance with the provisions of Texas Civil Statutes, Article 6252-13a, codified as Government Code, Chapter 2001, and as amended by the Acts of the Seventy-third Legislature, and as may be amended from time to time.

§49.15. Forward Reservations; Binding Commitments.

(a) Anything in §49.4 of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) or elsewhere in this chapter to the contrary notwithstanding, the Department with approval of the Board may determine to issue commitments of tax credit authority with respect to Projects from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment"). The Department may make such forward commitments:

(1) with respect to Projects placed on a waiting list in any previous Application Round during the year; or

(2) pursuant to an additional Application Round.

(b) If the Department determines to make forward commitments pursuant to a new Application Round, it shall provide information concerning such round in the Texas Register. In inviting and evaluating Applications pursuant to an additional Allocation Round, the Department may waive or modify any of the set-asides set forth in §49.5(a) and (b) of this title (relating to Set-Asides, Commitments and Preferences) and make such modifications as it determines appropriate in the Threshold Criteria, evaluation factors and Selection Criteria set forth in §49.6 of this title (relating to Threshold Criteria, Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects) and in the dates and times by which actions are required to be performed under this chapter. The Department may also, in an additional Application Round, include Projects previously evaluated within the calendar year and rank such Projects together with those for which Applications are newly received.

(c) Unless otherwise provided in the Commitment Notice with respect to a Project selected to receive a forward commitment or in the announcement of an Application Round for Projects seeking a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the anticipated allocation rather than in the calendar year of the forward commitment.

(d) 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. No more than 15% of the per capita component of State Housing Credit Ceiling anticipated to be available in the State of Texas in a particular year shall be allocated pursuant to forward commitments to Project Applications carried forward without being ranked in the new Application Round pursuant to subsection (f) of this section. If a forward commitment shall be made with respect to a Project 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).

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

(f) In addition to or in lieu of making forward commitments pursuant to subsection (a) of this section, the Department may determine to carry forward Project Applications on a waiting list or otherwise received and ranked in any Application Round within a calendar year to the subsequent calendar year, requiring such additional information, Applications and/or fees, if any, as it determines appropriate. Project Applications carried forward may, within the discretion of the Department, either be awarded credits in a separate allocation round on the basis of rankings previously assigned or may be ranked together with Project Applications invited and received in a new Application Round. The Department may determine in a particular calendar year to carry forward some Project Applications under the authority provided in this subsection, while issuing forward commitments pursuant to subsection (a) of this section with respect to others.

§49.16. Deadlines for Allocation of Low Income Housing Tax Credits.

(a) Not later than November 15 of each year, the Department shall prepare and submit to the Board for adoption the draft Qualified Allocation Plan required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the low income housing tax credit program.

(b) The Board shall adopt and submit to the Governor the Qualified Allocation Plan not later than January 31.

(c) The Governor shall approve, reject, or modify and approve the Qualified Allocation Plan not later than February 28.

(d) An Applicant for a low income housing tax credit to be issued a Commitment Notice during the initial Application Round in a calendar year must submit an Application to the Department not later than May 15.

(e) The Board shall authorize the Department to issue a Commitment Notice for allocation for the initial Application Round of low income housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

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Texas Department of Housing and Community Affairs

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For further information, please call: (512) 473-3726

Part 5. TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT

Chapter 186. SMART JOBS FUND PROGRAM

10 TAC §§186.101-186.121

The Texas Department of Economic Development (department) adopts new rules for 10 Texas Administrative Code, Chapter 186. Smart Jobs Fund Program, §§186.101-186.121, relating to the administration of the department's Smart Jobs Fund Program. Sections 186.109, 186.112, 186.116, 186.120 and 186.121 are adopted with changes to the proposed text as published in the December 24, 1999 issue of the *Texas Register* (24 TexReg 11650).

The justification for this chapter is to implement the Smart Jobs Fund Program in accordance with Texas Government Code, Chapter 481, Subchapter J, as reauthorized by House Bill 3657 of the 76th Legislature. The new rules provide definitions for the program, set procedures for waivers and modifications, specify certification requirements for provision of a group health benefit plan, set the details for implementing the county average weekly wage, specify eligibility for the program and application requirements, provide for technical assistance by the department, specify a timeline for review of applications as well as provide for daily submission of applications, set funding priorities and assign a point system for ranking applications, set out contracting guidelines, provide for a reimbursement timeline, provide for contract monitoring, and set specific provisions on contract closeout.

The department received three comments and in response to these comments as well as staff input, has made several changes. Sections 186.109, 186.112, 186.116, 186.120 and 186.121 will be republished to indicate these changes. Sections 186.101-186.108, 186.110, 186.111, 186.113-186.115, and 186.117-186.119 will not be republished.

A comment was received from the Texas Workforce Commission advising the department that the Aid to Families with Dependent Children program is now known as Temporary Assistance for Needy Families. As a result, §186.112(f)(3)(C) is being adopted with changes to reflect this correction.

Bell Helicopter submitted a comment requesting that §186.120(a), which requires monthly reporting of training progress, be changed to allow for either quarterly or monthly reporting. Bell Helicopter provides training to its employees that lasts longer than a month and would therefore, if reporting monthly, have to split training courses between reports. The department recognizes that this may occur with a few contractors, but believes that the program goal of closer and more accurate monitoring of contractor performance outweighs this inconvenience. As a result, §186.120(a) is being adopted without changes from the text as proposed.

A comment was received from the State Auditor's Office in Audit Report #00-008, dated January 2000. In Section 1-B of this report, the State Auditor's Office recommends that the department "Establish a standard for the minimum number of hours that must be provided before an employer may count a trainee towards meeting its program objective." In response to this recommendation, the department adds a new subsection (b) to §186.121 which requires that employees must complete at least 75% of course hours for each course taken in order to be counted as a trainee. The remainder of the proposed §186.121 is re-lettered to accommodate this new subsection (b).

Other changes were made to clarify program requirements and improve the monitoring process. Section 186.109 was changed to reflect actual cost per trainee instead of contracted cost per trainee. Section 186.112(f)(1)(A)(iii) was changed to reflect actual travel costs. Section 186.116(a) was changed to delete the word 'only,' in order to reflect program requirements. Section 186.116(c) was changed to add language about a secondary set of general evaluation criteria. This secondary criteria will be used to differentiate among applications after the initial evaluation and scoring. This change was made to reflect a program change as a result of a program re-engineering process. Section 186.120(b) has been changed to clarify the possibility that a contractor may have more than one project period. The changes also clarify that payment will be made at the end of each project period, reimbursing up to 75% of the approved allowable expenditures for that individual project period. A change was recommended and made to Section 186.120(c) to clarify that the department will withhold 25% of the total allowable expenditures until the end of the contract's final reconciliation period. The proposed language referred to withholding 25% of the total grant amount. This change in language tracks the statutory language.

The new rules are adopted pursuant to Government Code, Subchapter J, §481.153, and Government Code, §481.0044(a), which direct the governing board of the department to adopt rules for administration of the Smart Jobs Program, and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

§186.109. Cost per Trainee.

The cost per trainee is calculated by dividing the actual total project cost by the actual number of employees trained.

§186.112. Application Requirements.

(a) Grant applications must be filed in a form approved by the department and must include a complete business and training plan and a project budget with a line item breakdown of costs.

(b) The grant application must be signed by an owner or an authorized employer representative who can bind the company contractually.

(c) For purposes of coordinating applications for the Smart Jobs Fund and the Skills Development Fund that is administered under the Labor Code, Chapter 303, by the Texas Workforce Commission (TWC), the following shall apply:

(1) A certification at the time of application to the department or TWC shall be filed indicating whether the application is a "concurrent application" for both the Smart Jobs Fund and the Skills Development Fund.

(2) For purposes of this subsection "concurrent application" shall mean either:

(A) an application for Smart Jobs Funds that has been filed and is pending at the time the applicant applies for Skills Development Funds with TWC; or

(B) an application for Skills Development Funds that has been filed and is pending at the time the applicant applies for Smart Jobs Funds.

(3) A joint application, on a form approved by the executive director or his designee and the executive director of TWC or his designee, may be used for coordinating applications for both the Skills Development Fund and the Smart Jobs Fund.

(d) Business and Training Plan. Grant funds awarded hereunder shall pay for job-related occupational skills training and job-related basic skills training that enhance the employer's ability to carry out its business plan. Job-related basic skills must be integrated as part of the job-related occupational skills training curricula. An

approved business and training plan will become part of any contract for grant funds awarded. The business and training plan will specify project start dates and project end dates. Up to six project periods may be specified by the employer. Each business and training plan must contain the information required by the Government Code, §481.156(b). Each business and training plan shall also:

(1) describe how the proposed training is consistent with and will enhance the employer's ability to carry out its business plan to retain and increase its competitiveness;

(2) describe the skills training curricula for each project, including the number of hours each participant will spend in classroom training, on-the-job training, and/or other employer-designed training components to be funded by the grant and specify the training provider for each curricula;

(3) describe the skills and the competencies the employer expects the participant to achieve upon completion of training. Competencies must be specified by the employer, by industry associations, or by inclusion in courses approved by the Texas Higher Education Coordinating Board, and must be consistent with certification standards, or other credible sources as acceptable to the employer and as essential to the business' competitiveness;

(4) specify the projected cost per trainee;

(5) specify the geographic location, number and kind of jobs that will be available at the end of the project and the wages to be paid on completion of the project; and

(6) specify the geographic location of all training to be provided with grant funds that may require travel.

(e) The application must include the following information:

(1) whether the employer is a micro-business, small business, medium business or large business; and

(2) whether the employer is a minority group member, and if so, to which minority group the employer belongs.

(f) Budget. Each application must include a budget with line item breakdown of costs consistent with the requirements of the program. The budget must include three parts:

(1) specification of reasonable and competitive costs related to direct training; the department will determine whether costs are reasonable and competitive.

(A) Costs related to direct training may include the following:

(i) tuition, fees, books and classroom materials;

(ii) instructor wages and salaries and reasonable benefits if the instructor is not an employee of a public education institution and grant funds are paying tuition and fees;

(iii) actual instructor and trainee travel outside the employer's specified region of the state (limited to 10% of the total costs related to direct training) with expenses not to exceed the State of Texas allowable rates as discussed in paragraph 2(B) of this subsection;

(iv) reasonable equipment lease or rental costs during the term of the project excluding equipment lease agreements which include additional costs to cover the option to purchase;

(v) reasonable costs of pre- and post-training participant assessment;

(vi) costs of purchasing approved curricula specified in the applicant's business and training plan if there is not already a course offering at a convenient public education institution for which the grant is paying tuition and fees;

(vii) wages, salaries, and reasonable benefits of instructional aides and trainees' counselors if such personnel are not employees of a public education institution and grant funds are paying tuition and fees; and,

(viii) other such reasonable costs related to direct training.

(B) Costs related to direct training must not include the following:

(i) lease, rental, purchase, or construction of facilities;

(ii) the purchase of capital equipment, salaries, wages, or benefits paid to personnel assigned to manage or report on the project or the contract agreement;

(iii) training conducted before the effective date of the contract; or,

(iv) costs incurred in the application process.

(2) specification of administrative and trainee travel costs;

(A) Administrative costs are limited to 10% of costs related to direct training incurred by the training project(s). Administrative costs may include:

(i) the lease or rental of facilities except those facilities belonging to public education institutions where the curriculum specified in the business and training plan will be provided and for which the grant is paying tuition and fees;

(ii) salaries, wages, and reasonable benefits paid to personnel assigned to manage or report on the project or the contract agreement; and,

(iii) other such reasonable expenses not included in costs related to direct training as are necessary to the successful completion of the project.

(B) Instructor and trainee travel must not exceed 10% of total direct training-related costs. No trainee travel will be reimbursed from grant funds for any purpose other than training as specified in the employer's training plan. Travel costs are only reimbursable in an amount not to exceed the following state rates: $70 per day for lodging, $25 per day for meals, and $.28 per mile for travel in a personally owned vehicle. All travel costs incurred shall be for the least expensive mode of transportation, considering all relevant circumstances.

(3) specification of matching contributions.

(A) An employer who is a medium or large business must provide a matching amount of private funds or in-kind contributions in an amount equal to 100% of the total project costs.

(B) An employer who is a micro or small business must provide a matching amount of private funds in an amount at least equal to 10% of the total project cost.

(C) Projects that provide significant economic benefits to an entire region of the state may have all matching requirements waived at the discretion of the executive director. Such projects must provide information describing the region to which benefits will accrue and projected economic information which may include

other relevant macroeconomic and microeconomic data that shows positive effects on the region's average weekly wage, tax base, employment rates, family income, purchasing power, expenditures on unemployment insurance, Temporary Assistance for Needy Families, Medicaid, and other public assistance, and the availability of job openings.

(D) Documentation for in-kind contributions, which are submitted as part of the employer's match, must specify the dollar value of facilities, equipment, personnel, and consumable supplies contributed to the project. In-kind contributions may not include the value of facilities, equipment, or personnel existing in public education institutions where such resources already are available to the employer as part of the institution's course offerings and for which the grant is paying tuition and fees.

(i) New equipment will be valued at cost.

(ii) Existing equipment and facilities will be valued on a pro rata basis for the time used for training consistent with the United States Internal Revenue Service depreciation schedules for such assets based on data provided by the employer.

(iii) Personnel contributions will be valued on a pro rata basis for the time spent on the project.

(E) The sum of costs related to direct training and administrative costs will be used to determine the total matching costs required for any grant awarded.

(g) Application process and time line.

(1) Any eligible entity desiring to request funds from the program must submit an application for funding.

(2) The department will send an application packet within three business days after receiving an oral or written request for an application.

(3) The department will accept and process applications on a continuous basis.

(4) Within five business days from receipt of an application, the department will notify the applicant whether all necessary application components are complete in order for the department to perform a comprehensive evaluation.

(5) An applicant will have 10 business days from the date notification is received to submit application information necessary for grant award consideration. Failure of an applicant to submit the required information within the 10 business days will disqualify the application. After disqualification, an applicant may not reapply for a Smart Jobs grant for 180 days.

(6) The department will directly contact the business for information regarding an application.

(7) The department may require an employer to submit documentation showing the amount it has spent on non-managerial training during a period of not more than two years preceding the year in which the application is made.

§186.116. Funding Priorities.

(a) Program objectives and priorities outlined in the Smart Jobs Fund Act and these rules will be considered in evaluating applications for funding, including but not limited to the following:

(1) At least 60% of the money spent under the program shall be used for projects that assist existing employers.

(2) At least 20% of the money spent under the program will be used for business relocations.

(3) To the greatest extent practical, money from the Smart Jobs Fund will be spent in all areas of the state.

(b) The department will develop an evaluation form, providing for a possible total of 150 points. Program data used to evaluate paragraphs (1) through (4) of this subsection, will be based upon the most recent consecutive four quarter period preceding the submission of this application, for which data is available. Priority for funding applications, as set out in the department's evaluation form, will be based on the following criteria:

(1) Under served region. The criteria listed in subparagraphs (A) through (D) of this paragraph, are worth 10 points each. At least 51% of the jobs proposed to be trained as identified in the application, are located in an under served region based upon the following:

(A) proportion of the region's share of the state's total population according to the most recent population estimates from the State Data Center in relation to the region's share of program funding compared to the total program funding provided statewide;

(B) proportion of the region's share of the state's civilian labor force according to the Texas Workforce Commission's Annual Civilian Labor Force estimates compared to the region's share of program funding in relation to the total program funding provided statewide;

(C) proportion of the region's share of the state's unemployed population according to the Texas Workforce Commission's Annual Civilian Labor Force estimates compared to the region's share of program funding in relation to the total program funding provided statewide;

(D) proportion of the region's share of total Smart Jobs applications submitted to the department compared to the region's share of program funding in relation to the total program funding provided statewide.

(2) Under served business size. The business is an under served business size if program grants have not been made to this size business in proportion to the number of persons employed by this size business statewide, based upon the four quarters immediately preceding the submission of this application. Data on the number of persons employed by a certain size business is based upon information published by the U.S. Census Bureau in County Business Patterns. This criteria is worth 15 points.

(3) Under served minority-owned business. The business is a minority-owned business that is under served if program grants have not been made to minority-owned businesses in proportion to the number of persons employed by minority owned business for the four quarters immediately preceding the submission of this application. Data on the number of persons employed by a minority-owned business is based upon the most recent five year Survey of Minority-Owned Business by the U.S. Census Bureau. This criteria is worth 15 points.

(4) Under served women-owned business. The business is a woman-owned business that is under served if program grants have not been made to women-owned business in proportion to the number of persons employed by women-owned business for the four quarters immediately preceding the submission of the application. Data on the number of persons employed by a women-owned business is based upon the most recent five year Survey of Women Owned Business by the U.S. Census Bureau. This criteria is worth 15 points.

(5) Economic impact criteria.

(A) Unemployment rates. Unemployment rates are determined by the most recent Texas Workforce Commission's Annual Civilian Labor Force estimates. If at least 51% of the jobs proposed to be trained, as identified in the application, are located in a county with:

(i) 1.01 to 1.49 times the statewide unemployment rate, applicant will receive 3 points;

(ii) 1.50 to 1.99 times the statewide unemployment rate, applicant will receive 5 points;

(iii) 2.00 to 2.49 times the statewide unemployment rate, applicant will receive 10 points; or,

(iv) 2.50 or more times the statewide unemployment rate, applicant will receive 15 points.

(B) New jobs. If the new jobs proposed to be trained in the application represent at least a 10% expansion in the company's labor force within the State of Texas, applicant will receive 10 points.

(C) Enterprise zone. If at least 51% of the jobs proposed to be trained in the application are located in an enterprise zone, applicant will receive 10 points.

(D) Texas Department of Criminal Justice (TDCJ) or Texas Youth Commission (TYC) residents. If any of the jobs proposed to be trained in the application are or will be filled by Texas residents formerly sentenced to the custody of TDCJ or TYC, applicant will receive 5 points.

(E) Defense related product conversion. If the project involves training of employees for an applicant who is a defense contractor and is in the process of converting its operation to peacetime commodities, applicant will receive 5 points.

(F) Economically disadvantaged individuals. If applicant will hire and train under this project individuals identified as follows, then applicant will receive 10 points:

(i) individuals who are unemployed for at least 3 months out of the past 12 month period;

(ii) individuals who are receiving public assistance benefits including but not limited to the programs referred to Texas Human Resource Code, Chapter 31; or

(iii) individuals who, based upon their total family income, qualify for housing under 42 U.S.C.A. §1437f.

(G) First time contractor. If applicant has not previously entered into a contract for a Smart Jobs Fund grant, then applicant will receive 5 points.

(H) Exports. If applicant is currently exporting at least 10% of its products or services, then applicant will receive 5 points.

(c) The department will rank applications for grant awards based upon the score received on the evaluation form. Based upon available resources and demand for those resources, a secondary set of general evaluation criteria may be used by the Department to differentiate among applications after the initial evaluation. These evaluation criteria will be available from the Department upon request.

§186.120. Contract Performance and Monitoring.

(a) The contractor must submit training updates on a monthly basis.

(b) At the end of a training project period, and upon verification by the department of the successful completion of that training project, the department may pay up to 75% of the approved allowable expenditures to the contractor.

(c) The department will withhold 25% of the total allowable expenditures until the end of the contract's final reconciliation period. The final 25% of actual allowable training expenses will be reimbursed to the contractor at the end of the reconciliation period if department determines that:

(1) at least 85% of the trainees in the project have been retained in employment for the 90 day period, other than trainees who leave employment voluntarily for better paying jobs;

(2) at least 85% of the trainees have successfully attained the skills and competencies established in the training plan;

(3) at least 85% of the trainees have been paid the wage required by statute and the contract; and

(4) other contractual obligations have been met.

(d) The contractor must notify the department immediately of any specific downturn in its financials that may result in its inability to fulfill the contract requirements.

(e) Each contract will be evaluated for performance upon receipt of the required reporting documentation. Training that is not supported by documentation required by the department will not be reimbursed.

(f) Department staff may perform on-site monitoring visits to a contractor's business. Among other information relevant to performance under the program, department may verify availability and coverage under a group health benefit plan during an on-site monitoring visit.

§186.121. Contract Reconciliation and Closeout.

(a) In order to comply with the terms of this program, contractor must provide training to trainees who successfully achieve the required skills and competencies, must pay these trainees the agreed wage rates or increases, and must retain these trainees as employees for a 90-day retention period following the project period of the contract, unless the trainee voluntarily leaves for a better paying job.

(b) Course participants must complete at least 75% of course hours for each course taken in order to be counted as a trainee.

(c) Within 30 calendar days after the expiration of the final 90-day retention period, the contractor shall submit to the department the employment records for each trainee and other such data as required by the department. If complete information is not received by the deadline, the contract may be reconciled as non-compliant.

(d) Notwithstanding any other provisions of this title, a trainee attrition rate of 15% is allowed based upon the actual number of jobs that have received training. If a trainee leaving employment with the contractor for a better paying job causes the trainee attrition rate to exceed the allowed 15% level, the contractor may request that each trainee in excess of the allowed 15% not be considered in the trainee attrition calculation by completing a form furnished by the department. The department will withhold final reimbursement until verification of better paying employment. Verification will be accomplished by the earlier of:

(1) Contractor submitting a signed verification of employment and wage level from the new employer for each trainee that puts the contractor in excess of the 15% allowed attrition rate; or

(2) The department verifying the trainee's new employment and wage through the Texas Workforce Commission.

(e) If a contractor does not meet the required matching amount as provided by the contract, a reduced grant amount will automatically be recalculated, without requiring a formal contract amendment, so that the matching amount actually provided meets the requirements of §186.112(f)(3) of this title (relating to application requirements).

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 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter A. GENERAL PROVISIONS

16 TAC §25.5

The Public Utility Commission of Texas (commission) adopts an amendment to §25.5 relating to Definitions with changes to the proposed text as published in the October 22, 1999 issue of the *Texas Register* (24 TexReg 9136). The amendment is necessary to add new definitions and modify existing definitions in §25.5 to conform to the Public Utility Regulatory Act (PURA) as amended by Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service, 2543 (Vernon) (SB 7).

The amendment also updates citations to the commission's rules and clarifies defined terms as necessary. This amendment is adopted under Project Number 21232.

The commission received comments on the proposed amendment from Brazos Electric Power Cooperative, Inc. (Brazos); Cap Rock Electric Cooperative, Inc. (Cap Rock); Central Power and Light Company, Southwestern Electric Power Company and West Texas Utilities Company, the Texas electric operating companies of Central and South West Corporation (collectively CSW); City of Austin doing business as Austin Energy (Austin); City of Denton, City of Garland, and Greenville Electric Utility System (collectively Cities); City Public Service of San Antonio (CPS); Entergy Gulf States, Inc. (EGSI); Pedernales Electric Cooperative, Inc. (PEC); Reliant Energy HL&P (Reliant); Southwestern Public Service Company (SPS), Texas Electric Cooperatives, Inc. (TEC); Texas-New Mexico Power Company (TNMP); Texas Public Power Association (TPPA); and TXU Electric Company (TXU).

Comments on specific definitions:

Definition of "ancillary service"

Brazos and TEC commented that the definition of "ancillary service" should be revised to conform to PURA §35.004(e) and proposed that the following language be included in the definition: "A service necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power and any other services the commission may determine by rule." EGSI suggested that the definition of "ancillary service" should include a non-exclusive list of examples of ancillary services that would include those services excluded from the definition of "transmission service" on or after implementation of customer choice (*i.e.,* control area services, scheduling resources, regulation services, provision of operating reserves, reactive power support, and voltage support).

The commission agrees with Brazos and TEC and has adopted the suggested language. The definition as modified is consistent with the statutory definition in PURA §35.004(e). The EGSI proposal, while similar, does not track the statutory definition as closely.

Definition of "ancillary service provider"

Cap Rock, CSW, CPS, PEC, and SPS commented that the definition of "ancillary service provider" should be amended to include electric cooperatives. EGSI proposed that the definition be amended to include a "transmission company". TXU proposed adding the sentence "The independent organization in ERCOT may acquire generation related ancillary services on a nondiscriminatory basis on behalf of entities selling electricity at retail" to better describe the role of independent operators.

The commission agrees that the definition of ancillary service provider should include electric cooperatives. The commission concludes that a "transmission company" is a utility, so that EGSI's suggestion is unnecessary. The modification proposed by TXU appears to be a substantive provision that is not appropriate for a definition, and for this reason, it is not adopted.

Definition of "Electric Reliability Council of Texas (ERCOT)"

Reliant suggested that the definition of ERCOT be revised to indicate that ERCOT is recognized as a "power region" as that term is defined in PURA §31.002(12).

The commission finds that Reliant's suggestion is a substantive provision not appropriate for a definition.

Definition of "eligible ancillary service customer"

Cap Rock, Cities, and PEC stated that if the definition of "person" is amended to be consistent with the definition of "person" in PURA as amended by Senate Bill 7, then the term "eligible ancillary service customer" will need to be revised to include municipally-owned utilities and electric cooperatives.

The commission finds that the term should include municipally-owned utilities and electric cooperatives regardless of the definition of "person" and has modified the definition accordingly.

Definition of "eligible transmission service customer"

Cap Rock, Cities, CSW and PEC stated that electric cooperatives should be added to the definition of "eligible transmission service customer". Reliant stated that power generation companies and retail electric providers could both be eligible transmission service customers under the new provisions of Senate Bill 7 and suggested that the term be expanded to include both

power generation companies and retail electric providers. TXU agreed that all three entities should be added to the definition.

The commission agrees and has revised the definition.

Definition of "generation assets"

Reliant commented that the term "generation assets" should be modified to insert the phrase "but not limited to" between the words "including" and "generation plants" to clarify that the list of assets in not intended to be exhaustive, but rather illustrative. For example, Reliant states that coal and lignite handling facilities are not listed but clearly fall within the definition's scope as indicated by the presently proposed list of assets.

The commission finds that the modification suggested by Reliant is unnecessary. The definition as proposed is identical to the definition in PURA §39.251(3).

Definition of "independent organization"

Cities commented that the definition of "independent organization" should be modified to add the phrase "at minimum" regarding the number of representatives from each segment of the electric market that the organization must consist of in order for it be deemed to be independent.

The commission finds that the modification suggested by Cities is unnecessary. The definition as proposed is identical to the definition in PURA §39.151(b). The PURA definition does not prohibit more than three representatives from each segment from being appointed. Three is merely the minimum required from each market sector for the board to be deemed "independent".

Definition of "person"

All commenters, except EGSI, commented on the definition of the term "person". The commenters, with the exception of CSW, SPS and TXU, generally agreed that the term should be defined as it is in PURA §11.003(14) and that failure to do so could have far reaching, and perhaps unintended, consequences. Brazos states this could result in electric cooperatives being subject to many provisions of the rules promulgated to implement Senate Bill 7, from which the Legislature expressly excluded electric cooperatives. Cap Rock, Cities, and PEC also state that the term "person" should be changed to match the definition in PURA. Cap Rock comments that failure to do so, as an example, will result in municipally-owned utilities and electric cooperatives being included in the definition of "retail electric provider" which includes the term "person" in the definition, and that this would be inconsistent with the meaning of retail electric provider established by Senate Bill 7. Other terms listed by commenters that include the term "person" and might result in inconsistencies with PURA are "power generation company" and "affiliates". CPS and Austin commented that the definition of "person" should exclude municipal corporations, governmental subdivisions, and electric cooperatives.

TXU commented that the term should be amended to mirror PURA, but that the commission must first review all of its other substantive rules to ensure that those rules that refer to "person" and are still applicable to electric cooperatives are concurrently amended so as to remain applicable to electric cooperatives. TXU stated that such a review will be a large task and one that is outside the scope of this rulemaking and that the definition of "person" should remain unchanged until such a review can be done, so as not to free electric cooperatives from the reach of provisions that are still applicable to them.

CSW and SPS commented that the commission may wish to clarify the term "agency" as it is used in the current definition of "person" in §25.5. They stated that the term "agency" is not defined and that a number of governmental entities at various levels may consider themselves as an "agency".

The commission agrees with TXU. The definition of "person" will be amended to mirror the PURA definition after the review of all the rules in Chapter 25 for consistency with the 1999 amendments to PURA is completed. This review is being conducted under Project Number 21232, *Rule Changes to Conform Rules to the Electric Restructuring Act (Senate Bill 7).* Until the definition is amended, including municipal corporations and electric cooperatives in the definition does not make them subject to commission authority unless such entities are otherwise subject to commission authority under law.

Definition of "planned transmission service" and "unplanned transmission service"

Cities and TXU commented that these two terms should not be deleted as proposed. Cities states that these types of service will still be requested and provided for at least two more years and that regardless of what procedures will exist in the future for obtaining firm transmission service, the current distinction between "planned transmission service" and "unplanned transmission service" is necessary for arranging for firm transmission service to serve load. TXU stated that the terms should be defined in §25.5 using the wording in §25.191(c)(1) and (c)(2) and that the terms can be eliminated from the transmission rules in a subsequent rulemaking.

The commission agrees with the commenters. The terms will be defined in §25.5 as they are defined in §25.191, except for the last sentence in (c)(1) and the last sentence in (c)(2) which are substantive provisions not appropriate for a definitions section.

Definition of "public utility or utility"

Brazos, Cap Rock, PEC, Reliant and TEC all commented that the definition of "public utility or utility" should be amended to reflect the definition in PURA §11.004.

The commission agrees and amends the term accordingly.

Definition of "renewable energy technology"

TEC commented that the definition of "renewable energy technology" should be amended to be identical to the definition found in PURA, which would require replacing the word "solar" in the second sentence with "those that rely on energy derived directly from the sun".

The commission agrees with TEC and has revised the definition accordingly.

Definition of "tariff"

TXU commented that the term "tariff" should be amended to reflect that not just electric utilities will continue to have tariffs, but also municipally-owned utilities and electric cooperatives. Reliant commented that it is common practice for all utility tariffs to include not only "rates and charges" but also standard form agreements and terms and conditions associated with the various classes of service, together with other relevant information.

The commission agrees with Reliant that terms and conditions of contracts are included in tariffs. The commission agrees with TXU that municipally-owned utilities and electric cooperatives

are subject to the commission's rules regarding transmission service and file tariffs for transmission service. The definition has been amended to reflect the comments of Reliant and TXU.

Definition of "transmission service"

TEC and Brazos commented that the definition of "transmission service" should be revised to clarify that municipally-owned utilities and electric cooperatives are not required to provide a retail transmission or distribution service unless they have decided to offer customer choice. EGSI commented that the definition should be revised to include independent transmission companies as the owner or operator of transmission and distribution facilities used for transmission service.

The change suggested by TEC and Brazos would be a substantive provision not appropriate for the definition. The commission finds that an independent transmission company is a utility, and therefore it is not necessary to change the definition as proposed by EGSI.

Definition of "transmission service provider"

Cap Rock, PEC and TXU commented that the definition of "transmission service provider" should be amended to expressly refer to electric cooperatives.

The commission agrees and has made the change.

The commission finds that the terms "test year" and "native load customer" apply to electric cooperatives and municipally-owned utilities and has added these entities to the definitions of those two terms. All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.003, 14.002, 31.002, 39.151, 39.156, 39.251, 39.353, 39.354, 39.3545, and 39.904.

§25.5. Definitions.

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

(1) Above-market purchased power costs–Wholesale demand and energy costs that a utility is obligated to pay under an existing purchased power contract to the extent the costs are greater than the purchased power market value.

(2) Administrative review–A process under which an application may be approved without a formal hearing.

(3) Affected person–means:

(A) a public utility or electric cooperative affected by an action of a regulatory authority;

(B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a public utility with respect to a service performed by the utility; or

(ii) wants to enter into competition with a public utility.

(4) Affiliate–means:

(A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;

(B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;

(D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or

(ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or

(F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.

(5) Affiliated power generation company–A power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(6) Affiliated retail electric provider–A retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(7) Aggregator–A person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from retail electric providers. Aggregators may not sell or take title to electricity. Retail electric providers are not aggregators.

(8) Aggregation–Includes the following:

(A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load; or

(B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load.

(9) Ancillary service–A service necessary to facilitate the transmission of electric energy including load following, standby power, backup power, reactive power, and any other services the commission may determine by rule.

(10) Ancillary service provider–An electric utility, municipally-owned utility, electric cooperative, or power generation company that provides an ancillary service or an independent system operator that provides such services.

(11) Base rate–Generally, a rate designed to recover the costs of electricity other than costs recovered through a fuel factor, power cost recovery factor, or surcharge.

(12) Commission–The Public Utility Commission of Texas.

(13) Control area–An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

(A) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

(B) maintain, within the limits of good utility practice, scheduled interchange with other control areas;

(C) maintain the frequency of the electric power system(s) within reasonable limits in accordance with good utility practice; and

(D) obtain sufficient generating capacity to maintain operating reserves in accordance with good utility practice.

(14) Corporation–A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver, or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation or electric cooperative, except as expressly provided by the Public Utility Regulatory Act.

(15) Customer choice–The freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

(16) Customer class–A group of customers with similar electric usage service characteristics (e.g., residential, commercial, industrial, sales for resale) taking service under one or more rate schedules. Qualified businesses as defined by the Texas Enterprise Zone Act, Texas Government Code, Title 10, Chapter 2303 may be considered to be a separate customer class of electric utilities.

(17) Demand-side management–Activities that affect the magnitude and/or timing of customer electricity usage.

(18) Demand-side resource or demand-side management resource–Activities that result in reductions in electric generation, transmission, or distribution capacity needs or reductions in energy usage or both.

(19) Distribution line–A power line operated below 60,000 volts, when measured phase-to-phase.

(20) Distributed resource–A generation, energy storage, or targeted demand-side resource, generally between one kilowatt and ten megawatts, located at a customer's site or near a load center, which may be connected at the distribution voltage level (60,000 volts and below), that provides advantages to the system, such as deferring the need for upgrading local distribution facilities.

(21) Electric cooperative–

(A) a corporation organized under the Texas Utilities Code, Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter;

(B) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; or

(C) a successor to an electric cooperative created before June 1, 1999, in accordance with a conversion plan approved by a vote of the members of the electric cooperative, regardless of whether the successor later purchases, acquires, merges with, or consolidates with other electric cooperatives.

(22) Electric Reliability Council of Texas (ERCOT)–Refers to the organization and, in a geographic sense, refers to the area served by electric utilities, municipally owned utilities, and electric cooperatives that are not synchronously interconnected with electric utilities outside of the State of Texas.

(23) Electric utility–Except as provided in Subchapter I, Division 1 of this Chapter, an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;

(B) a qualifying facility;

(C) a power generation company;

(D) an exempt wholesale generator;

(E) a power marketer;

(F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) the state of Texas or an agency of the state; or

(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Subchapter C, Chapter 184.

(24) Eligible ancillary service customer–Any person, municipally-owned utility, or electric cooperative that is an eligible transmission service customer.

(25) Eligible transmission service customer–A transmission service provider (for all uses of its transmission system) or any electric utility, municipally-owned utility, electric cooperative, power generation company, retail electric provider, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be an eligible transmission service customer.

(26) Exempt wholesale generator–A person who is engaged directly or indirectly through one or more affiliates exclusively

in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale who does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale, and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators and Qualifying Facilities).

(27) Existing purchased power contract–A purchased power contract in effect on January 1, 1999, including any amendments and revisions to that contract resulting from litigation initiated before January 1, 1999.

(28) Facilities–All the plant and equipment of an electric utility, including all tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of an electric utility.

(29) Freeze period–The period beginning on January 1, 1999, and ending on December 31, 2001.

(30) Generation assets–All assets associated with the production of electricity, including generation plants, electrical interconnections of the generation plant to the transmission system, fuel contracts, fuel transportation contracts, water contracts, lands, surface or subsurface water rights, emissions-related allowances, and gas pipeline interconnections.

(31) Good utility practice–Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.

(32) Hearing–Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(33) Independent organization–An independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller. An entity will be deemed to be independent if it is governed by a board that has three representatives from each segment of the electric market, with the consumer segment being represented by one residential customer, one commercial customer, and one industrial retail customer.

(34) Independent system operator–An entity supervising the collective transmission facilities of a power region that is charged with non-discriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

(35) License–The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

(36) Licensing–The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(37) Market power mitigation plan–A written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by the Public Utility Regulatory Act §39.154.

(38) Market value–For nonnuclear assets and certain nuclear assets, the value the assets would have if bought and sold in a bona fide third-party transaction or transactions on the open market under the Public Utility Regulatory Act (PURA) §39.262(h) or, for certain nuclear assets, as described by PURA §39.262(i), the value determined under the method provided by that subsection.

(39) Municipality–A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(40) Municipally-owned utility–Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(41) Native load customer–A wholesale or retail customer on whose behalf an electric utility, electric cooperative, or municipally-owned utility, by statute, franchise, regulatory requirement, or contract, has an obligation to construct and operate its system to meet in a reliable manner the electric needs of the customer.

(42) Person–Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(43) Planned resources–Generation resources owned, controlled, or purchased by a transmission customer, and designated as planned resources for the purpose of serving load.

(44) Planned transmission service–A service that permits a transmission service customer to use the transmission service providers' transmission systems for the delivery of power from planned resources to loads on the same basis as the transmission service providers use their transmission systems to reliably serve their native load customers.

(45) Pleading–A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.

(46) Power cost recovery factor–A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.

(47) Power generation company–A person that:

(A) generates electricity that is intended to be sold at wholesale;

(B) does not own a transmission or distribution facility in this state, other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(48) Power marketer–A person who becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale; does not own generation, transmission, or distribution facilities in this state; does not have a certificated service area; and who is in compliance with the registration requirements of §25.105 of this title (relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators and Qualifying Facilities).

(49) Power region–A contiguous geographical area which is a distinct region of the North American Electric Reliability Council.

(50) Pre-existing transmission contract–A contract for transmission or wheeling services that took effect prior to March 4, 1996.

(51) Premises–A tract of land or real estate including buildings and other appurtenances thereon.

(52) Proceeding–A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.

(53) Public utility or utility–means an electric utility as that term is defined in this section, or a public utility or utility as those terms are defined in the Public Utility Regulatory Act §51.002.

(54) Public Utility Regulatory Act (PURA)–The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001-64.158, (Vernon 1999).

(55) Purchased power market value–The value of demand and energy bought and sold in a bona fide third-party transaction or transactions on the open market and determined by using the weighted average costs of the highest three offers from the market for purchase of the demand and energy available under the existing purchased power contracts.

(56) Qualifying cogenerator–The meaning as assigned this term by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

(57) Qualifying facility–A qualifying cogenerator or qualifying small power producer.

(58) Qualifying small power producer–The meaning as assigned this term by 16 U.S.C. §796(17)(D).

(59) Rate–A compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

(60) Rate class–A group of customers taking electric service under the same rate schedule.

(61) Rate year–The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.

(62) Ratemaking proceeding–A proceeding in which a rate may be changed.

(63) Regulatory authority–In accordance with the context where it is found, either the commission or the governing body of a municipality.

(64) Renewable energy technology–Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(65) Renewable resource–A resource that relies on renewable energy technology.

(66) Retail customer–The separately metered end-use customer who purchases and ultimately consumes electricity.

(67) Retail electric provider–A person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

(68) Retail stranded costs–That part of net stranded cost associated with the provision of retail service.

(69) Rule–A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(70) Rulemaking proceeding–A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, §§2001.021-2001.037 to adopt, amend, or repeal a commission rule.

(71) Separately metered–Metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

(72) Service–Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by an electric utility in the performance of its duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities or electric utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities or electric utilities.

(73) Spanish-speaking person–A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(74) Stranded cost–The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of the Public Utility Regulatory Act, Chapter 39. For purposes of §39.262, book value shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under §39.262(h), whichever is earlier, and shall include stranded costs incurred under §39.263.

(75) Submetering–Metering of electricity consumption on the customer side of the point at which the electric utility meters electricity consumption for billing purposes.

(76) Supply-side resource–A resource, including a storage device, that provides electricity from fuels or renewable resources.

(77) Tariff–The schedule of a utility, municipally-owned utility, or electric cooperative containing all rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.

(78) Tenant–A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(79) Test year–The most recent 12 months for which operating data for an electric utility, electric cooperative, or municipally-owned utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(80) Transmission and distribution utility–A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section, in a qualifying power region certified under the Public Utility Regulatory Act (PURA) §39.152, but does not include a municipally owned utility or an electric cooperative.

(81) Transmission facilities study–An engineering study conducted by a transmission service provider subsequent to a system security study to determine the required modifications to its transmission system, including the detailed costs and scheduled completion date for such modifications, that will be required to provide a requested transmission service.

(82) Transmission interconnection agreement–An agreement that sets forth requirements for physical connection or other terms relating to electrical connection between an eligible transmission service customer and a transmission service provider, including contracts or tariffs for transmission service that include provisions for interconnection. Transmission service providers must have such an agreement with all transmission service providers to whom they are physically connected.

(83) Transmission line–A power line that is operated at 60,000 volts or above, when measured phase-to-phase.

(84) Transmission losses–Energy losses resulting from the transmission of power.

(85) Transmission service–Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control and other services provided by generation resources are not "transmission service".

(86) Transmission service customer–A transmission customer receiving transmission service. Where consistent with the context, "transmission service customer" includes an eligible transmission service customer seeking transmission service.

(87) Transmission service provider–An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity and provides transmission service.

(88) Transmission system–The transmission facilities at or above 60 kilovolts owned, controlled, operated, or supported by a transmission provider or transmission customer that are used to provide transmission service.

(89) Transmission system security study–An assessment by a transmission service provider of the adequacy of the transmission system to accommodate a request for transmission service and whether any costs are anticipated in order to provide transmission service.

(90) Transmission upgrade–A modification or addition to transmission facilities owned or operated by a transmission service provider.

(91) Unplanned resources–Generation resources owned, controlled or purchased by the transmission customer that have not been designated as planned resources.

(92) Unplanned transmission service–A service that permits a transmission service customer to use the transmission service providers' transmission systems to deliver energy to its loads from resources that have not been designated as the transmission service customer's planned resources.

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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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7308

Chapter 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §26.125

The Public Utility Commission of Texas (commission) adopts an amendment to §26.125, relating to Automatic Dial Announcing Devices (ADAD) without changes to the proposed text as published in the November 12, 1999 issue of the *Texas Register* (24 TexReg 9931).

The amendment is necessary to be consistent with the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §55.126 (Vernon 1999 Supp.) Copies of the rule may be obtained in the commission's Central Records and on the commission's web page at http://www.puc.state.tx.us/. The amendment is adopted under Project Number 21422.

The amendment to §26.125 reduces the amount of time an ADAD must disconnect from a called person after a call is terminated by either party from 30 seconds to five seconds.

The commission received written comments in Project Number 21422 on December 13, 1999, from Southwestern Bell Telephone Company (SWBT). Interested parties were encouraged to provide written comments on the costs associated with, and benefits that would be gained by, implementation of the rule, and the costs and benefits in deciding whether to adopt the rule. SWBT stated that it supported the proposed amendment as proposed by the commission.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §55.126, (as added by House Bill 450), which reduces the time an automated dial announcing device has to disconnect from 30 seconds to five seconds after the call is terminated; PURA §55.134, which grants the commission authority to investigate complaints relating to the use of an automated dial announcing device; PURA §55.135, which grants the commission authority to revoke a person's permit for failure to comply with the requirements of operating an automated dial announcing device; and PURA §55.137, which grants the commission authority to impose an administrative penalty against a person who owns or operates an automated dial announcing device in violation of a commission rule or order.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 55.126, 55.134, 55.135, and 55.137.

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 19. EDUCATION

Part 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

Chapter 5. PROGRAM DEVELOPMENT

Subchapter A. GENERAL PROVISIONS

19 TAC §5.9

The Texas Higher Education Coordinating Board adopts amendments to §5.9 concerning General Provisions (Uniform Admission Policy) without changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10690).

The proposed amendments are being adopted to reflect recent legislation (House Bill 1804, 76th Legislative Session), extending automatic admission for the top 10% of students attending high schools operated by the United States Department of Defense, provided they are also Texas residents or entitled to pay tuition and fees at the rate provided for Texas residents for the term to which admitted.

No comments were received regarding the proposed amendments to the rules.

The amendments to the rule are adopted under Texas Education Code, §51.803 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning General Provisions (Uniform Admission Policy).

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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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483-6162

19 TAC §5.12

The Texas Higher Education Coordinating Board adopts new §5.12 concerning General Provisions (Expert Witnesses) with changes to the proposed text as published in the December 3, 1999 issue of the *Texas Register* (24 TexReg 10691).

The proposed new rule is specifically being adopted to implement the provisions of Texas Education Code, §61.0815, requiring reporting by higher education institutions to the Coordinating Board on certain employees who serve as consulting or testifying expert witness under the conditions specified in the statute and in this rule.

Comments were received from the University of North Texas and the Texas Faculty Association regarding the proposed new rule as follows:

Comment: The University of North Texas commented that the definition of fiscal year in §5.12(b)(4) should read "September 1 through August 31" and that §5.12(c)(1)(B) should read "the names of the parties, cause number and county where the cause is filed, for each case in which qualifying expert witness services was rendered."

Response: Staff agrees with those comments and those sections were changed to clarify the requirements of §5.12.

Comment: Scott Polikov, an attorney with George and Donaldson, L.L.P., commented on behalf of the Texas Faculty Association, objecting to the reporting requirements of the statute.

Response: These comments were directly related to the requirements of the statute and no changes were made as a result of these comments.

The new rule is adopted under Texas Education Code, §61.027 which provides the Texas Higher Education Coordinating Board

with the authority to adopt rules concerning General Provisions (Expert Witnesses).

§5.12. Expert Witnesses.

(a) Purpose. Pursuant to Texas Education Code, §61.0815, this subchapter sets out guidelines for reporting by higher education institutions to the Coordinating Board on certain employees who serve as consulting or testifying expert witness under the conditions specified in the law and in this subchapter.

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

(1) Consulting or testifying expert witness–any non-fact witness whose name must be disclosed during litigation as required by the Texas Rules of Civil Procedure.

(2) Institution of higher education–any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(3) Faculty or professional staff of an institution of higher education–a non-classified, full-time employee who is a member of the faculty or staff and whose duties include teaching, research, administration or performing professional services, including professional library services.

(4) Fiscal year– the State of Texas' fiscal year, September 1 through August 31.

(5) Non-classified–an employee whose position is not controlled by the institution's classified personnel system or a person employed in a similar position if the institution does not have a classified personnel system.

(c) Reporting. No later than September 30 of each year, the president of an institution of higher education shall file a written report with the Coordinating Board regarding members of the faculty or professional staff who received compensation for serving as consulting or testifying expert witnesses during the prior fiscal year in lawsuits in which the state is a party.

(1) Each report shall contain:

(A) the number of hours spent by faculty or professional staff members serving as consulting or testifying expert witnesses during the prior fiscal year;

(B) the names of the parties, cause number and county where the cause is filed, for each case in which qualifying expert witness services was rendered; and

(C) the outcome of the case, including the amount of:

(i) any judgment entered against the state;

(ii) any prejudgment or postjudgment interest awarded against the state; and

(iii) any attorney's fees of another party ordered to be paid by the state.

(2) The information regarding the number of hours spent by faculty or staff serving as consulting or testifying expert witnesses shall be reported to the Coordinating Board in the aggregate without identifying specific individuals.

(3) In the event an institution cannot provide the information specified in subsection (c)(1)(C) of this section, the Texas Attorney General's Office shall provide the information to the Coordinating Board.

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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James McWhorter
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Subchapter T. TOBACCO LAWSUIT SETTLEMENT FUNDS

19 TAC §5.420

The Texas Higher Education Coordinating Board adopts new §5.420 concerning Tobacco Lawsuit Settlement Funds (Nursing, Allied Health and Other Health-related Education Grant Program) with changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10691).

Specifically, the Fund was one of four funds created by the 76th Legislature (House Bill 1945) to support higher education for certain public health purposes. Eligible grant recipients are public institutions of higher education that offer upper-level academic instruction and training in the fields of nursing, allied health or other health-related education. The new section creates a grant program to be administered by the Coordinating Board and describes eligibility requirements, application, peer review, and funding processes, awards criteria, and other administrative matters associated with the distribution of these funds.

No comments were received regarding the proposed new rule.

The new rule is adopted under Texas Education Code, §63.202 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Tobacco Lawsuit Settlement Funds (Nursing, Allied Health and Other Health-related Education Grant Program).

§5.420. Nursing, Allied Health and Other Health-related Education Grant Program.

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

(1) Board–The Texas Higher Education Coordinating Board.

(2) Commissioner–The Commissioner of Higher Education.

(b) General Information. The program, as it applies to this section:

(1) Name. Nursing, Allied Health and Other Health-related Education Grant Program.

(2) Purpose. To provide funding to eligible institutions of higher education to establish or support academic instruction and training programs on public health issues specific to nursing, allied health and other health-related education.

(3) Authority. Texas Education Code, §§63.201-63.203.

(4) Eligible institutions. Public institutions of higher education that offer upper-level academic instruction and training in the fields of nursing, allied health, or other health-related education. Institutions or components identified under Texas Education Code, §63.002(c), and §§63.101-63.102 are not eligible to receive funding through the grant program.

(5) Eligible programs. Nursing, allied health or other health-related educational initiatives, including those that expand existing academic programs, and develop other new or existing activities and projects, that are not funded by state appropriation during the funding period.

(6) Application requirements. Applications shall be submitted to the Board in the format and at the time specified by the Board.

(7) General Selection Criteria Competitive. Designed to award grants that provide the best overall value to the state. Selection criteria shall be based on:

(A) Program quality as determined by peer reviewers;

(B) Impact the grant award shall have on academic instruction and training in public health-related education in the state;

(C) Cost of the proposed program; and

(D) Other factors to be considered by the Board, including financial ability to perform program, state and regional needs and priorities, ability to continue program after grant period, and past performance.

(8) Minimum award $75,000 per award in any fiscal year.

(9) Maximum award 15% of the estimated available funding per award in any fiscal year.

(10) Maximum award length. A program is eligible to receive funding for two years within a fiscal biennium. Previously funded programs may reapply for one additional funding biennium.

(c) Peer Review.

(1) The Board shall use peer reviewers to evaluate the quality of applications.

(2) The Commissioner shall select qualified individuals to serve as reviewers. Peer reviewers shall demonstrate appropriate credentials to evaluate grant applications in health education. Reviewers shall not evaluate any applications for which they have a conflict of interest.

(3) The Board staff shall provide written instructions and training for peer reviewers.

(4) The peer reviewers shall score each application according to these award criteria and weights:

(A) Significance of instruction or training program. The reviewers shall consider issues such as: How relevant and timely is this topic to public health issues for the particular discipline? Is the program unique and important or unique and important for a geographic area? Will the program be useful to or later replicated at other institutions in the state? Will the program provide an advancement of knowledge that may result in positive changes in patient care, education or health care policy? How many people will benefit directly from the program? Maximum points: 30

(B) Resources to perform program. The reviewers shall consider issues such as: What new personnel, equipment and facility resources are needed for the program? What existing resources can be used? What are the professional credentials and experience of the program's key personnel? Maximum points: 15

(C) Program design. The reviewers shall consider issues such as: Is the program well defined? Is it a discrete program which can be completed in the grant period? Are the goals and objectives realistic? How well has the proposal described the program development process and the nature of analysis to be carried out? Maximum points: 25

(D) Cost sharing. The reviewers shall consider issues such as: What level of local funding, if any, is available to share in the cost of the program? Maximum points: 5

(E) Cost effectiveness. The reviewers shall consider issues such as: How appropriate are the chosen equipment, staffing and service providers for the program given the cost of the program? Is the budget realistic? Does the proposal make effective use of the grant funds? Maximum points: 25

(F) Evaluation and expected outcomes. The reviewers shall consider issues such as: How well has the proposal described the methodology to evaluate and estimate the outcomes from the program? Is the evaluation methodology appropriate and effective? Are the outcomes realistic? Maximum points: 30

(d) Application and Review Process.

(1) The Commissioner may solicit recommendations from an advisory committee or other group of qualified individuals on funding priorities for each biennial grant period, and the administration of the application and review process.

(2) The Board staff shall review applications to determine if they adhere to the grant program requirements and the funding priorities contained in the Request for Proposal. An application must meet the requirements of the Request for Proposal and be submitted with proper authorization before or on the day specified by the Board to qualify for further consideration. Qualified applications shall be forwarded to the peer reviewers for evaluation. Board staff shall notify applicants eliminated through the screening process within 30 days of the submission deadline.

(3) Peer reviewers shall evaluate applications and assign scores based on award criteria. All evaluations and scores of the review committee are final.

(4) Board staff shall rank each application based on points assigned by peer reviewers, and recommend a priority ranked list of applications to the Commissioner for approval.

(e) Funding Decisions.

(1) Applications for grant funding shall be evaluated only upon the information provided in the written application.

(2) The Board delegates to the Commissioner the authority to approve grants upon the recommendation of the panel of peer reviewers and Board staff.

(3) Funding recommendations to the Commissioner shall consist of the most highly ranked and recommended applications up to the limit of available funds. If available funds are insufficient to fully fund a proposal after the higher-ranking and recommended applications have been fully funded, staff shall negotiate with the

applicant to determine if a lesser amount would be acceptable. If the applicant does not agree to the lesser amount, the staff shall negotiate with the next applicant on the ranked list. The process shall be continued until all grant funds are awarded.

(f) Contract. Following approval of grant awards by the Board, the successful applicants must sign a contract issued by Board staff and based on the information contained in the application.

(g) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point before a contract is signed.

(h) Request for Proposal. The full text of the administrative regulations and budget guidelines for this program are contained in the official Request for Proposal (RFP) available upon request from the Board.

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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James McWhorter
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19 TAC §5.421

The Texas Higher Education Coordinating Board adopts new §5.421 concerning Tobacco Lawsuit Settlement Funds (Minority Health Research and Education Grant Program) with changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10693).

Specifically, the Fund was one of four funds created by the 76th Legislature (House Bill 1945) to support higher education for certain public health purposes. Eligible grant recipients are institutions of higher education, including Centers for Teacher Education, that conduct research or education programs that address minority health issues or form partnerships with minority organizations, colleges of universities to conduct research and educational programs that address minority health issues. The new section creates a grant program to be administered by the Coordinating Board and describes eligibility requirements, application, peer review, and funding processes, awards criteria, and other administrative matters associated with the distribution of these funds.

No comments were received regarding the proposed new rule.

The new rule is adopted under Texas Education Code, §63.302 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Tobacco Lawsuit Settlement Funds (Minority Health Research and Education Grant Program).

§5.421. Minority Health Research and Education Grant Program.

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

(1) Board–The Texas Higher Education Coordinating Board.

(2) Commissioner–The Commissioner of Higher Education.

(3) Minority–a particular ethnic or racial group that is under-represented in one or more areas of health research or health education.

(b) General Information. The program, as it applies to this section:

(1) Name–Minority Health Research and Education Grant Program.

(2) Purpose–To provide funding to eligible institutions of higher education to conduct research and educational programs on public health issues affecting one or more minority groups in Texas.

(3) Authority–Texas Government Code, §§63.301-63.302.

(4) Eligible institutions–Public and private accredited general academic and health related institutions, and Centers for Teacher Education, that conduct research or educational programs that address minority health issues or form partnerships with minority organizations, colleges, or universities to conduct research and educational programs that address minority health issues. Two-year institutions, including junior and community colleges, state colleges or technical colleges, and other agencies of higher education as defined by Texas Education Code, §61.003(6) are not eligible to submit an application for program funding but may receive program funding indirectly as a partner to an eligible institution.

(5) Eligible programs–Research and educational initiatives, including those that expand existing research and degree programs, and develop other new or existing activities and projects, that are not funded by state appropriation during the funding period. Proposed programs shall not conflict with current judicial decisions and state interpretation on administering minority programs in higher education.

(6) Application requirements–Applications shall be submitted to the Board in the format and at the time specified by the Board.

(7) General Selection Criteria Competitive. Designed to award grants that provide the best overall value to the state. Selection criteria shall be based on:

(A) Program quality as determined by peer reviewers;

(B) Impact the grant award shall have on public health issues affecting one or more minority groups in the state;

(C) Cost of the proposed program; and

(D) Other factors to be considered by the Board, including financial ability to perform program, state and regional needs and priorities, ability to continue program after grant period, and past performance.

(8) Minimum award–$50,000 per award in any fiscal year.

(9) Maximum award–15% of the estimated available funding per award in any fiscal year.

(10) Maximum award length–A program is eligible to receive funding for two years within a fiscal biennium. Previously funded programs may reapply for one additional funding biennium.

(c) Peer Review.

(1) The Board shall use peer reviewers to evaluate the quality of applications.

(2) The Commissioner shall select qualified individuals to serve as reviewers. Peer reviewers shall demonstrate appropriate credentials to evaluate grant applications in health research and education. Reviewers shall not evaluate any applications for which they have a conflict of interest.

(3) The Board staff shall provide written instructions and training for peer reviewers.

(4) The peer reviewers shall score each application according to these award criteria and weights:

(A) Significance of research or educational program for minority health issues. The reviewers shall consider issues such as: How relevant and timely is this topic to minority public health issues? Is the program unique and important or unique and important for a geographic area? Will the program be useful to or later replicated at other institutions in the state? Will the program provide an advancement of knowledge that may result in positive changes in patient care, education or health care policy for minorities? How many people will benefit directly from the program? Maximum points: 30

(B) Resources to perform program. The reviewers shall consider issues such as: What new personnel, equipment and facility resources are needed for the program? What existing resources can be used? Will the program draw on resources from other institutions and organizations? Do the institution's partners, if any, demonstrate financial stability and effectiveness in conducting similar research or education programs? What are the professional credentials and experience of the program's key personnel? Maximum points: 15

(C) Program design. The reviewers shall consider issues such as: Is the program well defined? Is it a discrete program which can be completed in the grant period? Are the goals and objectives realistic? How well has the proposal described the data collection or program development process and the nature of analysis to be carried out? Maximum points: 25

(D) Cost sharing. The reviewers shall consider issues such as: What level of local funding, if any, is available to share in the cost of the program? Maximum points: 5

(E) Cost effectiveness. The reviewers shall consider issues such as: How appropriate are the chosen equipment, staffing and service providers for the program given the cost of the program? Is the budget realistic? Does the proposal make effective use of the grant funds? Maximum points: 25

(F) Evaluation and expected outcomes. The reviewers shall consider issues such as: How well has the proposal described the methodology to evaluate and estimate the outcomes from the program? Is the evaluation methodology appropriate and effective? Are the outcomes realistic? Maximum points: 30

(d) Application and Review Process.

(1) The Commissioner may solicit recommendations from an advisory committee or other group of qualified individuals on funding priorities for each biennial grant period, and the administration of the application and review process.

(2) The Board staff shall review applications to determine if they adhere to the grant program requirements and the funding priorities contained in the Request for Proposal. An application must meet the requirements of the Request for Proposal and be submitted with proper authorization before or on the day specified by the Board to qualify for further consideration. Qualified applications shall be forwarded to the peer reviewers for evaluation. Board staff shall notify applicants eliminated through the screening process within 30 days of the submission deadline.

(3) Peer reviewers shall evaluate applications and assign scores based on award criteria. All evaluations and scores of the review committee are final.

(4) Board staff shall rank each application based on points assigned by peer reviewers, and recommend a priority ranked list of applications to the Commissioner for approval.

(e) Funding Decisions.

(1) Applications for grant funding shall be evaluated only upon the information provided in the written application.

(2) The Board delegates to the Commissioner the authority to approve grants upon the recommendation of the panel of peer reviewers and Board staff.

(3) Funding recommendations to the Commissioner shall consist of the most highly ranked and recommended applications up to the limit of available funds. If available funds are insufficient to fully fund a proposal after the higher-ranking and recommended applications have been fully funded, staff shall negotiate with the applicant to determine if a lesser amount would be acceptable. If the applicant does not agree to the lesser amount, the staff shall negotiate with the next applicant on the ranked list. The process shall be continued until all grant funds are awarded.

(f) Contract. Following approval of grant awards by the Board, the successful applicants shall sign a contract issued by Board staff and based on the information contained in the application.

(g) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point before a contract is signed.

(h) Request for Proposal. The full text of the administrative regulations and budget guidelines for this program are contained in the official Request for Proposal (RFP) available upon request from the Board.

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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James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

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For further information, please call: (512) 483-6162

Chapter 8. CREATION, EXPANSION, DISSOLUTION, OR CONSERVATORSHIP OF PUBLIC COMMUNITY/JUNIOR COLLEGE DISTRICTS

Subchapter F. CONSERVATORSHIP OF A PUBLIC COMMUNITY/JUNIOR COLLEGE DISTRICT

19 TAC §8.123

The Texas Higher Education Coordinating Board adopts amendments to §8.123 concerning Conservatorship of a Public Community/Junior College (Mismanagement Finding; Conservatorship Order) without changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10694).

The proposed amendments would revise provisions concerning conservatorship of public community/junior colleges found to have a condition of gross fiscal mismanagement. The state conservatorship board has been replaced by a Governor-appointed conservator who is to receive a salary and reimbursement for related expenses from the institution in conservatorship.

No comments were received regarding the proposed amendments to the rules.

The amendments to the rule are adopted under Texas Education Code, §§61.051, 61.061, 61.062(c), 130.001(b)(3), and Government Code, §2104.031 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Conservatorship of a Public Community/Junior College (Mismanagement Finding; Conservatorship Order).

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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19 TAC §8.124

The Texas Higher Education Coordinating Board adopts new §8.124 concerning Conservatorship of a Public Community/Junior College (Compensation of a Conservator) without changes to the proposed text as published in the December 3, 1999 issue of the *Texas Register* (24 TexReg 10694).

The proposed new rule would revise provisions concerning conservatorship of public community/junior colleges found to have a condition of gross fiscal mismanagement. The state conservatorship board has been replaced by a Governor-appointed conservator who is to receive a salary and reimbursement for related expenses from the institution in conservatorship.

No comments were received regarding the proposed new rule.

The new rule is adopted under Texas Education Code, §§61.051, 61.061, 61.062(c), 130.001(b)(3), and Government Code, §2104.031 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Conservatorship of a Public Community/Junior College (Compensation of a Conservator).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 9. PROGRAM DEVELOPMENT IN PUBLIC COMMUNITY/JUNIOR COLLEGES DISTRICTS AND TECHNICAL COLLEGES

Subchapter A. DEFINITIONS

19 TAC §9.1

The Texas Higher Education Coordinating Board adopts amendments to §9.1 concerning Program Development in Public Community/Junior College Districts and Technical Colleges with changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10696).

The proposed amendments would change the definition of distance education to be consistent with the definition of distance education as proposed in July 1999, in Chapter 5, Subchapter H. New definitions would be added to clarify terms found in proposed rules for Tech-Prep Education. As a result of these revisions and additions, renumbering of existing definitions would be necessary.

Comments were received regarding the proposed amendments to the rules as follows:

Comment: The Coastal Bend Business Roundtable, Ingelside Independent School District, and various representatives from the Coastal Bend, Concho Valley, Gulf Coast, North Central Texas, North Texas, and South Plains Tech-Prep consortia commented that the inclusion in the consortium governing board definition of one representative from each educational entity participating in the consortium would create significant problems in the management, size, or equitable and consistent representation within a consortium. Clarification was requested on the definition of governing board and did not suggest changes to the rules.

Response: The staff agrees and has made modifications to definition §9.1(13) to reflect a broadening of the definition in allowing members to represent multiple entities if agreed upon by the consortium.

Comment: A representative from East Central Independent High School in San Antonio suggested that a definition of articulation agreement be included in the Chapter 1, Definitions.

Response: The staff agrees to the extent that some clarification may be important concerning articulated credit. More specific guidelines on appropriate activities, use of funds, requirements,

and other terms or definitions (including articulation issues) for administration of Tech-Prep programs will be provided in the Guidelines for Instructional Programs in Workforce Education.

Comment: A representative of the Governor's Office provided a comment on definition §9.1(13), Governing Board, Tech-Prep Consortium, recommending additional language be included concerning the composition of a consortium governing board.

Response: The suggested language has been included in the definition except the proposal that the governing board include one representative of each optional entity. A broadening of the definition has been made as a result of other comments allowing members to represent multiple entities if agreed upon by the consortium. Each consortium may decide the composition of the governing board except the requirement that membership include educational entity representation.

Comment: A representative of the Governor's Office provided a comment on definition 9.1(21), Tech-Prep consortium, to include additional language on the local option to consolidate a Tech-Prep consortium with a School-to-Career partnership.

Response: The suggested language has not been included in the definition but will be provided in the Guidelines for Instructional Programs in Workforce Education. The revision will also include the Perkins Act requirement prohibiting the use of Perkins funds for School-to-Careers activities.

Comment: A representative of the Texas Workforce Commission suggested that definition 9.1(21), Tech-Prep consortium, include a broadening of educational entities to include examples such as school districts, institutions of higher education, businesses, labor organizations, school-to-careers partnerships, local workforce development boards, etc.

Response: The suggested language has not been included in the definition because the staff believes the reference to the applicable section of the Carl D. Perkins Act given in the definition adequately addresses the composition of a consortium. Appropriate references will be included in revisions to the Guidelines for Instructional Programs in Workforce Education.

Comment: The President of Amarillo College, a representative from Roscoe High School and representatives from the Brazos Valley and Southeast Texas Tech-Prep consortia commented that the Tech-Prep rules were acceptable as proposed.

Response: The staff appreciates the input of these respondents.

The amendments to the rule are adopted under Texas Education Code, §§29.182, 29.184, 61.076(a), 61.851 - 61.855, 130.001(b)(3)-(4), 130.008, 130.090, and 135.06(d), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Program Development in Public Community/Junior College Districts and Technical Colleges (Definitions).

§9.1. Definitions.

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

(1) Academic courses – Semester or quarter hour credit courses as included or allowed under the provisions of the Community College Academic Course Guide Manual designed for college transfer to institutions of higher education in completion of associate and baccalaureate degree programs.

(2) Associate degree program – A grouping of courses designed to lead the individual directly to employment in a specific career, or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts, associate of science, associate of applied arts, associate of applied science, and the associate of occupational studies degrees. The term "applied" in an associate degree name indicates a program in which the content is primarily technical.

(3) Board or coordinating board – The Texas Higher Education Coordinating Board.

(4) Certificate program – Workforce programs designed for entry-level employment or for upgrading skills and knowledge within an occupation. Certificate programs serve as building blocks and exit points for AAS degree programs.

(5) Commissioner of higher education or commissioner – The chief executive officer of the Texas Higher Education Coordinating Board.

(6) Concurrent course credit – The award of credit to a student upon successful course completion for both high school credit (graduate requirements) and college credit (associate degree requirements.)

(7) Continuing education unit or CEU – Ten (10) contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education.

(8) Contractual agreements – Agreements or contracts between public community/junior or technical colleges and one of the following:

(A) a non-SACS/COC-accredited organization, for postsecondary instructional services that could not be offered otherwise;

(B) a public secondary school, for instructional services that could not be offered otherwise; or

(C) another SACS/COC-accredited institution of higher education, whether public or independent.

(9) Contract instruction – Postsecondary workforce education and training in which specific instruction is provided by a public community/junior or technical college or a non-SACS/COC-accredited organization to a contracting entity. This arrangement is utilized when conventional methodology or instructional systems are difficult or impossible to obtain.

(10) Developmental courses – Courses designed to correct academic deficiencies and bring students' skills to an appropriate level for entry into college.

(11) Distance education – Instruction in which the majority of the instruction occurs when the student and instructor are not in the same physical setting. A class is considered a distance education class if students receive more than one-half of the instruction at a distance. Distance education can be delivered synchronously or asynchronously to any single or multiple location(s):

(A) other than the "main campus of a senior institution (or "on campus"), where the primary office of the chief executive officer of the campus is located;

(B) outside the boundaries of the taxing authority of a community/junior college district; or

(C) via instructional telecommunications to any other distance location, including electronic delivery of all types.

(12) Governing board – The body charged with policy direction of any public community/junior college district, the technical college system, public senior college or university, or other educational agency including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards.

(13) Governing board, tech-prep consortium – Consists at a minimum of representatives of each educational entity that participates in a Tech-Prep consortium which determines the policies and operations of the Tech-Prep consortium in accordance with its written by-laws and fiscal agency and personnel agreements. A representative may represent multiple entities as agreed upon by the participating consortium members.

(14) Independent institution of higher education – A private or independent college or university that is:

(A) organized under the Texas Non-Profit Corporation Act;

(B) exempt from taxation under Article V, Section 2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code; and

(C) accredited by the Southern Association of Colleges and Schools Commission on Colleges.

(15) Postsecondary institutions – Any public community/junior college; public technical college; public senior college or university offering applied associate degree programs; and proprietary institutions offering applied associate degree programs.

(16) Related-instruction – Relates to Section 9.27, organized off-the-job classroom instruction in theoretical or technical subjects required for the completion of an apprenticeship program.

(17) Remedial and compensatory – All courses designated as developmental or remedial in the Community College Academic Course Guide Manual. These courses are designed to address academic deficiencies and may not be offered for college degree credit.

(18) Remedial courses – Courses for high school students designed to correct academic deficiencies and bring students' skills to an appropriate level for graduation from high school.

(19) SACS/COC – The Southern Association of Colleges and Schools Commission on Colleges.

(20) Technical courses or programs – Workforce education courses or programs for which semester/quarter credit hours are awarded.

(21) Tech-Prep consortium – A collaboration of educational entities and, at local option, employer and labor organizations, and universities defined under the Carl D. Perkins Vocational and Technical Education Act, as amended, and the Texas Education Code, Chapter 61, Subchapter T, Tech-Prep Education (hereinafter referred to as "the Code"), which work together to implement a Tech-Prep program.

(22) Unique need academic course – An academic course created by a college to satisfy a unique need and designed to transfer into a baccalaureate program.

(23) Vocational courses or programs – Workforce education courses or programs for which continuing education units (CEUs) are awarded.

(24) Workforce continuing education course – A course offered for continuing education units (CEUs) with an occupationally specific objective and supported by state funding. A workforce continuing education course differs from a community service course offered for recreational or avocational purposes and is not supported by state funding.

(25) Workforce education – Technical courses and programs for which semester/quarter credit hours are awarded, and vocational courses and programs for which continuing education units are awarded. Workforce education courses and programs prepare students for immediate employment or job upgrade within specific occupational categories.

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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James McWhorter
Assistant Commissioner for Administration
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For further information, please call: (512) 483-6162

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Subchapter H. PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND PUBLIC TWO-YEAR ASSOCIATE DEGREE-GRANTING INSTITUTIONS

19 TAC §9.142

The Texas Higher Education Coordinating Board adopts amendments to §9.142 Partnerships Between Secondary Schools and Public Two-year Associate Degree-granting Institutions (Authority) without changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10697).

The proposed amendments would revise the existing rules on partnerships between secondary and public two-year associate degree-granting institutions to incorporate Tech-Prep Education as a type of secondary-postsecondary partnership.

No comments were received regarding the proposed amendments to the rule.

The amendments to the rule are adopted under Texas Education Code, §§29.182, 29.184, 61.076(a), 61.851 through 61.855, 130.001(b)(3)-(4), 130.008, 130.090, and 135.06(d) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Partnerships Between Secondary Schools and Public Two-year Associate Degree-granting Institutions (Authority).

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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James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

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For further information, please call: (512) 483-6162

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19 TAC §9.147

The Texas Higher Education Coordinating Board adopts new §9.147 concerning Partnerships Between Secondary Schools and Public Two-year Associate Degree-granting Institutions (Tech-Prep Education) with changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10697).

The new rule would revise the existing rules on partnerships between secondary and public two-year associate degree-granting institutions to incorporate Tech-Prep Education as a type of secondary-postsecondary partnership.

Comments were received regarding the proposed amendments to the rule as follows:

Comment: The Texas Education Agency, Central Texas Tech-Prep Consortium, and North Central Texas Tech-Prep Consortium commented that some students are not able to participate in a Tech-Prep program because not all public school districts participate in Tech-Prep.

Response: The staff is in agreement and has made modifications to §9.147(c)(5) to replace language concerning the participation of every student with language that every public school district in a consortium will have opportunity to develop Tech-Prep programs.

Comment: One comment was received from a member of the Capital Area Tech-Prep Consortium concerning alignment of institutions and ISDs within consortia.

Response: This comment does not directly relate to the proposed rules, but the staff understands the concern and has an informal mechanism in place to allow ISDs to join another consortium if appropriate.

Comment: A representative from the Texas Workforce Commission recommended adding a new paragraph to §9.147 to address how the Board will gather input from the public and other interested parties regarding the needs of urban, rural, and special populations to ensure an adequate number of programs are offered to adequately serve each local area.

Response: The suggested language has not been included but the staff will address the concern in revisions to the Guidelines for Instructional Programs in Workforce Education.

Comment: A representative from the Governor's Office suggested that reference to the Texas Education Code be included in seven places in order to recognize explicitly that the Legislature has established a state policy for Tech-Prep.

Response: All seven references to the Education Code have been added.

Comment: A representative from the Governor's Office also suggested to require the Board, not the staff, to conduct the public hearing on the formula on Tech-Prep funding and require the Board to consult with all interested state and local entities at least 90 days prior to the beginning of the grant year.

Response: This language has not been included because of the Board's desire to concentrate its resources on policy issues and because the Board does not conduct such hearings for any of the several other funding formulas it establishes. The modified proposed rules provide for the staff to conduct the required public hearing and solicit input from identifiable interested parties and report the results to the Board.

Comment: A representative from the Governor's Office also suggested that the Board, not just the staff, determine the time frame for the submission of the annual application for Tech-Prep funding.

Response: This suggestion has not been included because of the Board's desire to focus on policy issues.

Comment: A representative from the Governor's Office also suggested language that would require state goals, objectives, and performance criteria be added to the documentation in the annual application for Tech-Prep funding.

Response: The suggested language has been included.

Comment: A representative from the Governor's Office also suggested language be added permitting each consortium to request technical assistance from the Board staff.

Response: The suggested language has been included.

Comment: A representative from the Governor's Office also suggested that the Board, not just the staff, provide oversight of all Tech-Prep activities.

Response: This suggestion has not been included because of the Board's desire to focus on policy issues.

Comment: A representative from the Governor's Office also suggested language that would require each consortium ensure that colleges and universities in the service area of the consortium have an opportunity to participate.

Response: The suggested language has been included.

The new rule is adopted under Texas Education Code, §§29.182, 29.184, 61.076(a), 61.851 through 61.855, 130.001(b)(3)-(4), 130.008, 130.090, and 135.06(d) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Partnerships Between Secondary Schools and Public Two-year Associate Degree-granting Institutions (Tech-Prep Education).

§9.147. Tech-Prep Education.

(a) General Provisions.

(1) The State Board of Education, in its capacity as the Board for Career and Technology Education, is the eligible agency responsible for implementation and evaluation of all programs funded in Texas under the Act, as amended, until such time as the Act amends the provision defining the eligible agency.

(2) The State Board of Education, in its capacity as the eligible agency, has designated the Texas Higher Education Coordinating Board as the administering agency responsible for the operation and supervision of that section, part, or title of the Act referring to Tech-Prep Education.

(b) State Administration of Tech-Prep.

(1) The Board shall annually award Tech-Prep funds to eligible consortia in accordance with the Act, as amended, and the Code.

(2) Notwithstanding provisions of the Act and the Code, annual awards to eligible consortia shall be based upon a formula which shall be adopted by the Board after a public hearing.

(3) To be eligible for an award, a consortium shall submit an application and all supporting documentation on an annual basis and in a manner and time frame determined by Board staff that documents and ensures the progress of local consortium activities addressing the requirements of the Act and the Code and enables the state to meet state goals, objectives, and performance criteria, and to meet federal evaluation criteria as designated in the Consolidated State Plan.

(4) Board staff shall assist local consortia with the evaluation of local activities and provide technical assistance to consortia that do not meet evaluation criteria standards or upon request by the consortia.

(5) Board staff shall provide oversight of all Tech-Prep activities to ensure that funds provided by the Act for Tech-Prep education are expended according to provisions of the Act, and the Code.

(c) Consortium Responsibilities.

(1) Each consortium shall create, evaluate, and maintain a long-term strategic plan that addresses goals, objectives, activities, and evaluation criteria supporting local, state, and federal goals and evaluation criteria.

(2) Each consortium shall develop and implement local activities and coordinate the expenditure of funds in accordance with guidelines determined by the Act and the Code, as well as state and local goals and objectives.

(3) Each consortium shall maintain the records on local activities and budgetary expenditures to support evaluation criteria and participate in a scheduled, systematic, evaluation program.

(4) Each consortium shall provide reports on activities, activity outcomes, and budgetary expenditures in a manner and time as established by Board staff.

(5) Each consortium shall ensure that every local school district and public college and university in the consortium service area will have the opportunity to develop Tech-Prep programs of study as defined by the Act and the 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.

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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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Chapter 11. TEXAS STATE TECHNICAL COLLEGE SYSTEM

Subchapter B. GENERAL PROVISIONS

19 TAC §11.26

The Texas Higher Education Coordinating Board adopts the repeal of §11.26, concerning General Provisions (TSTC-Marshall Prohibitions) without changes to the proposal as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10698).

The repeal of the rule would eliminate references to Texas State Technical College at Marshall as an "extension center" now that it is a TSTC System "campus". The specific provision regarding duplication of courses and programs with Panola College, Northeast Texas Community College, and Kilgore College included in Section 11.26 is also repealed. Provisions concerning duplication by TSTC-Marshall are addressed in already existing sections of the statute and Board rules on the operation of TSTC System campuses.

No comments were received regarding the repeal of the rule.

The repeal of the rule is adopted under Texas Education Code, §61.051 and §135.04 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning General Provisions (TSTC-Marshall Prohibitions).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 13. FINANCIAL PLANNING

Subchapter G. FORMULA FUNDING AND TUITION CHARGED FOR EXCESS CREDIT HOURS OF UNDERGRADUATE STUDENTS

19 TAC §§13.110 - 13.116

The Texas Higher Education Coordinating Board adopts new §§13.110 - 13.116, concerning Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students without changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10699).

The proposed new rules clarify how the length of the student's degree program is to be determined, describe the reporting and record-keeping requirements of institutions related to the limit, and require that institutions provide affected students with timely and useful information about the limit so that they can take the limit into account as they plan and complete their undergraduate degrees.

No comments were received regarding the proposed new rules.

The new rules are adopted under Texas Education Code, §54.068 and §61.0595 which provides the Texas Higher Ed-

ucation Coordinating Board with the authority to adopt rules concerning Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students.

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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James McWhorter
Assistant Commissioner for Administration
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Chapter 17. CAMPUS PLANNING

Subchapter B. APPLICATION FOR APPROVAL OF NEW CONSTRUCTION AND MAJOR REPAIR AND REHABILITATION

19 TAC §17.46

The Texas Higher Education Coordinating Board adopts amendments to §17.46, concerning Application for Approval of New Construction and Major Repair and Rehabilitation (Special Approval Procedure) with changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10700).

The proposed amendments to the rule would make the decisions of the Campus Planning Committee final, eliminating a provision in the current rules that allow individual members to refer decisions to the full Board.

No comments were received regarding the proposed amendments to the rule.

The amendments to the rule are adopted under Texas Education Code, §61.0572 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Application for Approval of New Construction and Major Repair and Rehabilitation (Special Approval Procedure).

§17.46. Special Approval Procedure.

(a) The Coordinating Board authorizes the Campus Planning Committee to review and approve the following types of projects:

(1) gifts, purchase or acquisition of real property having a value of $300,000 to $5 million;

(2) construction of new educational and general space having a value of $1 million to $5 million;

(3) Major repair and rehabilitation of existing education and general buildings that will not add educational and general space with a total projected project cost of $5 million or more; and

(4) auxiliary enterprise projects costing between $10 million and $20 million.

(b) The Campus Planning Committee shall be guided in its decision in part by its judgment as to whether or not the full Board would approve the project, were the request being brought to the Board at this time. The committee may approve a request or refer the request to the next meeting of the Board. Approval by the committee is final. The committee shall report all actions to the Board at its next meeting.

(c) The Coordinating Board authorizes the Commissioner to review and approve the following types of projects on certification by the proposing institution's governing board that Coordinating Board-approved criteria are met:

(1) auxiliary enterprise projects being acquired, constructed or renovated without the use of state general revenue funds and with a total projected cost of less than $10 million;

(2) major repair and rehabilitation of existing education and general buildings that will not add educational and general space with a total projected project cost of less than $5 million; and

(3) gifts, purchase or acquisition of real property having a value of less than $300,000; and

(4) construction of new educational and general space having a value of less than $1 million; and

(5) projects funded more than 50 percent with tuition revenue bond proceeds.

(d) The Commissioner shall be guided in making a decision in part by his or her judgment as to whether or not the full Board would approve the project, were the request being brought to the Board. The Commissioner may approve or disapprove a request or refer the request to a subsequent meeting of the Campus Planning Committee or the Board. Institutions may appeal the Commissioner's decision to the Board. Each quarter, the Commissioner shall send a list of all actions to the Board. The list of all actions shall be attached as an addendum to the minutes of the Board's next quarterly meeting.

(e) The Commissioner shall consider projects for approval after certification by the Governing Board that the following criteria are met, where applicable. (If the governing board cannot make the appropriate certification, projects shall be referred to the Campus Planning Committee for its consideration.):

(1) Board standards regarding space need are met.

(2) Board standards regarding construction cost and efficiency are met.

(3) Board standards regarding deferred maintenance are met, or the project will reduce campus deferred maintenance by an amount equal to no less than 50 percent of project costs.

(4) If the project financing involves private gift and grant funds, these funds are either in-hand or the governing board has committed an alternative source of funds, should the primary source of funds not be forthcoming, or has agreed to forego the project.

(5) If the project will cause an increase in student fees, such increases have been executed in accordance with the applicable laws concerning approval by the student body.

(6) If the project involves construction of a dormitory, bookstore, food service facility, or other facility for which privatization may be a viable alternative, the governing board has considered the feasibility of privatization of both construction and operation of the facility.

(7) The project will comply with the minimum flood plain management standards established by the Texas Natural Resources Conservation Commission and the Federal Emergency Management Administration (FEMA).

(8) If the project includes the acquisition of real property, appropriate consideration has been given to the effect of the acquisition on residential neighborhoods.

(9) If the project includes the acquisition of real property, the acquisition is included in the institution's long-range campus master plan.

(10) The project is included in the institution's most recently submitted Campus Master Plan(MP1) or is an opportunity or emergency that could not have been foreseen at the time the MP1 was submitted.

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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James McWhorter
Assistant Commissioner for Administration
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Chapter 25. OPTIONAL RETIREMENT PROGRAM

Subchapter A. OPTIONAL RETIREMENT PROGRAM

19 TAC §25.2

The Texas Higher Education Coordinating Board adopts an amendment to §25.2, concerning Optional Retirement Program without changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10701).

The amendment is being proposed by adding a new §25.2(d) which defines "ORP retiree" and prohibits the payment of ORP retirement program contributions to ORP retirees who later return to work full-time in what would be considered a benefits-eligible position if the person had not retired. The reason for the rule is to promote uniformity both among the different institutional ORP plans and between ORP and TRS retirees, which is a goal that institutions have indicated they desire. The proposed amendment would make an exception for ORP participants during their participation in the period of the phased retirement program, allowing them to continue to receive ORP contributions as long as they meet eligibility requirements.

No comments were received regarding the proposed amendment to the rule.

The amendment to the rule is adopted under Texas Government Code, §830.101 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Optional Retirement Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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TITLE 22. EXAMINING BOARDS

Part 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

Chapter 511. CERTIFICATION AS CPA

Subchapter A. GENERAL INFORMATION

22 TAC §511.11

The Texas State Board of Public Accountancy adopts the amendment to §511.11 concerning Definitions without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9451) and will not be republished.

The amendment allows for the removal of the name of an examination that is no longer used by the Board.

The amendment will function by removing the name of an unused examination from the Board's Rules.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

Subchapter B. CERTIFICATION BY EXAMINATION

22 TAC §511.26

The Texas State Board of Public Accountancy adopts the amendment to §511.26 concerning Applications under Prior Acts without changes to the proposed text as published in the

October 29, 1999, issue of the *Texas Register* (24 TexReg 9454) and will not be republished.

The amendment allows the rule caption to be more descriptive, and replaces a reference to a specific Act with "prior" Act.

The amendment will function by having the rule caption be more descriptive and replacement of a specific act with "prior" Act, which is broader.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

Subchapter C. EDUCATIONAL REQUIREMENTS

22 TAC §511.56

The Texas State Board of Public Accountancy adopts the amendment to §511.56 concerning Educational Qualifications under the Act without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9456) and will not be republished.

The amendment allows the rule to contain only the current education requirements that must be met by initial applicants by deleting former subsection (a) and rewriting a new subsection (a).

The amendment will function by having a rule that is easier to read and comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §511.57

The Texas State Board of Public Accountancy adopts the amendment to §511.57 concerning Definition of Accounting Courses without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9457) and will not be republished.

The amendment to §511.57 will not allow CPA review courses to be used to satisfy the requirements of this rule and will give quarter system courses 2/3 credit towards a semester hour.

The amendment will function by having a rule to memorialize the Board's actual practice regarding CPA review courses and will have the semester/quarter hour explanation.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §511.58

The Texas State Board of Public Accountancy adopts the amendment to §511.58 concerning Definitions of Related Business Subjects without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9458) and will not be republished.

The amendment allows repealed §511.59 to be incorporated into this rule, which is a more logical location for it, and clarifies that review courses are excluded from being eligible for college credit.

The amendment will function by having a more complete rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

Subchapter D. CPA EXAMINATION

22 TAC §511.70

The Texas State Board of Public Accountancy adopts the amendment to §511.70 concerning Processing Suspected Irregularities Involving Candidates for the Uniform CPA Examination without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9459) and will not be republished.

The amendment to §511.70 will abbreviate the reference to the Public Accountancy Act (Act), correct the reference to the Administrative Procedure Act (APA) and make some minor text changes.

The amendment will function by abbreviating the reference to the Act and by having the correct citation to the APA.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000865
William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §511.72

The Texas State Board of Public Accountancy adopts an amendment to §511.72 concerning Uniform Examination without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9459).

The amendment to section 511.72 will allow section 511.71 and section 511.74 to be incorporated into new subsections (a), (c) and (d), delete former subsection (a) which had an expiration date and modify the rule caption.

The amendment will function by having a rule on uniform examination that is more complete.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §511.80

The Texas State Board of Public Accountancy adopts an amendment to §511.80 concerning Granting of Credit without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9461).

The amendment allows repealed section 511.181 to be rewritten and incorporated into this rule.

The amendment will function by having a rule that is more complete and is easier to comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
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For further information, please call: (512) 305-7848

22 TAC §511.82

The Texas State Board of Public Accountancy adopts an amendment to §511.82 concerning Application for Transfer of

Credits without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9462).

The amendment allows this rule to contain the requirements for a transfer of all credits and partial credits from another licensing jurisdiction.

The amendment will function by having a rule that will be more complete about transfer of credits.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §511.83

The Texas State Board of Public Accountancy adopts an amendment to §511.83 concerning Granting of Credit by Transfer of Credit without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9463).

The amendment to section 511.83 will transfer the majority of the text to section 511.82, leaving only the text describing the criteria to transfer partial credits.

The amendment will function by having a rule that addresses only transfer of partial credits.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §511.84

The Texas State Board of Public Accountancy adopts an amendment to §511.84 concerning Partial Examination after Transfer of Credit without changes to the proposed text as published in the October 29, 1999 issue of the Texas Register (24 TexReg 9464).

The amendment allows for the rewriting of subsections (a) and (b) to make them applicable to a more current time period.

The amendment will function by having a rule that is current and easier to comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §511.89

The Texas State Board of Public Accountancy adopts an amendment to §511.89 concerning Examination Sites and Board Policy on Documentation without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9465).

The amendment allows for the substitution of "take the examination" for "sit".

The amendment will function by having a more grammatically correct rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000871
William Treacy

Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §511.90

The Texas State Board of Public Accountancy adopts an amendment to §511.90 concerning Proctoring Candidates for Another Licensing Jurisdiction without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9465).

The amendment to section 511.90 will make the costs that are required for accommodations under the Americans with Disabilities Act (ADA) the responsibility of the licensing jurisdiction that requests this Board proctor their candidate.

The amendment will function by having examination candidates from other licensing jurisdictions who are ADA may be proctored by this state at no cost to this state.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000872
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §511.92

The Texas State Board of Public Accountancy adopts an amendment to §511.92 concerning Definitions without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9466).

The amendment to section 511.92 will substitute "chapter" for "title" in the first line.

The amendment will function by having a rule with the correct descriptive term.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000873
William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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Subchapter F. EXPERIENCE REQUIREMENTS

22 TAC §511.121

The Texas State Board of Public Accountancy adopts the amendment to §511.121 concerning Application for Approval of Experience without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9468) and will not be republished.

The amendment to §511.121 will correct the citation to the Public Accountancy Act to agree with the recodification.

The amendment will function by having the rule contain the correct citation to the Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000874
William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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Subchapter H. CERTIFICATION

22 TAC §511.161

The Texas State Board of Public Accountancy adopts the amendment to §511.161, concerning Qualifications for Issuance of a Certificate without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9469) and will not be republished.

The amendment to §511.161 will rewrite paragraph (8) for grammatical purposes.

The amendment will function by having paragraph (8) easier to comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000875
William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

22 TAC §511.162

The Texas State Board of Public Accountancy adopts the amendment to §511.162, concerning Application for Issuance of the Certificate by Exam after Completion of the CPA Examination without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9470) and will not be republished.

The amendment allows the rule caption to be more descriptive.

The amendment will function by having a more descriptive rule caption.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000876
William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §511.164

The Texas State Board of Public Accountancy adopts the amendment to §511.164 concerning Names on Certificates without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9471) and will not be republished.

The amendment allows for the deletion of unnecessary language at the end of subsection (b).

The amendment will function by having a rule that does not contain unnecessary language.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000877
William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

22 TAC §511.165

The Texas State Board of Public Accountancy adopts the amendment to §511.165, concerning Certificate without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9472) and will not be republished.

The amendment to §511.165 will clarify that certificates are awarded twice a year.

The amendment will function by having it clearly understood that certificates are awarded twice a year.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000878
William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §511.166

The Texas State Board of Public Accountancy adopts the amendment to §511.166, concerning Replacement Certificates without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9472) and will not be republished.

The amendment to §511.166 will direct the reader to another rule for fee information and rewords the prohibition against possessing more than one certificate or registration.

The amendment will function by having a rule that is easier to read and comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §511.167

The Texas State Board of Public Accountancy adopts the amendment to §511.167, concerning Relinquishing a Certificate or Registration without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9473) and will not be republished.

The amendment to §511.167 will change the rule caption, clarify that licensure requires requalification and reexamination, delete subsection (b) because it is redundant to the Act and delete section (c) because it is addressed elsewhere in the Rules.

The amendment will function by having a rule that is easier to read and comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §511.168

The Texas State Board of Public Accountancy adopts the amendment to §511.168, concerning Reinstatement of a Certificate or of a Registration without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9474) and will not be republished.

The amendment to §511.168 will change the rule caption, clarify that the rule applies to public accountants, delete the CPE part of subsection (b) because it is already addressed in subsection (a), relocate former subsection (c)(3) to subsection (c) and add additional clarifying language about the Texas certification being a reciprocal certificate.

The amendment will function by having a rule that is easier to read and comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §511.171

The Texas State Board of Public Accountancy adopts the amendment to §511.171, concerning Consent Revocation without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9475) and will not be republished.

The amendment to §511.171 will correct several citations to the Act to agree with the recodification and re-write the last sentence.

The amendment will function by having a rule with the correct citation that is easier to read and comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and

repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §511.174

The Texas State Board of Public Accountancy adopts the amendment to §511.174, concerning Action Relating to Complaints without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9476) and will not be republished.

The amendment allows the rule caption to be more descriptive and correct.

The amendment will function by having a correct rule caption.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §511.176

The Texas State Board of Public Accountancy adopts the amendment to §511.176, concerning Certification Hearings without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9477) and will not be republished.

The amendment to §511.176 will delete those parts of paragraph (1) and (2) that are redundant to the introductory sentence and delete paragraphs (3) (E) through (3) (J) because they are redundant to Article 6252-13(c).

The amendment will function by having this rule purged of redundant language.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

Chapter 512. CERTIFICATION BY RECIPROCITY

22 TAC §512.1

The Texas State Board of Public Accountancy adopts new rule §512.1 concerning Certification as a Certified Public Accountant by Reciprocity without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9478) and will not be republished .

The new rule allows the Board to re-write its rules on Certification by Reciprocity, to relocate them from Chapter 511 where they were repealed, and to state the standards for reciprocal licensure.

The new rule will function by having its rules on Certification by Reciprocity re-written and in a separate chapter of the rules.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000891
William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

22 TAC §512.2

The Texas State Board of Public Accountancy adopts new rule §512.2 concerning Application for Certification by Reciprocity from National Association of State Boards of Accountancy Approved Jurisdictions without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9479) and will not be republished.

The new rule allows applicants for reciprocity to establish their credentials for licensure by reciprocity through the National Association of State Boards of Accountancy (NASBA).

The new rule will function by having a rule that continues to address obtaining reciprocity with NASBA's assistance.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §512.3

The Texas State Board of Public Accountancy adopts new rule §512.3 concerning Requirements for Certification by Reciprocity by an Individual without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9480) and will not be republished.

The new rule allows the Board to have a re-written rule on this subject, states the requirements for an individual's certification, and relocates this rule from Chapter 511.

The new rule will function by having a rule that is easier to read.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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William Treacy
Executive Director
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For further information, please call: (512) 305-7848

22 TAC §512.4

The Texas State Board of Public Accountancy adopts new rule §512.4 concerning Qualifications for Certification by Reciprocity without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9481) and will not be republished.

The new rule allows the Board to re-write this rule, relocate it from Chapter 511 and list what an individual must do to be certified by reciprocity.

The new rule will function by having a rule that will be re-written and relocated to a new chapter.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code,§901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §512.5

The Texas State Board of Public Accountancy adopts new rule §512.5 concerning Evaluation of Foreign Credentials by the International Qualifications Appraisal Board without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9482) and will not be republished.

The new rule allows the rule to be re-written and relocated and recognize the International Qualifications Appraisal Board (IQAB).

The new rule will function by having a rule that will be a re-written rule and a relocated rule that recognizes IQAB.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §512.6

The Texas State Board of Public Accountancy adopts new rule §512.6 concerning Examination Authorization without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9483) and will not be republished.

The new rule allows the rule to be re-written and relocated and recognize the International Uniform CPA Qualification Examination (IQEX).

The new rule will function by having a re-written rule that recognizes IQEX.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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William Treacy
Executive Director
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For further information, please call: (512) 305-7848

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22 TAC §512.7

The Texas State Board of Public Accountancy adopts new rule §512.7 concerning Reciprocal Fee without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9483) and will not be republished.

The new rule allows the rule to be re-written and relocated from Chapter 511 and to describe the Board's fee payment and refund policy.

The new rule will function by having a rule that will be re-written and relocated.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7848

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Chapter 513. REGISTRATION

Subchapter A. REGISTRATION OF CPAS OF OTHER STATES AND PERSONS HOLDING SIMILAR TITLES IN FOREIGN COUNTRIES

22 TAC §513.1

The Texas State Board of Public Accountancy adopts the amendment to §513.1 concerning Application without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9484) and will not be republished.

The amendment allows the rule to contain an accurate description of the application procedure.

The amendment will function by having a rule that correctly describes the application procedure.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000898
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §513.2

The Texas State Board of Public Accountancy adopts the amendment to §513.2 concerning Approval by the Board without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9485) and will not be republished.

The amendment allows the Board to require applicants from another state or country to complete a four-hour ethics course prior to issuance of certification, and relocates some language within the rule.

The amendment will function by having licensees from other states or another country exposed to a four-hour course on the Board's Rules of Professional Conduct.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which

provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

Subchapter B. REGISTRATION OF PARTNERSHIPS

22 TAC §513.22

The Texas State Board of Public Accountancy adopts the amendment to §513.22 concerning Application for Registration of a Partnership without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9487) and will not be republished.

The amendment allows the rule to be clearer and better organized.

The amendment will function by having a rule that is clearer and easier to comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

22 TAC §513.23

The Texas State Board of Public Accountancy adopts an amendment to §513.23 concerning Types of Partnership Registration without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9488) and will not be republished.

The amendment allows for a clearer understanding that partnerships must apply for practice unit registration, that a partner practicing within this state must be licensed, and some minor language changes.

The amendment will function by having a clear understanding that partnerships must apply for practice unit registration, that a partner practicing within this state must be licensed, and some minor language changes.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000901
William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

22 TAC §513.24

The Texas State Board of Public Accountancy adopts an amendment to §513.24 concerning Restrictions on a Partnership Registration without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9489).

The proposed amendment to section 513.24 recognizes that professional limited liability companies and registered limited liability companies may be partners in CPA firms.

The amendment will function by having a rule that will recognize what has been in practice for some time.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000902
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999

For further information, please call: (512) 305-7848

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22 TAC §513.25

The Texas State Board of Public Accountancy adopts an amendment to §513.25 concerning Notice of any Changes to a Partnership without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9489).

The amendment allows the rule caption to be more descriptive and accurate.

The amendment will function by having a rule caption that will be more descriptive and accurate.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000903
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §513.26

The Texas State Board of Public Accountancy adopts an amendment to §513.26 concerning Partnership Names without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9490).

The amendment allows a partnership's firm name to be an acronym of the first letters of current or past partners' surnames, removes the prohibition against an employee's name being part of the firm's name because it is prohibited elsewhere and deletes subsections (c), (d), (e) and (h) because they are addressed in other rules.

The amendment will function by having a rule that is shorter, easier to comprehend and that does not contain unnecessary items.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000904
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §513.31

The Texas State Board of Public Accountancy adopts an amendment to §513.31 concerning General Rule for a Professional Limited Liability Company without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9491).

The amendment allows for the use of the correct names of companies and of the Act.

The amendment will function by having a rule that has the correct name for the company and the Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000905
William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §513.32

The Texas State Board of Public Accountancy adopts an amendment to §513.32 concerning Application for Registration of a Professional Limited Liability Company without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9491).

The amendment allows for the insertion of "professional" before "limited liability company" in several places and minor editing.

The amendment will function by inserting "professional" before "limited liability company" in several places and by making some minor editing.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and

repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000906
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

22 TAC §513.33

The Texas State Board of Public Accountancy adopts an amendment to §513.33 concerning Partnership Rules Applying to Partnerships and Professional Limited Liability Companies without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9493).

The amendment allows a short, plain statement to serve as the rule.

The amendment will function by having a short, plain statement to serve as the rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000907
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

22 TAC §513.34

The Texas State Board of Public Accountancy adopts an amendment to §513.34 concerning Professional Limited Liability Company without changes to the proposed text as published in the October 29, 1999 issue of the *Texas Register* (24 TexReg 9493).

The amendment allows "Professional" to be added to the rule caption, the deletion of subsection (b) because it is already addressed by the rule on firm Names, and minor editing.

The amendment will function by having a shorter, clearer rule that is easier to read and to comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

Subchapter C. REGISTRATION OF CORPORATIONS

22 TAC §513.41

The Texas State Board of Public Accountancy adopts the amendment to §513.41 concerning General Rule for Registration of a Corporation without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9494) and will not be republished.

The amendment allows for the rule caption to be changed to a more descriptive caption, changes articles of "incorporation" to "organization" and reduces the reference to the Public Accountancy Act.

The amendment will function by having a more descriptive rule caption and correct current language.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000909
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §513.42

The Texas State Board of Public Accountancy adopts the amendment to §513.42 concerning Application for Registration of a Corporation without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9495) and will not be republished.

The amendment allows the rule to be edited so as to read more smoothly and logically.

The amendment will function by having a rule that is easier to read and comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §513.43

The Texas State Board of Public Accountancy adopts the amendment to §513.43 concerning Partnership Rules Applying to Professional Corporations without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9496) and will not be republished.

The amendment allows a short, plain statement to serve as the rule.

The amendment will function by having a rule that will be shorter, clearer and easier to comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
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Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §513.44

The Texas State Board of Public Accountancy adopts the amendment to §513.44 concerning Professional Corporation Names without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9497) and will not be republished.

The proposed amendment to §513.44 will allow for the deletion of language which is already addressed in the rule on Firm Names.

The amendment will function by having a rule that does not contain unnecessary, redundant language.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000912
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §513.47

The Texas State Board of Public Accountancy adopts the amendment to §513.47 concerning Affidavit of Firm without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9498) and will not be republished.

The amendment allows for the deletion of subsection (d) which imposes disciplinary actions for failure to complete an Affidavit and for completing it falsely.

The amendment will function by having a rule that will not contain unneeded language.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000913
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

Subchapter D. REGISTRATION OF OFFICES

22 TAC §513.61

The Texas State Board of Public Accountancy adopts an amendment to §513.61, concerning General Rule for Registration of Practice Units (Office) with changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9498).

The amendment allows the rule caption to be more descriptive, combines former subsections (b)(2) and (b)(3) into subsection (b)(1) and minor editorial changes.

The amendment will function by having a more compact rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

§513.61. General Rule for Registration of Practice Units (Offices).

(a) Each practice unit (office) established in Texas for the practice of public accountancy must register with the board and hold a current license to practice.

(b) An application for registration must be made on a form prescribed by the board and submitted with the requisite fee. The application must indicate the practice unit (office) address and telephone number and the following:

(1) the names, addresses, telephone numbers, and certificate numbers of the sole proprietors, partners, shareholders, incorporators, directors and resident managers involved in the practice, and the office the individual is associated with and whether each individual holds a current Texas license;

(2) whether the firm or any sole proprietor, partner, officer, director, or shareholder within the firm has been a party to legal proceedings as described in §513.47 of this title (relating to Affidavit of Firm).

(c) Firms may have an office, which is not required to register as a practice unit if the office does not hold out as defined in §501.2 of this title (relating to Definitions).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000914
William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §513.62

The Texas State Board of Public Accountancy adopts an amendment to §513.62, concerning Resident Manager without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9499).

The amendment allows the rule caption to be more descriptive, substitutes "manager" for "person in charge" and combines former subsection (d)(2) into subsection (d)(1).

The amendment will function by having a rule caption that is more descriptive and a rule that is easier to read and comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000915
William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

Subchapter E. REGISTRATION OF SOLE PROPRIETORSHIPS

22 TAC §513.81

The Texas State Board of Public Accountancy adopts the amendment to §513.81 concerning General Rule for Registration of a Sole Proprietorship without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9501) and will not be republished.

The amendment allows the rule caption to be more descriptive.

The amendment will function by having a rule that will have a more descriptive caption.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and

repeal rules deemed necessary or advisable to effectuate the Act.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000916
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

22 TAC §513.83

The Texas State Board of Public Accountancy adopts the amendment to §513.83 concerning Notice of Change of Information Regarding a Sole Proprietorship without changes to the proposed text as published in the October 29,1999, issue of the *Texas Register* (24 TexReg 9502) and will not be republished.

The amendment allows the rule caption to be more descriptive and will require licensees to inform the Board within 30 days of an event that affects the continued existence of a sole proprietorship.

The amendment will function by having a rule caption that will be more descriptive and a rule that will be clearer that the Board is to be informed of the occurrence of certain events.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000917
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

Chapter 515. LICENSES

22 TAC §515.1

The Texas State Board of Public Accountancy adopts the amendment to §515.1 concerning License without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9501) and will not be republished.

The amendment to §515.1 will make it clear that annual licenses will not be renewed if continuing professional education (CPE) requirements are not satisfied.

The amendment will function by having a clear statement in the license rule that CPE is required for a license.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000918
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

22 TAC §515.2

The Texas State Board of Public Accountancy adopts the amendment to §515.2 concerning Initial License without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9503) and will not be republished.

The amendment allows for some editorial changes to be made for clarification.

The amendment will function by having a rule that is easier to read and comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000919
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

22 TAC §515.3

The Texas State Board of Public Accountancy adopts the amendment to §515.3 concerning License Renewal for Individuals and Practice Units without changes to the proposed text as

published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9504) and will not be republished.

The amendment to §515.3 will clarify that the prohibition against relicensing a practice unit that has not informed the Board of its assigned review date applies only if the firm is subject to quality review and that the reviewer must be Board approved.

The amendment will function by having a rule that will be clearer and easier to comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000920
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §515.4

The Texas State Board of Public Accountancy adopts new rule §515.4 concerning License Cancellation without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9506) and will not be republished.

The new rule will not allow an individual license or practice unit registration to be issued unless they have satisfied all of the requirements for licensure.

The new rule will function by having in one location a plain statement that licenses will not be issued until certain requirements are satisfied.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200000921
William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §515.5

The Texas State Board of Public Accountancy adopts the amendment to §515.5 concerning Reinstatement of License without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9506) and will not be republished.

The amendment to §515.5 will allow the rule caption to be more descriptive, make some editorial changes, update the citation to the Public Accountancy Act, clarify that this rule applies to situations where the sole issue is non payment of license fees, and replaces an Ethics course for an examination on the Board's Rules of Professional Conduct.

The amendment will function by having a more descriptive rule caption and by requiring reinstated licensees to complete a four hour ethics course prior to reinstatement of license.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §515.8

The Texas State Board of Public Accountancy adopts the amendment to §515.8 concerning Retirement Status or Permanent Disability with changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9507).

The amendment to §515.8 will rewrite former subsection (a)(1) and relocate it to subsection (a), delete subsections (a)(2) and (b)(2) regarding license fee because fees are already addressed in another rule, rewrite and restate that a Retired or Disabled licensee who resumes employment has the Retired or Disabled license status automatically revoked, must pay a regular license fee for the period since employment was resumed and must complete continuing professional education courses in an amount retroactive and cumulative to the date Retired or Disabled status was granted, and will make some minor editorial changes.

The amendment will function by having a rule that is easier to read and comprehend.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

§515.8. Retirement Status or Permanent Disability.

(a) Retired status. An individual who holds a current license who is 60 years old and has filed a request on a form prescribed by the board stating the licensee is no longer employed may be granted retired status at the time of license renewal.

(1) A licensee who has been granted retired status and who becomes employed automatically loses the retired status and must notify the board and request a new renewal notice and:

(A) pay the license fee established by the board for the period since he became employed;

(B) complete a new license renewal notice; and

(C) meet the continuing professional education requirements for the period since he was granted the retired status.

(2) All board rules and all provisions of the Act apply to a licensee in either an active or retired status.

(b) Permanent disability status. Permanent disability status may be granted to a licensee who submits to the board a statement and a notarized affidavit from the licensee's physician stating that the licensee is unable to work and clearly details the disability. This status may be granted only at the time of license renewal.

(1) A licensee who has been granted permanent disability status and who becomes employed automatically loses the permanent disability status and must notify the board and request a new license renewal notice and:

(A) pay the license fee established by the board for the period since he became employed;

(B) complete a new license renewal notice; and

(C) meet the continuing professional education requirements for the period since he was granted disability status.

(2) All board rules and all provisions of the Act apply to a licensee in permanent disability status.

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 February 7, 2000.

TRD-200000923
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §515.9

The Texas State Board of Public Accountancy adopts the amendment to §515.9 concerning License Renewal for Individuals and Practice Units without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9509) and will not be republished.

The amendment allows for the rule to be re-written to be easier to read and comprehend.

The amendment will function by rewriting former subsection (b) and relocating it to subsection (a) (1), making some editorial changes and relocating former subsection (c) to subsection (b).

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000924
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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22 TAC §515.11

The Texas State Board of Public Accountancy adopts the amendment to §515.11 concerning License Renewal for Individuals and Practice Units without changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9510) and will not be republished.

The amendment allows for the deletion of unnecessary and redundant language.

The amendment will function by deleting former subsection (c) because it is already addressed in the Board's Rule on Discreditable Conduct.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000925
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 27, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 305-7848

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TITLE 25. HEALTH SERVICES

Part 1. TEXAS DEPARTMENT OF HEALTH

Chapter 41. UTILIZATION REVIEW

Subchapter A. WAIVER FOR UTILIZATION REVIEW PROCEDURES

25 TAC §§41.101-41.105, 41.107-41.113

Senate Bill 30, §1.07, 75th Legislative Session transferred the responsibility for utilization review in the state Medicaid program from the Texas Department of Health and the Texas Department of Human Services to the Texas Health and Human Services Commission. In accordance with this transfer, Title 25, Part 1, §§41.101-41.105 and 41.107-41.113 concerning utilization review will become Title 1, Part 15, §§371.200-371.211, effective September 1, 1997. Title 40, Part 1, §§19.1812, 19.2411, and 19.2412 will become Title 1, Part 15, §§371.212-371.214, effective September 1, 1997. The rule conversion chart is published in the Tables and Graphic section.

Figure: 1 TAC Chapter 371.

§41.101. Inpatient Hospital Utilization Review Program.

§41.102. Case Selection Process.

§41.103. Contracting for Texas Medical Review Program (TMRP) or Tax Equity and Fiscal Responsibility (TEFRA) Services.

§41.104. Texas Medical Review Program (TMRP) Review Process.

§41.105. TMRP Hospital Screening Criteria for TMRP and TEFRA Reviews.

§41.107. Acknowledgment of Penalty Notice.

§41.108. Denials and Recoupments for Texas Medical Review Program (TMRP) and Tax Equity and Fiscal Responsibility Act (TEFRA) Hospitals.

§41.109. Diagnostic Related Group (DRG) Changes and Adjustments.

§41.110. Appeals Requirements under the Texas Medical Review Program (TMRP) and Tax Equity and Fiscal Responsibility Act (TEFRA), and Hospital Notification.

§41.111. Sanctions under the TMRP and TEFRA.

§41.112. Inpatient Utilization Review for Hospitals Reimbursed under the Tax Equity and Fiscal Responsibility Act (TEFRA) Principles of Reimbursement.

§41.113. Quality of Care Review.

TITLE 34. PUBLIC FINANCE

Part 1. COMPTROLLER OF PUBLIC ACCOUNTS

Chapter 9. PROPERTY TAX ADMINISTRATION

Subchapter H. TAX RECORD REQUIREMENTS

34 TAC §9.3039

The Comptroller of Public Accounts adopts an amendment to §9.3039, concerning applications for property tax refunds, without changes to the proposed text as published in the December 3, 1999, issue of the *Texas Register* (24 TexReg 10833).

This rule is being amended to add language to the currently prescribed application form as required by Senate Bill 446, 76th Legislature, 1999, effective September 1, 1999, which requires the comptroller to prescribe a form for property tax refund applications, prescribes minimum requirements for a refund application form, and requires the tax assessor-collector to sign the application, to indicate the taxing unit's governing body's approval or disapproval of the refund application and the date of the approval or disapproval, and House Bill 2220, 76th Legislature, 1999, effective September 1, 1999, which provides that the governing body of a county with a population of 2.8 million or more must approve refund applications for amounts over $2,500, rather than $500, which is the refund amount that all other governing bodies must approve. The amendments also update the language describing penalties for filing a false application and make other non substantive changes.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §5.07, which requires the comptroller to prescribe the contents of all forms necessary for the administration of the property tax system, and Senate Bill 446, 76th Legislature, 1999, effective September 1, 1999, which requires the comptroller to prescribe a form for an application for a property tax refund.

The amendment implements the Tax Code, §31.11.

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 February 4, 2000.

TRD-200000819
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Effective date: February 24, 2000
Proposal publication date: December 3, 1999
For further information, please call: (512) 463-3699

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. TEXAS DEPARTMENT OF HUMAN SERVICES

Chapter 3. TEXAS WORKS

Subchapter LL. DISABILITY DETERMINATION

40 TAC §3.3801

The Texas Department of Human Services (DHS) adopts the repeal of §3.3801, and new §3.3801, in its Texas Works chapter.

The repeal is adopted without changes to the proposed text published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11697). The new section is adopted with changes.

Justification for the new section is to streamline the process used to determine disability for Temporary Assistance for Needy Families (TANF) applicants and recipients, as well as eligibility for Medicaid under the Medically Needy programs for a parent.

The new section will function by allowing disability to be determined by the client's physician, resulting in a more efficient use of time for medical professionals involved in the copying and transmitting of medical information.

During the comment period, DHS received a comment from the Houston Welfare Rights Organization. A summary of the comment and DHS's response follows:

Comment: The commenter stated that when this item was presented at the December 2, 1999 Texas Works Advisory Council meeting, the department indicated that the disability could be physical or mental and the mental disability could be verified by a psychologist. The commenter pointed out that this is not indicated in the proposed rule.

Response: DHS agrees with the comments as they are consistent with the intent of the policy. The comments are incorporated in the adopted rule.

The repeal is adopted under the Human Resources Code, Title 2, Chapter 31, which provides the department with the authority to administer financial assistance programs.

The repeal implements the Human Resources Code, §§31.001-31.0325.

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 February 7, 2000.

TRD-200000939
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: February 27, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 438-3108

The new section is adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The new section implements the Human Resources Code, §§31.001- 31.0325.

§3.3801. Basis for Disability Determination and Employment Services Program Exemptions.

(a) TANF. The Texas Department of Human Services (DHS) considers a person incapacitated if he has a physical or mental disability which precludes him for substantial gainful employment or care for his children for a continuous period of at least 30 days. The physical or mental disability must be supported by a physician, a physician's assistant (under a physician's order), or a licensed or certified psychologist. A certification of RSDI, SSI, or VA disability is sufficient proof of incapacity.

(b) Food Stamps. DHS allows disability determination for employment services as specified in 7 Code of Federal Regulations (CFR) §273.7(b)(ii).

Filed with the Office of the Secretary of State on February 7, 2000.

TRD-200000940
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: February 27, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 438-3108

Chapter 15. MEDICAID ELIGIBILITY

Subchapter D. RESOURCES

40 TAC §15.417

The Texas Department of Human Services (DHS) adopts an amendment to §15.417, without changes to the proposed text published in the December 24, 1999, issue of the *Texas Register* (24 TexReg 11698).

The amendment is justified to clarify the treatment of limited partnerships as a resource. The Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66) established the treatment of trusts and similar financial arrangements in Medicaid eligibility policy. DHS Legal Services staff requested the addition of a specific rule for limited partnerships because of the increased use of limited partnerships as estate-planning devices.

The amendment will function by ensuring that long term care Medicaid eligibility policy will be applied correctly and consistently statewide.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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 February 4, 2000

TRD-200000812
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: April 1, 2000
Proposal publication date: December 24, 1999
For further information, please call: (512) 438-3108

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Chapter 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

Subchapter I. RESIDENT ASSESSMENT

40 TAC §19.804

The Texas Department of Human Services (DHS) adopts new §19.804, without changes to the proposed text published in the October 15, 1999, issue of the *Texas Register* (24 TexReg 8929).

The justification for the new section is to require nursing facilities to use a tool, the Capacity Assessment for Self Care and Financial Management, when asked by a court or when considering obtaining guardianship of a nursing facility patient. The Texas Health and Safety Code §533.044 requires DHS and the Texas Department of Mental Health and Mental Retardation to agree to develop rules relating to the use of this instrument in their respective facilities. The Texas Health and Safety Code also requires DHS to use this tool to provide probate courts with sufficient information to make informed decisions regarding a person's need for guardianship. This tool is designed to enable the facility or a court to assess whether a person needs a guardian.

The new section will function by ensuring that nursing facilities will have a uniform tool to assist the facility in determining whether or not a person needs a guardian. Nursing facilities may also benefit by discovering that an individual may be in need of guardianship.

During the comment period, DHS received a comment from the Houston Welfare Rights Organization. The commenter noted that DHS should add a definition regarding when a guardianship referral may be appropriate. One of the purposes of the tool is to assist the facility in determining if a guardianship referral is appropriate. DHS believes that each individual case is different and varies by setting. For example, in an intermediate care facility, a person could lack capacity to participate in care planning and have a non-responsible party participate in the care plan. This person may have his or her needs met by the use of surrogate decision makers, or for major medical decisions, by a surrogate decision making committee. These same protections would not be available in a community based setting. DHS feels that guidance to help nursing facilities determine when a guardianship is indicated should be covered in training materials. A referral for guardianship may be appropriate when (1) a resident lacks capacity to participate in care planning; (2) a resident has no presently appointed guardian; (3) no one is seeking guardianship for the resident; (4) there is no responsible party to participate in care planning; and (5) there is no agent under a medical power of attorney who is willing to participate in care planning. DHS will include these and other examples in the training materials it is preparing. In addition, DHS will be working with the Texas Rural Health Initiatives Agency to determine how to disseminate information regarding the Capacity Assessment Instrument to rural physicians. If a physician feels that a guardianship proceeding should be initiated on behalf of a patient, the physician may request that a nursing facility complete the assessment.

The new section is adopted under the Health and Safety Code §533.044, which provides the department with the authority to require facilities to use the instrument; and the Health and Safety Code Chapter 242, which provides the department with the authority to license nursing facilities.

The new section implements §533.044 of the Health and Safety 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 February 3, 2000.

TRD-200000771
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: March 15, 2000
Proposal publication date: October 15, 1999
For further information, please call: (512) 438-3108

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Subchapter S. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

40 TAC §19.1812

Senate Bill 30, §1.07, 75th Legislative Session transferred the responsibility for utilization review in the state Medicaid program from the Texas Department of Health and the Texas Department of Human Services to the Texas Health and Human Services Commission. In accordance with this transfer, Title 25, Part 1, §§41.101-41.105 and 41.107-41.113 concerning utilization review will become Title 1, Part 15, §§371.200-371.211, effective September 1, 1997. Title 40, Part 1, §§19.1812, 19.2411, and 19.2412 will become Title 1, Part 15, §§371.212-371.214, effective September 1, 1997. The rule conversion chart is published in the Tables and Graphic section.

Figure: 1 TAC Chapter 371.

§19.1812. Case Mix Classification System.

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Subchapter Y. MEDICAL REVIEW AND REEVALUATION

40 TAC §19.2411, §19.2412

Senate Bill 30, §1.07, 75th Legislative Session transferred the responsibility for utilization review in the state Medicaid program from the Texas Department of Health and the Texas Department of Human Services to the Texas Health and Human Services Commission. In accordance with this transfer, Title 25, Part 1, §§41.101-41.105 and 41.107-41.113 concerning utilization review will become Title 1, Part 15, §§371.200-371.211, effective September 1, 1997. Title 40, Part 1, §§19.1812, 19.2411, and 19.2412 will become Title 1, Part 15, §§371.212-371.214, effective September 1, 1997. The rule conversion chart is published in the Tables and Graphic section.

Figure: 1 TAC Chapter 371.

§19.2411. Utilization Review and Control Activities Performed by Texas Department of Human Services (DHS).

§19.2412. Texas Index for Level of Effort (TILE) Assessments.

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Part 8. CHILDREN'S TRUST FUND OF TEXAS COUNCIL

Chapter 201. COUNCIL ADMINISTRATION: POLICIES AND PROCEDURES

40 TAC §§201.1, 201.3, 201.6, 201.7

The Children's Trust Fund of Texas Council adopts the repeal of §§201.1, 201.3, 201.6, 201.7 without changes as published in the August 6, 1999, issue of the *Texas Register* (24 TexReg 6016).

The proposed repeal arose as a result of the Rule Review process mandated by the 1997 General Appropriations Act, Art. IX, sec. 167. In compliance with that rider, the Council reviewed its rules to determine whether the reasons the rules originally were adopted continued to exist, to determine whether the rules were consistent with current law, and to determine whether rules should be re-adopted with or without changes, or whether rules should be repealed.

Section 201.1 is repealed. The section is out-of-date and is repetitive of CTF's enabling legislation; therefore it is repetitive of agency statute and not an appropriate subject of an agency rule.

Section 201.3 is repealed. Subsection (a) largely tracks CTF's enabling legislation, therefore it is repetitive of agency statute and not an appropriate subject of an agency rule. Subsections (b) and (c) lack a proper statutory basis.

Section 201.6 is repealed. This section involves the internal organization of the agency and incorrectly states the law regarding the executive director's employment status.

Section 201.7 is repealed. This section is a restatement of CTF's enabling legislation, therefore it is repetitive of agency statute and not an appropriate subject of an agency rule.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the authority of Texas Human Resources Code §74.003(a)(11) which directs the board to adopt rules to implement the council enabling statute, Texas Human Resources Code, Chapter 74.

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 February 3, 2000.

TRD-200000768

John Chacon

Executive Director

Children's Trust Fund of Texas Council

Effective date: February 23, 2000

Proposal publication date: August 6, 1999

For further information, please call: (512) 833-3440

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40 TAC §§201.8 - 201.10

The Children's Trust Fund of Texas Council adopts the amendments to §§201.8, 201.9, and 201.10, without changes to the text as published in the August 6, 1999, issue of the *Texas Register* (24 TexReg 6016).

The rule amendments arise as a result of the Rule Review process mandated by the 1997 General Appropriations Act, Art. IX, §167. In compliance with that rider, the Council reviewed its rules to determine whether the reasons the rules originally were adopted continued to exist, to determine whether the rules were consistent with current law, and to determine whether rules should be re-adopted with or without changes, or whether rules should be repealed.

Section 201.8 is amended to reflect the correct reference to the Open Meetings Act (Government Code, Chapter 551). Subsections (a), (c), (g), (i), and (k) are deleted. These subsections mirror applicable statutory law. Also, subsection (d) is deleted. The Open Meetings Act, not a rule, determines when an agency is authorized to go into executive session.

Section 201.9 is retained but amended by adding a new paragraph (6) as follows: "adoption of substantive or procedural rules," to clarify to board members what actions required Council approvals.

Section 201.10(b) regarding amendments to and concerning Council Administration: Policies and Procedures is deleted because it is a restatement of existing law, therefore it is repetitive of agency statute and not an appropriate subject of an agency rule. Additionally the statutory citation is out-of-date.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of Texas Human Resources Code §74.003(a)(11) which directs the board to adopt rules to implement the council's enabling statute, Texas Human Resources Code, Chapter 74.

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 February 3, 2000.

TRD-200000769

John Chacon

Executive Director

Children's Trust Fund of Texas Council

Effective date: February 23, 2000

Proposal publication date: August 6, 1999

For further information, please call: (512) 833-3440

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Chapter 202. FUNDED PROGRAM AWARDS AND CONTRACTS

40 TAC §§202.6, 202.8, 202.10

The Children's Trust Fund of Texas Council adopts the amendments §§202.6, 202.8, and 202.10, without changes to the text as published in the August 6, 1999, issue of the *Texas Register* at 24 TexReg 6016.

The rule amendments arise as a result of the Rule Review process mandated by the 1997 General Appropriations Act, Art. IX, §167. In compliance with that rider, the Council reviewed its rules to determine whether the reasons the rules originally were adopted continued to exist, to determine whether the rules

were consistent with current law, and to determine whether rules should be re-adopted with or without changes, or whether rules should be repealed.

Section 202.6(a) is amended to delete a delivery address that is no longer available.

Section 202.8(f) is amended by including a description of the confidentiality guidelines that are referred to in the current rule. By adding the guidelines, applicants will have adequate guidance without going to another source.

Section 202.10 amends subsection (a) to reflect the amendment to Human Resources Code, §74.010, which authorizes more than two extensions under certain circumstances as determined by the Council and defines those circumstances.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of Texas Human Resources Code §74.003(a)(11) which directs the board to adopt rules to implement the council's enabling statute, Texas Human Resources Code, Chapter 74.

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 February 3, 2000.

TRD-200000766
John Chacon
Executive Director
Children's Trust Fund of Texas Council
Effective date: February 23, 2000
Proposal publication date: August 6, 1999
For further information, please call: (512) 833-3440

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40 TAC §202.9

The Children's Trust Fund of Texas Council adopts the repeal of §202.9 without changes as published in the August 6, 1999, issue of the *Texas Register* (24 TexReg 6016).

The proposed repeal arose as a result of the Rule Review process mandated by the 1997 General Appropriations Act, Art. IX, §167. In compliance with that rider, the Council reviewed its rules to determine whether the reasons the rules originally were adopted continued to exist, to determine whether the rules were consistent with current law, and to determine whether rules should be re-adopted with or without changes, or whether rules should be repealed.

Section 202.9 is repealed because of the conflict of interest provisions concerning internal policies and are not the proper subject for rules. They will be transferred to the Policies and Procedures Manual.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the authority of Texas Human Resources Code §74.0039(a)(11) which directs the board to adopt rules to implement the council enabling statute, Texas Human Resources Code, Chapter 74.

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 February 3, 2000.

TRD-200000767
John Chacon
Executive Director
Children's Trust Fund of Texas Council
Effective date: February 23, 2000
Proposal publication date: August 6, 1999
For further information, please call: (512) 833-3440

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Chapter 203. ADVISORY COMMITTEES

40 TAC §§203.1 - 203.5

The Children's Trust Fund of Texas Council adopts the repeal of Chapter 203 §§203.1 - 203.5 without changes as published in the August 6, 1999, issue of the *Texas Register* (24 TexReg 6016).

The proposed repeal arose as a result of the Rule Review process mandated by the 1997 General Appropriations Act, Art. IX, §167. In compliance with that rider, the Council reviewed its rules to determine whether the rules originally were adopted continued to exist, to determine whether the rules were consistent with current law, and to determine whether rules should be re-adopted with or without changes, or whether rules should be repealed.

Chapter 203, §§203.1 - 203.5 concerning advisory committees is repealed, because both advisory committees addressed in the rules have expired; therefore the entire chapter is no longer necessary and is ineffective.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the authority of Texas Human Resources Code §74.003(a)(11) which directs the board to adopt rules to implement the council enabling statute, Texas Human Resources Code, Chapter 74.

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 February 3, 2000.

TRD-200000765
John Chacon
Executive Director
Children's Trust Fund of Texas Council
Effective date: February 23, 2000
Proposal publication date: August 6, 1999
For further information, please call: (512) 833-3440

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Part 19. TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

Chapter 700. CHILD PROTECTIVE SERVICES

Subchapter C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §700.347

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §700.347, without changes to the proposed text published in the November 5, 1999, issue of the *Texas Register* (24 TexReg 9798).

The justification for the new section is to describe new situations in which a child who does not reside in the state that signed the state adoption assistance agreement can receive Texas Medicaid coverage. Receipt of medical assistance (Medicaid) from the state of residence versus the state signing the adoption assistance agreement will facilitate access to the coverage. Access to medical coverage is an essential part of the nationwide effort to promote and support adoption of children with special needs.

The new section will function by ensuring that children with special needs who are covered by adoption assistance agreements have access to medical assistance in the state of residence.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Family Code, Chapter 162, Subchapter C, §§162.201 - 162.206, which provides the Texas Department of Protective and Regulatory Services with the authority to extend medical assistance to children with state adoption assistance agreements from member states; under Texas Human Resources Code §40.002(e), which authorizes the department to adopt rules necessary to conform with federal funding requirements; under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds; and under the Memorandum of Understanding Between the Texas Health and Human Services Commission and the Texas Department of Protective and Regulatory Services Regarding Implementation of the Interstate Compact on Adoption and Medical Assistance and the Adoption and Safe Families Act of 1997.

The new section implements the Interstate Compact on Adoption and Medical Assistance, Texas Family Code §162.201, Art. VII and the Adoption and Safe Families Act of 1997, 42 U.S.C. §673b (b)(4) and 42 U.S.C. §1320a-9(a)(4).

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 February 4, 2000.

TRD-200000813
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: March 1, 2000
Proposal publication date: November 5, 1999
For further information, please call: (512) 438-3734

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 Board 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 board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board 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 78714-9104.)

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

FINAL ACTION

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE, CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF AMENDMENTS TO RULE XVIII AND FORMS GPP-1 AND GPP-2 OF THE TEXAS BASIC MANUAL OF RULES, CLASSIFICATIONS AND EXPERIENCE RATING PLAN FOR WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

The Commissioner of Insurance has adopted amendments to Rule XVIII and Form GPP-1 and GPP-2 of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (the Manual). The amendments were proposed in a petition filed by CompGroup AGC, Inc. on October 21, 1999. Notice of the proposal (Reference Number W-0999-15) was published in the December 17, 1999, issue of the *Texas Register* (24 TexReg 11539). The amendments were considered at a public hearing on January 18, 2000 at 10:00 a.m. under Docket Number 2434 in Room 100 of the William P. Hobby Jr., State Office Building, 333 Guadalupe Street in Austin, Texas. The purpose of the amendments is to allow a group to establish a pre-determined premium discount evaluation date that is used in lieu of a common expiration date for determining the premium discount for the group. The amendments also make editorial changes by amending the post office box number and zip code for the Workers' Compensation Division and by correcting punctuation marks in the rule and on the forms.

The adopted changes to Rule XVIII of the Manual define the term "pre-determined premium discount evaluation date" as the date agreed upon by the group and the insuring carrier and set forth in the group's plan of operation used in lieu of a common expiration date by the members of the group. Since the group must use either the common expiration date or the pre-determined premium discount evaluation date, any time the common expiration date is mentioned in the rule, the term "pre-determined premium discount evaluation date is added. In addition Form GPP-1 and GPP-2 are amended to include the pre-determined premium discount evaluation date and to update the post office box and zip code of the Workers' Compensation Division of the Texas Department of Insurance.

The Commissioner adopted the amendments to the rule and to the forms without changes to the proposal as noticed in the *Texas Register*.

The amendments as adopted by the Commissioner of Insurance are shown in the petition on file with the Chief Clerk under Reference Number W-9999-15, which are incorporated by reference into Commissioner's Order Number 00-0149.

The Commissioner has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.56, 5.57A and 5.96.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Government Code, Title 10, Chapter 200. (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96 (h), prior to the effective date of this action, the Texas Department of Insurance will notify all insurers affected by this action.

The agency hereby certifies that the adopted amendments have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments to Rule XVIII and Forms GPP-1 and GPP-2 contained in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance which are attached and incorporated hereto are hereby adopted to be effective fifteen days of notice of this adoption is published in the *Texas Register*.

TRD-200000966
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 8, 2000

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. 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.

Revised Agency Rule Review Plan

Texas Department of Transportation

Title 43, Part 1

Filed: February 7, 2000

Proposed Rule Reviews

Texas Department of Economic Development

Title 10, Part 5

The Texas Department of Economic Development (Department) files this notice of intention to review and repeal Chapter 162 related to the Texas Exporters Loan Fund pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As part of this review process the Department is proposing to repeal Chapter 162 in its entirety. The proposed repeal may be found in the Proposed Rules section of the *Texas Register*. As required by §167, the Department will accept comments regarding whether the reason for the rules continues to exist in the comments filed in the proposed rules section. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Any comments pertaining to this notice of intention to review may be hand-delivered to DeAnn Luper, Legal Assistant, Texas Department of Economic Development, 1700 North Congress, Suite 130, Austin, Texas 78701, or mailed to P.O. Box 12728, Austin, Texas 78711-2728, within 30 days of publication. Comments may be faxed to Ms. Luper at (512) 936-0415.

TRD-200000817
Robin Abbott
General Counsel
Texas Department of Economic Development
Filed: February 4, 2000

Board of Nurse Examiners

Title 22, Part 11

The Board of Nurse Examiners proposes to review Chapter 218, Delegation of Selected Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel in accordance with the Appropriations Act, §167. In conjunction with this review, the agency proposes to repeal the existing §§218.1 - 218.11 and proposes new §§218.1 - 218.11 in accordance with the Appropriations Act, §167. The proposed repeal and new rules may be found in the Proposed Rules section of the *Texas Register*.

Comments on the proposals may be submitted to Katherine Thomas, MN, RN, Executive Director, Board of Nurse Examiners, P.O. Box 430, Austin, Texas 78767-0430

TRD-200000926
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Filed: February 7, 2000

Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission proposes to review the following sections of Chapter 535 in accordance with the Texas Government Code, §2001.039, and the General Appropriations Act of 1999, Article IX, §167.

The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reason for adopting each of these sections continues to exist.

Any questions pertaining to this notice of intention to review should be directed to Mark A. Moseley, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to general.counsel@trec.state.tx.us.

§535.91. Renewal Applications

§535.92. Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.

§535.93. Licensing: Possession of License as Prerequisite.

§535.94. Hearing on Application Disapproval; Probationary Licenses.

§535.95. Miscellaneous Provisions Concerning License Renewals.

§535.101. Fees.

§535.111. Residence.

§535.112. Branch Office.

§535.113. Display of License.

§535.121. Inactive License.

§535.122. Reactivation of License.

§535.123. Inactive Broker License.

TRD-200000959
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: February 8, 2000

Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 125 concerning Education and Training of Ombudsmen, Chapter 131 concerning Calculation of Lifetime Income Benefits, Chapter 136 concerning Medical Benefits Vocational Rehabilitation and Chapter 165 concerning Rejected Risk: Injury Prevention Services. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by Senate Bill 178, 76th Legislature.

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt these rules.

Comments regarding the §167 requirement as to whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on March 20, 2000, and submitted to Donna Davila, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

Chapter 125 Education and Training of Ombudsmen

§125.1. Definitions

§125.2. Ombudsman Training Program/Continuing Education

§125.3. Private Meetings with Unrepresented Claimants

Chapter 131 Calculation of Lifetime Income Benefits

§131.1. Initiation of Lifetime Income Benefits

§131.2. Calculation of Lifetime Income Benefits

§131.3. Carrier's Petition for Payment of Benefits By Subsequent Injury Fund

Chapter 136 Medical Benefits-Vocational Rehabilitation

§136.1. Review of Employer Report of Injury

§136.2. Registry of Private Providers of Vocational Rehabilitation Services

Chapter 165 Rejected Risk: Injury Prevention Services

§165.1. Identification and Notification of Certain Policyholder Insured by the Texas Workers' Compensation Insurance Fund Acting as the Insurer of Last Resort

§165.2. Safety Consultation

§165.3. Formulation and Components of Accident Prevention Plan

§165.4. Request for Safety Consultation From the Division

§165.5. Reimbursement of Division for Services Provided to Rejected Risk Employers

§165.6. Follow-up Inspection of the Policyholder's Premises by the Division

§165.7. Report of Follow-up Inspection

TRD-200000961
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: February 8, 2000

Adopted Rule Review

Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board adopts without changes, Chapter 12, Proprietary Schools, in accordance with §2001.039 Texas Government Code.

No comments were received regarding the adoption of this chapter.

TRD-200000775
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: February 4, 2000

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is 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. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure: 1 TAC Chapter 371

Current TAC Citation	New TAC Citation
25 TAC §41.101	1 TAC §371.200
25 TAC §41.102	1 TAC §371.201
25 TAC §41.103	1 TAC §371.202
25 TAC §41.104	1 TAC §371.203
25 TAC §41.105	1 TAC §371.204
25 TAC §41.107	1 TAC §371.205
25 TAC §41.108	1 TAC §371.206
25 TAC §41.109	1 TAC §371.207
25 TAC §41.110	1 TAC §371.208
25 TAC §41.111	1 TAC §371.209
25 TAC §41.112	1 TAC §371.210
25 TAC §41.113	1 TAC §371.211
40 TAC §19.1812	1 TAC §371.212
40 TAC §19.2411	1 TAC §371.213
40 TAC §19.2412	1 TAC §371.214

Figure: 16 TAC §26.130(e)(3)(A).

Customer billing name: ____

Customer billing address: ____

Customer street address: ____

City, state, zip code: ____

If applicable, name of individual legally authorized to act for customer:

____

Relationship to customer: ____

Telephone number of individual authorized to act for customer:

____

By signing below, I am authorizing (new telecommunications utility) to become my new telephone service provider in place of (current telecommunications utility) for the provision of (type of service(s) that will be provided) service. I authorize (new telecommunications utility) to act as my agent to make this change happen, and direct (current telecommunications utility) to work with the new provider to make the change.

I understand that I must pay a charge of approximately $ (industry average charge) to switch providers. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge. I also understand that my new telephone company may have different calling areas, rates, and charges than my current telephone company, and I am willing to be billed accordingly.

Telephone number(s) to be changed: _____________________________________

Initial here _______ if you are listing additional telephone numbers to be changed.

I have read and understand this Letter of Agency. I am at least eighteen years of age and legally authorized to change telephone companies for services to the telephone numbers listed above.

Signed: ____ Date: ______________

Figure: 16 TAC §26.130(g)(3).

Selecting a Telephone Company -- Your Rights as a Customer.

Telephone companies are prohibited by law from switching you from one telephone service provider to another without your permission, a practice commonly known as "slamming."

Texas law requires the telephone company that slammed you to do the following:

1. Pay all charges associated with returning you to your original telephone company within five business days of your request.
2. Provide all billing records to your original telephone company within ten business days of your request.
3. Pay your original telephone company the amount you would have paid if you had not been slammed.
4. Refund to you within 30 business days any amount you paid for charges during the first 30 days after the slam and any amount more than what you would have paid your original telephone company for charges after the first 30 days following the slam.

Your original telephone company is required to provide you with all the benefits, such as frequent flyer miles, you would have normally received for your telephone use during the period in which you were slammed.

If you have been slammed, you can change your service immediately back to your original provider by calling your local telephone company. You should also report the slam by writing or calling the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, fax: (512) 936-7003, e-mail address: customer@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

You can prevent slamming by requesting a preferred telephone company freeze from your local telephone company. This requires that you give your consent to the local telephone company before a change can be made. A freeze may apply to local toll service, long distance service, or both. The Public Utility Commission of Texas can give you more information about freezes or your rights as a customer.

Figure: 16 TAC §26.130(j)(12).

Preferred Telephone Company Freeze

A preferred telephone company freeze ("freeze") prevents a change in a customer's telephone provider unless you consent by contacting the local telephone company. A freeze can protect you against "slamming" (switching your telephone service without your permission). You can impose a freeze on your local toll, long distance service, or both. To impose a freeze, contact your local telephone company. The local telephone company must verify your freeze request by getting your written and signed authorization, electronic authorization, or through an independent third party verification. You may lift a freeze by giving your local telephone company a written and signed request or by calling your local telephone company with your request. You must do this in addition to providing the verification information that your new telephone provider will request. You will not be able to change your telephone provider without lifting the freeze. There is no charge to the customer for imposing or lifting a freeze.

Figure: 16 TAC §26.130(j)(13).

Freeze Authorization Form

Customer billing name: ______________________________

Customer service address: ______________________________

City, state, zip code: ______________________________

Customer mailing service address: ______________________________

City, state, zip code: ______________________________

Telephone number (1): ______________________________

Telephone number (2): ______________________________

Telephone number (3): ______________________________

The purpose of a freeze is to prevent a change in your telephone company without your consent. A freeze is a protection against "slamming" (switching your telephone company without your permission). You can impose a freeze on either your local toll or long distance service provider, or both. If you want a freeze, you must contact (name of local telephone company) at (phone number) to lift the freeze before you can change your service provider. You may add or lift a freeze at any time at no charge.

Please complete the following for each service for which you are requesting a freeze:

I authorize a freeze for the telephone number(s) listed above for local toll service.

Current preferred local toll company: ______________________________

Customer's signature: ______________________________

Date: ______________________________

I authorize a freeze for the telephone number(s) listed above for long distance service.

Current preferred long distance company: ______________________________

Customer's signature: ______________________________

Date: ______________________________

Mail this form to:

(Name of local telephone company)

(Address)

Or FAX to: (FAX number)

Figure: 16 TAC §26.130(j)(14).

Freeze Lift Form

Customer billing name: ______________________________

Customer service address: ______________________________

City, state, zip code: ______________________________

Customer mailing service address: ______________________________

City, state, zip code: ______________________________

Telephone number (1): ______________________________

Telephone number (2): ______________________________

Telephone number (3): ______________________________

Please complete the following for each service that you wish to lift a freeze:

I wish to remove a freeze for the telephone number(s) listed above for local toll service.

Current preferred local toll company: ______________________________

Customer's signature: ______________________________

Date: ______________________________

I wish to remove a freeze for the telephone number(s) listed above for long distance service.

Current preferred long distance company: ______________________________

Customer's signature: ______________________________

Date: ______________________________

Mail this form to:

(Name of local telephone company)

(Address)

Or FAX to: (FAX number)

40 TAC §97.52(b)(4)(D)(ii)

SEVERITY LEVEL II VIOLATIONS
$500 - $1,000 per violation

Rule	Subject Matter
Health & Safety Code, §142.002(a)	Relating to an agency operating without a license.
§97.21(a)(6)(A)	Relating to having adequate staff to provide services and supervise the provision of services within the agency's established service area.
§97.21(b)(1)(A)	Relating to an agency's adoption, implementation, and enforcement of provisions of the Human Resources Code, Chapter 102 (relating to Rights of the Elderly).
§97.21(b)(1)(B)	Relating to an agency's investigation of complaints made by a client or the client's family.
§97.21(b)(1)(C)	Relating to compliance with DHS [department] rules concerning the Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities.
§97.21(b)(1)(D)	Relating to compliance with the Clinical Laboratory Improvement Amendments of 1988.
§97.21(b)(1)(E)	Relating to compliance with the Nursing Practice Act, Texas Civil Statutes, Articles 4525a and 4525b concerning professional nurse reporting and peer review.
§97.21(b)(1)(F)	Relating to compliance with 22 TAC §§240.11-240.13 concerning licensed vocational nurse peer review and reporting.
§97.21(b)(1)(G)	Relating to an agency's acceptance of physician delegation orders.
§97.21(b)(2)(A)	Relating to an agency's quality assurance program.
§97.21(b)(2)(B)-(D)	Relating to an agency's use of and agreement with independent contractors.
§97.21(b)(2)(I)	Relating to an agency's transfer or discharge of a client.
§97.21(b)(3)(C)	Relating to the appointment, qualifications, and duties of a supervising nurse.
§97.21(b)(5)	Relating to an agency's financial ability to carry out its functions.
§97.21(b)(6)	Relating to the administration of medication.

§97.21(c)(22)(C)	**Relating to addressing compliance with out of hospital do-not-resuscitate orders and advance directives.**
§97.21(e)	Relating to the provision of psychoactive services.
§97.21(f)	Relating to a the provision of intravenous therapy services.
§97.21(g)	Relating to the possession of sterile water or saline, certain vaccines or tuberculin, and certain dangerous drugs.
§97.22(b)	Relating to acceptance of a client for home health services and the initiation of services.
§97.22(c)	Relating to employing or contracting with a registered nurse to provide or supervise nursing services.
§97.23(a)	Relating to compliance with the Medicare Conditions of Participation (Social Security Act, Code of Federal Regulations, Title 42, Part 484.
§97.24(a)	Relating to agencies which may provide peritoneal dialysis or hemodialysis services.
§97.24(e)	Relating to an agency's provision of medical and other important information when a dialysis client is transferred to a health care facility for treatment.
§97.24(g)	Relating to routine hepatitis testing of dialysis clients and agency employees providing dialysis care.
§97.24(l)	Relating to the initial admission assessment of a client for home dialysis services.
§97.24(m)	Relating to a long term program for clients receiving home dialysis.
§97.24(n) or (o)	Relating to physician orders for dialysis treatment.
§97.24(p)	Relating to the care plan for a home dialysis client.
§97.24(r)	Relating to medication administration under the home dialysis designation.
§97.24(s)	Relating to the required services to be provided by an agency with the home dialysis designation.
§97.24(t) or (u)	Relating to orientation and training of personnel providing direct care to clients receiving home dialysis.
§97.24(w)	Relating to conducting a history and physical of a home dialysis client.
§97.24(y)	Relating to water treatment in the home dialysis setting.
§97.24(aa)	Relating to reuse of disposable medical devices in the home dialysis setting.

§97.24(bb)(4)	Relating to the administration of blood and blood products for an agency with the home dialysis designation.
§97.24(cc)	Relating to supplies for home dialysis.
§97.25(j)	Relating to securing written informed consent for hospice services.
§97.25(z)(2) or (4)	Relating to a written plan in the event of a disaster.
§97.26(k)	Relating to limiting gastrostomy tube feedings or medication administration to short-term respite care setting for an agency providing personal assistance services.
§97.54	Relating to criminal history checks on unlicensed persons.
§97.61	Relating to home health aides.
§97.62(a) - (n)	Relating to home health medication aides.
§97.62(o) or (p)	Relating to a home health medication aide training program.

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, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Notice of Public Hearings

The Texas Department of Agriculture (the department) will hold three public hearings to take public comment on its proposed organic cotton regulations, new Title 4, Part I, Chapter 3, §§3.600 - 3.609. The proposed new sections will be published in the February 11, 2000, issue of the *Texas Register*. The hearings will be held as follows:

February 21, 2000, beginning at 10:30 a.m., at the Texas A&M Research and Extension Center Auditorium, Route 3, Box 219 (located 1/2 mile east of I-27 on FM 1294), Lubbock, Texas 79772;

February 21, 2000, beginning at 3:00 p.m., at the Dawson County Annex, 601 N. 1st Street, Lamesa, Texas; and

February 22, 2000, beginning at 9:00 a.m. at the Muleshoe National Bank, 101 West American Blvd., Muleshoe, Texas.

For more information, please contact Scott Heselmeyer, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711 (512) 463-7593.

Issued in Austin, Texas, on February 8, 2000. Dolores Alvarado Hibbs Deputy General Counsel Texas Department of Agriculture

TRD-200000976
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: February 8, 2000

Office of the Attorney General

Texas Health and Safety Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Health and Safety Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: State of Texas v. Petroleum Wholesale, Inc, Case No. 35306 in the 66th District Court of Hill County, Texas.

Nature of Defendant's Operations: Defendant operates a truck stop in Hill County that is in violation of provisions of the Texas Water Code. Remediation of leaks from underground storage tanks, oil/water separator tanks, and the disposal of sewage from the truck stop are the subject of the proposed agreed judgment.

Proposed Agreed Judgment: The judgment permanently enjoins Defendant from generating or storing sewage at the truck stop after December 31, 2000, unless the truck stop is connected to an organized and duly permitted sewage collection and treatment system. In the interim, the judgment requires Defendant to report sewage generation and disposal to the TNRCC. The judgment also requires Defendant to proceed with investigation and remediation of releases from underground storage tanks and oil/water separators. Defendant shall pay $7,500 in civil penalties and $17,500 in attorneys fees.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Tom Bohl, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For further information, please call A.G. Younger at 463-2110.

TRD-200000985
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: February 9, 2000

Texas Commission for the Blind

Request for Proposal for Professional Auditing Services

The Texas Commission for the Blind is currently seeking a Certified Public Accountant (CPA) or CPA firm to perform financial auditing

services. These services are to be performed in regards to the Business Enterprises Program, herein referred to as the Program. The Program provides employment opportunities for blind persons in food services businesses. The laws and rules that govern the Program are the Randolph-Sheppard Act, 20 U.S.C. 107-107F; Texas Human Resources Code, Chapter 94; and Chapter 167 of Title 40, Part IV, of the Texas Administrative Code. The procedures governing how licensed managers operate facilities are outlined in the Business Enterprises Program Manual of Operations (BMO).

The contract will be for conducting audits of facilities operated by licensed managers in the Program. These facilities are located throughout the State, generally in the State's larger metropolitan areas (Austin, Houston, Dallas, Fort Worth, San Antonio, and El Paso). There are currently 112 of these facilities across the state, with total annual sales in calendar year 1999 of more than $16.5 million.

The objectives of these audits are to verify that: – the following operational areas are managed, controlled, monitored, reported and/or maintained by the licensed manager (and subcontractors) in accordance with the BMO and good business practices: cash; sales revenue (counter, machine, other income); vending operations; food expenses and inventory; labor; and facility maintenance and record-keeping; and – all applicable payroll and sales taxes have been paid and all vending machine products have been delivered in accordance with the BMO and state and federal requirements.

Twelve facilities have been selected for audit based on a risk assessment performed by the Commission. Audits will be conducted using an audit program formulated by the Commission. The selected CPA or CPA firm must meet with Commission staff for a pre-work conference prior to starting the audits to obtain background information about each facility to be audited.

The Commission's Internal Audit Director will have primary oversight for the performance of this contract. Commission staff will review the work performed and products prepared by the selected CPA or CPA firm. The key products of each audit engagement will be a written statement of findings and supporting work papers. The contractor selected will be paid per engagement when both products are reviewed and accepted by the Commission. The Commission has targeted the timeframe for starting this contract to be around April 1, 2000, with completion around June 30, 2000.

The facilities selected for audit and their location, other pertinent information about the facilities selected, and audit program to be used are available to any CPA or CPA firm interested in responding to this RFP. Contact Tonya Netzley, Internal Audit Director, at (512) 377-0535 to obtain this information.

Proposal Content: If you are interested in making a proposal to perform this contract, please provide the Commission with qualifications, demonstrated competencies or experience, and references related to the provision of these services. Qualifications should include information such as CPA certification and degrees attained by staff, and peer review results. Demonstrated competencies or experience should include information such as past audit work, in general, specific to food services, and specific to contract compliance. At least three references should be provided with the contact name and phone number, and a description of the work performed.

The application also should include, in a sealed envelope, your fee proposal for providing these services. The fee proposal should include all anticipated operational costs, including travel. Travel expenses during the contract period will be reimbursed in accordance with State of Texas Travel Regulations and Official Mileage Guide as they apply to state employees.

Selection under this RFP to perform these services will be made based on qualifications, demonstrated competence, experience and references, for a fair and reasonable fee.

Proposal Deadline and Contact Person: All proposals must be postmarked or hand-delivered no later than **March 3, 2000**, to Ms. Vikki Meeker, Purchasing Manager, Texas Commission for the Blind, 4800 North Lamar Blvd, Suite 360, Austin, Texas 78756. Questions or inquiries about the scope of these financial auditing services should be directed to Ms. Tonya Netzley, Internal Audit Director, at (512) 377-0535.

Note: Should additional resources become available to the Commission during the contract period awarded, the Commission may consider negotiating for additional audits of facilities similar to those covered in this RFP.

TRD-200000949
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: February 7, 2000

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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 received for the following projects(s) during the period of January 26, 2000, through February 3, 2000:

FEDERAL AGENCY ACTIONS:

Applicant: Harbor Properties; Location: The project is located on Pier 9, at the intersection of 9th Street and Harborside Drive, in Galveston, Galveston County, Texas. CCC Project No.: 00-034-F1; Description of Proposed Action: The applicant proposes to construct a barge service facility adjacent to an existing bulkhead. Proposed is the construction of two timber piers, 12- by 300 feet and 12- by 270 feet, two 40- by 40-foot crane pads elevated above the water, and 21 mooring pilings. Type of Application: U.S.A.C.E. permit application #21903 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

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 for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-200000984
Larry R. Soward

Chief Clerk, General Land Office
Coastal Coordination Council
Filed: February 9, 2000

Comptroller of Public Accounts

Notice of Withdrawal

The Comptroller of Public Accounts (Comptroller) hereby withdraws its Request for Proposals (RFP #094bpp) to provide duplicating and mailing services to the Comptroller.

Additional notices regarding future solicitations for these services, if any, will be published on the Texas Marketplace (www./marketplace.state.tx.us) under the Comptroller's pending procurements.

The Notice of the RFP was originally published in the January 14, 2000, issue of the *Texas Register* (25 TexReg 283).

TRD-200000997
Pamela Ponder
Senior Legal Counsel
Comptroller of Public Accounts
Filed: February 9, 2000

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 02/14/00 - 02/20/00 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.09 for the period of 02/14/00 - 02/20/00 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-200000968
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 8, 2000

Texas Education Agency

Request for Applications Concerning Reading Excellence and Academic Development for Texas (READ for Texas) Local Reading Improvement Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications concerning the Reading Excellence and Academic Development for Texas (READ for Texas) Local Reading Improvement Grant under Request for Applications (RFA) #701-00-015 from eligible public school districts, open-enrollment charter schools, or shared services arrangements of eligible public school districts, or open-enrollment charter schools in Texas. To be eligible, applicants must meet at least one of the following three requirements:

1) School improvement status - A Local Education Agency (LEA) that has at least one campus elementary or secondary) that has been identified for school improvement under the Elementary and Secondary Education Act (ESEA), Title I, §1116(c), based on 1998 - 1999 data. A Title I campus is identified for school improvement status based on the Texas State Title I plan if it has been rated as Low Performing by the Texas Academic Excellence Indicator System (AEIS) after one academic year.

2) High poverty numbers - A LEA with the largest or the second largest number of children in the state counted for the Title I formula under ESEA, §1124(c).

3) High poverty rate - A LEA with the highest or second highest poverty rate of school-age children in comparison to other LEAs in the state of Texas. The LEA's poverty rate is the number of children counted under ESEA, Title I, §1124(c), divided by the total number of children aged 5-17 residing in the LEA expressed as a percentage.

An eligible LEA will be permitted to submit only one application for funding and must select eligible campuses within its district to participate in the program. Education Service Centers are eligible to apply as fiscal agents of shared services arrangements comprised entirely of eligible public school districts and/or open-enrollment charter schools.

Participating campuses within eligible LEAs that have met one of the criteria listed previously must meet at least one of the following criteria: 1) School improvement status - The campus must be a Title I campus identified for improvement status as defined by the Texas State Title I plan; 2) High poverty numbers - The campus must serve the highest or second highest number of poor children in the local education agency; or 3) High poverty rate - The campus must have the highest or second highest percentage of poor children in the local education agency.

Description. The READ for Texas program is designed to increase the capacity of eligible LEAs to improve elementary school reading instruction consistent with scientifically based reading research. The program supports professional development for the classroom teacher and other instructional staff on the teaching of reading; the selection of one or more programs of reading instruction; a focus on family literacy services to enable parents to be their child's first and most important teacher; transition programs for kindergarten children who are experiencing difficulty with reading skills; the use of supervised individuals (including tutors) who have been trained using scientifically based reading research; and additional support to children preparing to enter kindergarten and children in kindergarten through Grade 3 who are experiencing difficulty reading. The goal of the program is to provide children in the greatest need with structured support in early childhood and the early grade levels in school so they become proficient readers. This goal complements that of the Texas Reading Initiative to ensure that all children are reading on grade level or higher by the end of the Grade 3 and continue to read on grade level or higher throughout their schooling.

READ for Texas Local Reading Improvement programs must be designed to improve reading instruction in participating schools and include improving the reading instruction practice of teachers and other instructional staff through professional development based on scientifically based reading research, carry out family literacy services, provide extended learning (tutorial and after school programs), and provide early literacy intervention to children experiencing reading difficulties including kindergarten transition programs. A strong evaluation design must measure the extent to which participating students have improved their reading skills, direct benefits to teachers, the effectiveness of professional development activities, and the ef-

fectiveness of the program offered. Applicants should propose a plan to evaluate the most essential components of the program at the district level for all campuses.

Dates of Project. The READ for Texas Local Reading Improvement Grant project will be implemented as a two-year project with the first year's implementation occurring during the 2000 - 2001 school year. Applicants should plan for a starting date of no earlier than July 1, 2000, and an ending date of no later than June 30, 2001.

Project Amount. Funding will be provided for approximately 29 projects. Each project will receive a maximum of approximately $1.3 million for the 2000-2001 school year. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the State Board of Education, the commissioner of education, and the state legislature. The funding level for the second year will be the same as the first year. This project is funded 100% from federal funds.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA number 701-00-015 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing *dcc@tmail.tea.state.tx.us*. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code.

Further Information. For clarifying information about the RFA, contact Marianne Vaughan or Hellen R. Bedgood, Office of Statewide Initiatives, TEA, (512) 463-9027.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of TEA by **5:00 p.m. (Central Time), Monday, April 10, 2000**, to be considered for funding.

TRD-200000991
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: February 9, 2000

Request for Applications Concerning reading Excellence and Academic Development for Texas (READ for Texas) Tutorial Assistance Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications concerning the Reading Excellence and Academic Development for Texas (READ for Texas) Tutorial Assistance Grant under Request for Applications (RFA) #701-00-017 from public school districts, open-enrollment charter schools, or shared services arrangements of eligible public school districts or open-enrollment charter schools in Texas. To be eligible, applicants must meet at least one of the following five requirements: 1) Enterprise Community - A Local Education Agency (LEA) that has at least one campus that is located in the geographic area designated as an enterprise community under the Internal Revenue Code of 1986, Chapter 1, Subchapter U, Part I; 2) Empowerment Zone - A LEA that has at least one campus that is located in the geographic area designated as an empowerment zone under the Internal Revenue Code of 1986, Chapter 1, Subchapter U, Part I; 3) School improvement status - A LEA that has at least one campus (elementary or secondary) that has been identified for school improvement under the Elementary and Secondary Education Act (ESEA), Title I, §1116(c). A Title I campus is identified for school improvement status according to the Title I Texas State Plan if it has been rated as Low Performing by the Texas Academic Excellence Indicator System (AEIS) for the previous school year; 4) High poverty numbers - A LEA with the largest or the second largest number of children in the state counted for the Title I formula under ESEA, Title I, §1124(c); or 5) High poverty rate - A LEA with the highest or second highest poverty rate of school-age children in comparison to other LEAs in the state of Texas. The LEA's poverty rate is the number of children counted under ESEA, Title I, §1124(c) divided by the total number of children aged 5-17 residing in the LEA expressed as a percentage. An eligible LEA will be permitted to submit only one application for the Tutorial Assistance Grant.

Participating campuses within eligible LEAs that have met one of the criteria listed previously must meet at least one of the following criteria: 1) Enterprise Community - The campus must be located in the geographic area designated as an enterprise community under the Internal Revenue Code of 1986, Chapter 1, Subchapter U, Part I; 2) Empowerment Zone - The campus must be located in the geographic area designated as an empowerment zone under the Internal Revenue Code of 1986, Chapter 1, Subchapter U, Part I; 3) School improvement status - The campus must be identified for Title I school improvement status that is described, for the purposes of this grant, as having been rated Low Performing by the Texas AEIS for two consecutive years; 4) High poverty numbers - The campus must serve the highest or second highest number of poor children in the LEA; or 5) High poverty rate - The campus must have the highest or second highest percent of poor children in the LEA.

Description. The READ for Texas program is designed to increase the capacity of eligible LEAs to improve elementary school reading instruction consistent with scientifically based reading research; to provide professional development for the classroom teacher and other instructional staff on the teaching of reading; to provide for the selection of one or more programs of reading instruction; to provide family literacy services to enable parents to be their child's first and most important teacher; to provide a transition program for kindergarten children who are experiencing difficulty with reading skills; and to provide for use of supervised individuals (including tutors) who have been trained using scientifically based reading research; and to provide additional support to children preparing to enter kindergarten and children in kindergarten through Grade 3 who are experiencing difficulty reading. The goal of the program is to provide children in the greatest need with structured support in early childhood and the early grade levels in school so they become proficient readers. This goal complements that of the Texas Reading Initiative to ensure that all children are reading on grade level or higher by the end of the Grade 3 and continue to read on grade level or higher throughout their schooling.

The primary goal of the READ for Texas Tutorial Assistance Grant is to ensure that all children enrolled in kindergarten through Grade 3 who are identified as having difficulty reading are provided tutorial assistance based on scientific research based reading instruction before or after school, on weekends, or during the summer. These extended learning opportunities should complement the daily classroom instruction provided by teachers and should also provide for individual diagnosis and planned extension of the core-reading program. A strong evaluation design must be included in each application. All Tutorial Assistance Grant recipients will be required to measure the extent to which students who are the intended beneficiaries have improved their reading skills, to measure the direct benefits to teachers and tutors of all professional development activities, and to measure the effectiveness of the tutorial programs offered through the Tutorial Assistance Grant. Applicants should propose plans to evaluate the most essential components of the program at the district level for all campuses included in the Tutorial Assistance Grant.

Dates of Project. The READ for Texas Tutorial Assistance Grant project will be implemented as a two-year project with the first year's implementation occurring during the 2000 - 2001 school year. Applicants should plan for a starting date of no earlier than July 1, 2000, and an ending date of no later than June 30, 2001.

Project Amount. Funding will be provided for approximately 40 projects. The anticipated funding range for projects awarded is between, $25,000 and $75,000, not limited thereto for the 2000 - 2001 school year. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the State Board of Education, the commissioner of education, and the state legislature. The funding level for the second year will be the same as the first year. This project is funded 100% from federal funds.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-00-017 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing *dcc@tmail.tea.state.tx.us*. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code.

Further Information. For clarifying information about the RFA, contact Marianne Vaughan or Hellen R. Bedgood, Office of Statewide Initiatives, TEA, (512) 463-9027.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by **5:00 p.m. (Central Time), Monday, April 17, 2000**, to be considered for funding.

TRD-200000992
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: February 9, 2000

Request for Proposals Concerning Services to Assist in the Evaluation of Instructional Materials Submitted Under Proclamatin 1998

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-00-020 from nonprofit organizations, institutions of higher education, private companies, individuals, and regional education service centers to assist in the evaluation of instructional materials submitted under Proclamation 1998. Organizations or individuals currently associated professionally with textbook publishers intending to participate in the adoption of materials submitted under Proclamation 1998 are not eligible. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. Texas Education Code, Chapter 31, requires that the State Board of Education (SBOE) adopt lists of conforming and nonconforming textbooks in the foundation and enrichment curriculum that meet essential knowledge and skills. In addition, adopted textbooks must meet manufacturing specifications and must be free of errors at the time the contracts with publishers are executed. Evaluation of instructional materials submitted under Proclamation 1998, will be conducted by state textbook review panels appointed by the commissioner of education. State textbook review panel members will make recommendations for conforming and nonconforming lists to the commissioner of education based on their evaluations of assigned textbooks. The commissioner of education will make recommendations to the SBOE, who will adopt the textbooks.

Services conducted by a contractor will include: (1) participate in on-site orientation and training of state textbook review panel members and assist with verification of panel member evaluations, (2) conduct follow up with panel members that complete evaluation assignments off site, and (3) participate in meetings with TEA staff as needed.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than May 15, 2000, and an ending date of no later than September 29, 2000.

Project Amount. One contractor will be selected to receive a maximum of $23,000 during the contract period.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in this RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer and upon the reasonableness of the proposed fee. The TEA reserves the right to select from the highest ranking proposals the one that addresses all requirements in the RFP and that is most advantageous to the project.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-00-020 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing *dcc@tmail.tea.state.tx.us*. Please refer to the RFP number in your request.

Further Information. For clarifying information about this RFP, contact Dr. Robert H. Leos, Senior Director, Division of Textbook Administration, Texas Education Agency, (512) 463-9601.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by **5:00 p.m. (Central Time), Wednesday, April 19, 2000**, to be considered.

TRD-200000990
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: February 9, 2000

Education Service Center, Region 10

Request for Applications: Education for Children and Youth Experiencing Homelessness, School Year 2000 - 2001

Filing Authority. The availability of grant funds under Request for Applications (RFA) RFA # ESCR-10/H2001 is authorized by the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77, as amended.

Eligible Applicants. The Region 10 Education Service Center is requesting applications from school districts or cooperatives of school districts and regional education service centers to facilitate the enrollment, attendance, and school success of homeless children and youth.

Description. Applicants should describe plans to provide tutoring, counseling, social work services, transportation, and other assistance that might improve the access of homeless children and youth to a free and appropriate public education. Project evaluations will include data on the impact of the project on the enrollment, school attendance, and the academic success of homeless students.

Dates of Project. The Education of Children and Youth Experiencing Homelessness grants will be implemented during the 2000 - 2001 school year. Applicants should plan for a starting date no earlier than September 1, 2000.

Project Amount. Approximately $2.1 million will be provided for an unspecified number of projects; the number of projects will depend on the number of applicants. Each project will receive a maximum of $135,000 for the 2000 - 2001 school year. Project funding in the second and third years will be based on satisfactory progress of the first- and second-year objectives and activities and on general budget approval by the State Board of Education, the commissioner of education, the state legislature, and the availability of funding. This project is funded 100% from Stewart B. McKinney Homeless Assistance Act federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The Region 10 ESC reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

Region 10 ESC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit Region 10 ESC to pay any costs before an application is approved. The issuance of this RFA does not obligate Region 10 to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the Request For Application ESCR-10/H2001 may be obtained by writing the University of Texas at Austin, Charles A. Dana Center, Office for the Education of Homeless Children and Youth, 2901 North IH-35, Suite 2.422, Austin, TX 78722-2348, or by calling 1 - (800) 446-3142 or (512) 475-9702 (in Austin). Please refer to the RFA # in your request.

Further Information. For clarifying information about the RFA, contact the Office for the Education of Homeless Children and Youth at 1 - (800) 446-3142 or (512) 475-9702.

Deadline for Receipt of Application. Applications must be received in the Region 10 ESC business office by **5:00 p.m. (Central Daylight Savings Time), Friday, April 14, 2000**, to be considered.

TRD-200000741
Dr. Joe T. Farmer
Executive Director
Education Service Center, Region 10
Filed: February 2, 2000

Office of The Governor

Notice of Invitation for Applications for the Extraordinary Costs of Investigating and Prosecuting Capital Murder

The Criminal Justice Division, Office of the Governor is soliciting applications for grants to assist with extraordinary costs associated with prosecuting capital murder cases. The total amount available under this initiative is $903,000. The Criminal Justice Division will award at least one-half of these funds to counties with populations of less than 50,000. The maximum amount allowed to counties is $100,000. All grants must adhere to the rules and policies included in Title I, Chapter 3, Texas Administrative Code. Full specifications are in the application kit.

Eligible Applicants: Counties are the only applicants eligible to apply.

Contact Information: For questions regarding this initiative or a copy of the application kit call Camille Cain, Planning and Grant Administration, Criminal Justice Division, Office of the Governor at (512) 463-1789.

Applications Deadlines: CJD will accept and consider applications three times during the first year of the program. Grant applications must be postmarked by or received at the Governor's Criminal Justice Division on May 1, 2000; August 1, 2000; or November 1, 2000. If an application does not receive funding in the quarter it is submitted, it will be automatically reentered into competition in the following three quarters for as long as funds are available or the applicant withdraws it

Application Selection Process: A selection committee appointed by the executive director of the Criminal Justice Division will review eligible applications each quarter in two groups - counties with populations with less than 50,000 and counties with populations of 50,000 and over. Grants will be awarded based on the documented level of financial hardship on the county caused as a result of the capital murder case. As a result, counties where a capital murder caused a deficit or where the costs for the capital murder represent a large percentage of a county's deficit will be given preference. Counties with a budget surplus or where the capital murder was a

very small percentage of a county's deficit will only be awarded grants in the absence of adequate applications that can demonstrate a greater financial need. The Criminal Justice Division will make recommendations to the Governor, who will make all final funding decisions. In the event that no appropriate applications are received, the Criminal Justice Division reserves the right to fund no grants under this initiative or to not use the full amount available under this initiative. All decisions are fully within the discretion of the Office of the Governor and all decisions shall be final.

TRD-200000809
Claudia Nadig
Assistant General Counsel
Office of The Governor
Filed: February 4, 2000

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Texas Department of Health

Correction of Error

The Texas Department of Health proposed an amendment to 25 TAC §137.55, concerning Voluntary Paternity Establishment Services in Birthing Centers, in the January 28, 2000, issue of the *Texas Register* (25 TexReg 508).

Due to an error in the agency's submission, the section number was published as "§133.55". It should read "§137.55".

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Deer Park	Shell Epoxy Resins LLC	L05323	Deer Park	0	01/24/00
Stephenville	Stephenville Medical and Surgical Clinic	L05309	Stephenville	0	01/18/00

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Abilene	ADJ Services	L04142	Abilene	12	01/28/00
Austin	Austin Radiological Association	L00545	Austin	85	01/18/00
Baytown	Exxonmobil Refining and Supply Company	L01134	Baytown	50	01/28/00
Baytown	Exxonmobil Chemical Company	L01135	Baytown	58	01/28/00
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	83	01/25/00
Bellville	Bellville Hospital District	L03295	Bellville	15	01/28/00
Bonham	Northeast Medical Center LP	L03331	Bonham	17	01/28/00
Bryan	St. Joseph Regional Health Center	L00573	Bryan	51	01/31/00
Carrollton	Tenet Health System Hospitals Dallas Inc	L03765	Carrollton	29	01/19/00
Cedar Creek	Biocrest Manufacturing LP	L05214	Cedar Creek	02	01/26/00
Corpus Christi	Spohn Health System Corporation	L00265	Corpus Christi	70	01/25/00
Corpus Christi	Riverside Hospital Inc	L02977	Corpus Christi	26	01/28/00
Corpus Christi	Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	20	01/24/00
Corpus Christi	Coastal Cardiology Association	L04754	Corpus Christi	13	01/24/00
Dallas	Doctors Hospital	L01366	Dallas	38	01/25/00
Dallas	Tenet Health System Hospitals Dallas Inc	L02314	Dallas	38	01/14/00
Dallas	Physician Reliance Network Inc	L03989	Dallas	17	01/27/00
Dallas	PET Net Pharmaceutical Services Inc	L05193	Dallas	03	01/31/00
Dallas	Clear Sky MRI Imaging Center	L05201	Dallas	02	01/25/00
Dallas	Alliance Geotechnical Group Inc	L05314	Dallas	01	01/28/00
Denton	International Isotopes Inc	L05159	Denton	08	01/26/00
Denton	Metro North Clinic	L05235	Denton	03	01/28/00
El Paso	Southwestern General Hospital	L02338	El Paso	23	01/27/00
Galveston	The University of Texas Medical Branch	L01299	Galveston	54	01/27/00
Houston	Halliburton Energy Services Inc	L00442	Houston	94	01/28/00
Houston	Kelsey Seybold Clinic PA	L00391	Houston	50	01/31/00
Houston	Kellogg Brown & Root Inc	L03391	Houston	26	01/26/00
Houston	Richmond Imaging Affiliates LTD	L04342	Houston	28	01/18/00
Houston	Richmond Imaging Affiliates LTD	L04342	Houston	29	01/20/00
Houston	Champions MRI & Diagnostic Center	L04859	Houston	09	01/24/00

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Lake Jackson	Southern Services Inc	L05270	Lake Jackson	04	01/26/00
Longview	Longview Regional Hospital Inc	L02882	Longview	25	01/21/00
Marble Falls	Hill Country Imaging Associates PA	L05301	Marble Falls	01	01/28/00
McAllen	Cardiovascular Consultants of McAllen PA	L05126	McAllen	07	01/19/00
Plano	Arco Exploration and Production	L00134	Plano	66	01/24/00
Quitman	East Texas Medical Center Quitman	L03376	Quitman	09	01/31/00
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	97	01/24/00
San Antonio	Trinity University	L01668	San Antonio	29	01/21/00
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	22	01/21/00
Through out Texas	Cooperheat-MQS Inc	L00087	Houston	79	01/20/00
Through out Texas	Stork Southwestern Laboratories Inc	L00299	Houston	106	01/25/00
Through out Texas	Associated Wireline Services Inc	L00835	Wichita Falls	13	01/24/00
Through out Texas	Haliburton Energy Services Inc	L02113	Houston	93	01/28/00
Through out Texas	H & G Inspection Company Inc	L02181	Houston	131	01/28/00
Through out Texas	Non Destructive Inspection Corporation	L02712	Lake Jackson	70	01/26/00
Through out Texas	Global X-Ray & Testing Corp	L03663	Aransas Pass	81	01/25/00
Through out Texas	Computalog Wireline Services Inc	L04286	Fort Worth	36	01/21/00
Through out Texas	Desert Industrial X-Ray LP	L04590	Odessa	25	01/28/00
Through out Texas	Professional Service Insustries	L04942	Houston	07	01/28/00
Through out Texas	Conam Inspection	L05010	Houston	21	01/26/00
Through out Texas	Texas NDT Company	L05089	Pasadena	03	01/21/00
The Woodlands	Genometrix Incorporated	L05167	The Woodlands	01	01/26/00
Tyler	Trinity Mother Frances	L01670	Tyler	75	01/20/00

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Arlington	Metroplex Hematology	L03211	Arlington	58	01/28/00
Bryan	Osmonics-Poretics	L04065	Bryan	06	01/21/00
Palestine	Palestine Principal Healthcare Limited Partnership	L02728	Palestine	31	01/26/00
Through out Texas	Star-Jet Services Inc	L02214	Corpus Christi	17	01/21/00
Through out Texas	Production Logging Inc	L02698	Snyder	19	01/28/00
Through out Texas	Littleton Inspection Services	L04835	Desoto	04	01/28/00

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Beaumont	Columbia Beaumont Medical Center	L02102	Beaumont	45	01/26/00
Lake Jackson	Southern Services Inc	L02683	Lake Jackson	62	01/24/00
South Houston	US Leak Detection Inc	L03268	South Houston	10	01/31/00

[graphic]

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-200000956
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 8, 2000

Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Rickey A. Watson, D.P.M., Fort Worth, R16963; Gulf Coast Family Medical Center, Angleton, R19957; Greater Houston Physician Network, Houston, R16171; Harrell A. Grand, M.D., P.A., Dallas, R15355; River Oaks Family Practice, Fort Worth, R09037; Harold H. Reed, Jr., D.D.S., Inc., Denton, R06520; Jose E. Aguirre, D.M.D., San Antonio, R13232; Byron A. Mercer, D.D.S., Pasadena, R17617; Scott Summerlin, D.D.S., Coppell, R19962; La Primera Chiropratic, Laredo, R23511; John B. Glenn, D.C., P.C., Abilene, R24249; Clawson Family Chiropractic Center, Arlington, R19150.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200000889
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 7, 2000

Notice of Request for Proposals for Independent Consultant to Perform Risk Assessments Related to the Administrative Services Provided by Texas Medicaid Administrative System Contractors

Pursuant to Chapter 2254, Subchapter A, Texas Government Code, the Texas Department of Health (department) announces the issuance of its Request For Proposals (RFP) from qualified independent consultants to perform risk assessments for the administrative services provided by the Texas Medicaid Administrative (TMAS) contractors and the department's program areas responsible for the operation and/or oversight of the TMAS contractors. The RFP will be released on or about February 18, 2000.

Purpose

The department intends to procure the services of a qualified independent consultant to perform risk assessments for the administrative services provided by the Texas Medicaid Administrative (TMAS) contractors and the department's program areas responsible for the operation and/or oversight of the TMAS contractors. The four TMAS contractors are as follows: National Heritage Insurance Company, Birch & Davis Health Management Corporation, MAXIMUS, Inc. and Joint Commission on Accreditation of Health Care Organizations, doing business as Texas Health Quality Alliance.

In May 1999, the Texas legislature adopted House Bill 2085 and House Bill 2896 which direct the department to contract with an independent auditor to perform independent external financial and performance audits of any Medicaid contractor used by the department in the department's operation of a part of the state Medicaid program. The frequency and extent of the audits must be based on the amount of risk to the state involved in the administrative services being performed by the TMAS contractors.

Based on that statutory construct, the department will act as a prudent purchaser of risk assessments, performed by an independent consultant, to improve the state's understanding of the financial and performance risk(s) involved with each respective TMAS contractor. In addition, the department will also have the independent consultant perform risk assessments for the department's program areas responsible for the operation and/or oversight of the TMAS contractors.

The department initiates this RFP to facilitate the development of strategies and associated work plans to contract for independent consulting services for the Texas Medicaid program in the most cost effective manner possible; and the necessary risk assessments required for planning and executing the external financial and performance audits for each respective TMAS contractor.

Brief Description of Services

The successful proposer must have experience in and/or knowledge of: (1) Organization risk management, risk identification and risk analysis, (2) Generally Accepted Government Auditing Standards (GAGAS) promulgated by the Comptroller General of the United States, (3) Federal Acquisition Regulations (FAR), (4) applicable principles governing the allowability of costs as set out in Title 48 CFR Section 31.2 - Contracts with Commercial Organizations and (5) applicable principles governing the allocability of costs as set out in Title 48 CFR Chapter 99 - Cost Accounting Standards - Principles for Cost Allocation. The successful proposer will be required to perform risk assessments as outlined in the RFP; utilizing generally accepted risk assessment protocols, Generally Accepted Auditing Standards, contractual elements contained in each respective TMAS contract and any other applicable federal or state requirements.

The successful proposer will be responsible for performing risk assessments related to the administrative services provided by the TMAS contractors during the initial base periods of each respective contract and the department's program areas with responsibility for the operation and/or oversight of the TMAS contractors to (1) develop an understanding of the objectives/strategies, processes, capabilities and the contextual dynamics affecting the operations of each respective TMAS contract, (2) profile the philosophy on risk for each respective TMAS contractor and each applicable department program area, (3) develop an understanding of the risk management strategies implemented by each respective contractor and each applicable department program area; (4) provide advice and recommendations relating to each respective TMAS contractor's risk management philosophies, strategies and their implementation and (5) provide advice and recommendations relating to each applicable department program area's risk management philosophies, strategies and their implementation.

The successful proposer will be responsible for defining, specifying and developing all requirements related to the mandated risk assessments. Field work standards should at a minimum include, but not be limited to, (1) risk assessments related to known material findings and recommendations from previous audits, where applicable, (2) designing the required risk assessments to provide reasonable assurance of detecting areas of potential risk from noncompliance with provisions in each respective TMAS contract, (3) attaining an analysis of risk related to the internal controls and management controls of each respective TMAS contractor, (4) planning the work to provide reasonable assurance on compliance with laws and regulations applicable to each respective TMAS contract, and (5) compiling work papers that contain sufficient information to enable an experienced auditor (or an individual experienced with organizational risk management) having no previous connection with the risk assessment to ascertain that evidence supports the consultant's significant conclusions and judgments.

Eligible Applicants

Eligible applicants include qualified independent consultants. Proposers must disclose any existing or potential conflicts of interest relative to the performance of the requirements of the RFP. Examples of potential conflicts of interest may include an existing business or personal relationship between the proposer, its principal(s), or any af-

filiate or subcontractor, with the department, other participating state agencies, the TMAS contractors, or any other entity or person involved in any way in any project that is subject to this RFP. Any such relationship that might be perceived or represented as a conflict must be disclosed. Failure to disclose any such relationship may be cause for contract termination or disqualification of the proposal.

Prospective Proposer's Conference

A proposer's conference is scheduled for Friday, February 25, 2000, at 10:00 a.m., in Austin Texas in the First Floor Public Hearing Room at the department's office located at 12555 Riata Vista Circle, Building III. Attendees are requested to allow enough time for entry through Building II, Riata Security. For maps and directions, please reference the following web site: http://www.tdh.state.tx.us/visitor.htm#hcf.

Closing Date

Each potential proposer is required to submit a non-binding Letter of Intent To Propose (Letter of Intent), which must be received in the issuing office no later than 4:00 p.m., March 3, 2000. The Letter of Intent must state that the proposer is considering submitting a proposal. Only the proposals of those proposers who submit a Letter of Intent will be considered. The Letter of Intent must identify the entity that may submit a proposal in response to the RFP, and must be signed by an official of that entity. Proposals must be submitted by the following date and time: March 28, 2000, 4:00 p.m. Late proposals will not be considered.

For a Copy of the RFP

Potential proposers may obtain a copy of the RFP on or about February 18, 2000. Requests for the RFP must be submitted in writing to: Larry Fisher, Mail Code Y-995, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; Fax: (512) 338-6544. A copy of the RFP will also be available to download at the following web site: http://www.tdh.state.tx.us/hcf/rfp/phs- rfp.htm.

Contact Person

Questions regarding this RFP must be directed to: Larry Fisher, Mail Code Y-995, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; Telephone: (512) 794-6894, Fax: (512) 338-6544.

TRD-200000998
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 9, 2000

Notice of Request for Proposals for the Texas Diabetes Capacity/Infrastructure Development Program

Introduction

The Texas Department of Health (department) requests proposals for the Texas Diabetes Capacity/Infrastructure Development (CID) Program for the project period June 1, 2000, through August 31, 2003. The department is seeking to select providers of services to target high priority populations as described below. Proposals will be reviewed and awarded on a competitive basis.

Purpose

The goals of this CID Program grant are to improve the health status of underserved people in Texas and to establish the capacity and infrastructure to develop, promote and disseminate positive breakthrough changes in public primary care systems. This Request for Proposals (RFP) seeks to improve the health status of the underserved, and to provide clinicians with the systems, tools, and resources needed for high quality care, productive work environments, and strong clinical leadership. The objectives for the CID Program are to: 1) generate and document improved health outcomes for underserved populations, 2) transfer knowledge about how to promote positive breakthrough changes, and 3) develop infrastructure, expertise and leadership to support and drive improved health, access and cost outcomes. We seek specifically to: 1) decrease or delay the complications of diabetes through an interdisciplinary clinical strategy coupled with a strong collaboration with patient, family, and community, 2) demonstrate decreased economic burden for patients and the community with the effective management of diabetes, and 3) improve access to quality diabetes care for underserved populations. These grant funds are intended to enhance, not supplant, current activities. They cannot be used to develop training materials or curriculum.

Eligible Applicants

Eligible applicants include university-based programs, governmental entities, and not-for-profit organizations located and/or actively involved in Texas. Individuals are not eligible to apply. Eligible applicants must demonstrate a willingness and ability to conform to all the objectives outlined in this RFP.

Available Funds

Approximately $50,000 is expected to be available to fund one project for approximately three months during fiscal year 2000. Funds in the amount of approximately $185,000 per year will be available for an additional three full years if funding is available from the Texas Legislature and if the applicant's performance is satisfactory. The specific dollar amount to be awarded to the selected applicant for each budget period will depend upon the merit and scope of the proposed project. It is expected that funding will remain at level throughout the project period, September 1, 2001 through August 31, 2003.

Selection Criteria:

Applications will be reviewed and scored by a team of department employees with expertise in diabetes, health promotion, and public health, using a standardized scoring instrument. Each proposal will be reviewed and scored by at least two individuals. Only the highest ranking proposal will be funded. However, if no proposal is received that is deemed acceptable, then the department reserves the right to not fund any project. Final budget will be decided by department staff based on reviewer recommendations and negotiations with the applicant.

Deadline and Submission

The original and three copies of the application must be postmarked or received by Austin Kessler, Program Specialist, Texas Diabetes Program/Council, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, on or before 5:00 p.m., Central Daylight Saving Time, on April 15, 2000. No facsimiles will be accepted. Late competing applications not accepted for processing will not be considered and the applicant will receive written notification of the application status. Applications postmarked after the due date and time shall not be considered for review.

Review and Award Criteria

Each application will be screened for minimum eligibility, completeness, and satisfactory fiscal and administrative history. Applications that are deemed ineligible or incomplete will not be reviewed. Applications that arrive after the deadline for submission will not be

reviewed. Applications will be reviewed and scored by a team of department employees with expertise in diabetes, health promotion, and public health, using a standardized scoring instrument. Each application will be reviewed and scored by at least two individuals. Eligible, complete applications will be reviewed by a panel of reviewers and scored according to several criteria, including, but not limited to: 1) the applicant's experience in conducting health care organizational capacity/infrastructure development training specific to diabetes, 2) the organization's proposed faculty experience and expertise in conducting health care organizational capacity/infrastructure development training specific to diabetes, 3) the clarity and appropriateness of the goals, objectives, and performance measures, and 4) evidence of a realistic service delivery plan, along with a budget request that is realistic, clear, and appropriate to fulfilling both the service delivery plan and contractor expectations,

For Information

For a copy of the RFP, and other information, contact Mr. Austin Kessler, Texas Diabetes Program/Council, at (512) 458-7490 or at email: austin.kessler@tdh.state.tx.us. No copies of the RFP will be released prior to March 1, 2000.

TRD-200000999
Susan K. Steeg
General Counsel
Texas Department of Health
Filed:February 9, 2000

Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for incorporation to the State of Texas by SGP BENEFIT PLAN, INC., a domestic Multiple Employer Welfare Arrangement. The home office is in Flower Mound, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200001000
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 9, 2000

Notice of Filing

The following petition has been filed with the Texas Department of Insurance and is under consideration:

The adoption of amendments to the Plan of Operation for the Texas Workers' Compensation Insurance Fund (Fund), pursuant to Article 5.76-3 Section 5, Insurance Code.

The proposed amendments to the Fund's Plan of Operation update various organizational information about the Fund, reword the three (3) goals of the Fund to conform to the language in the statute and delete reference to retirement or defeasance of revenue bonds since the bonds were completely defeased during 1999.

This filing is subject to Department approval without a hearing unless an objection is filed with Nancy Moore, Deputy Commissioner Workers' Compensation, Texas Department of Insurance, Mail code 105-2A, P. O. Box 149104, Austin, Texas 78714-9014 within 15 days after publication of this notice.

For further information or to request a copy of the proposed amendments, please contact Angie Arizpe (512) 322-4147 (Refer to reference number W-1299-23).

TRD-200000818
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 4, 2000

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 Memorial Hermann Health-Net Providers, Inc., a domestic third party administrator. The home office is Houston, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200000967
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 8, 2000

Interagency Council on Early Childhood Intervention

Request for Proposals

Notice of Invitation. The Interagency Council on Early Childhood Intervention (ECI) announces a Request for Proposal (RFP) for funding comprehensive early childhood intervention services in the following counties for the period from September 1, 2000 through August 31, 2001: Potter and Randall. This RFP was previously published in the January 21, 2000, issue of the *Texas Register* (25 TexReg 437). The previous RFP was rescinded. The scope of work includes a comprehensive array of services to children with developmental delays and their families. All applicants must comply with all program requirements under V.T.C.A., Human Resources Code, Chapter 73 and 25 Texas Administrative Code, Chapter 621.

Contact Person. The RFP is available to all interested parties upon written request to Roland Greer, Interagency Council on Early Childhood Intervention, 4900 North Lamar Boulevard, Suite 2110, Austin, Texas 78751-2399. A copy may also be obtained by calling (512) 424-6825 or by visiting the ECI administrative office at the address listed in this notice. Questions should be directed to Roland Greer at (512) 424-6825.

Closing Date. All proposals to be considered for funding must be received in the ECI administrative office by 5:00 p.m. on May 12, 2000. ECI reserves the right to reject all proposals if necessary.

Selection Criteria. Proposals will be evaluated based on the following "Best Value" criteria: past performance, quality of services, cost, ability to maximize local and federal income, ability to comply

with state and federal program requirements, ability to deliver required services, and service area configuration. Review teams will make recommendations to the ECI Board for approval or denial of proposals received. Interagency Council on Early Childhood Intervention

TRD-200000993
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Filed: February 9, 2000

Request for Proposals

Notice of Invitation. The Interagency Council on Early Childhood Intervention (ECI) announces a Request for Proposal (RFP) for funding comprehensive early childhood intervention services in the following counties for the period from September 1, 2000 through August 31, 2001: Atascosa, Dimmit, Frio, Gonzales, Guadalupe, La Salle, McMullen, Wilson and Zavala. This RFP was previously published in the January 21, 2000, issue of the *Texas Register* (25 TexReg 437). The previous RFP was rescinded. The scope of work includes a comprehensive array of services to children with developmental delays and their families. All applicants must comply with all program requirements under V.T.C.A., Human Resources Code, Chapter 73 and 25 Texas Administrative Code, Chapter 621.

Contact Person. The RFP is available to all interested parties upon written request to Roland Greer, Interagency Council on Early Childhood Intervention, 4900 North Lamar Boulevard, Suite 2110, Austin, Texas 78751-2399. A copy may also be obtained by calling (512) 424-6825 or by visiting the ECI administrative office at the address listed in this notice. Questions should be directed to Roland Greer at (512) 424-6825.

Closing Date. All proposals to be considered for funding must be received in the ECI administrative office by 5:00 p.m. on May 12, 2000. ECI reserves the right to reject all proposals if necessary.

Selection Criteria. Proposals will be evaluated based on the following "Best Value" criteria: past performance, quality of services, cost, ability to maximize local and federal income, ability to comply with state and federal program requirements, ability to deliver required services, and service area configuration. Review teams will make recommendations to the ECI Board for approval or denial of proposals received. Interagency Council on Early Childhood Intervention

TRD-200000994
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Filed: February 9, 2000

Request for Proposals

Notice of Invitation. The Interagency Council on Early Childhood Intervention (ECI) announces a Request for Proposal (RFP) for funding comprehensive early childhood intervention services in the following counties for the period from September 1, 2000 through August 31, 2001: Chambers (partial county), Jefferson and Orange. This RFP was previously published in the January 21, 2000, issue of the *Texas Register* (25 TexReg 437). The previous RFP was rescinded. The scope of work includes a comprehensive array of services to children with developmental delays and their families. All applicants must comply with all program requirements under V.T.C.A., Human Resources Code, Chapter 73 and 25 Texas Administrative Code, Chapter 621.

Contact Person. The RFP is available to all interested parties upon written request to Roland Greer, Interagency Council on Early Childhood Intervention, 4900 North Lamar Boulevard, Suite 2110, Austin, Texas 78751-2399. A copy may also be obtained by calling (512) 424-6825 or by visiting the ECI administrative office at the address listed in this notice. Questions should be directed to Roland Greer at (512) 424-6825.

Closing Date. All proposals to be considered for funding must be received in the ECI administrative office by 5:00 p.m. on May 12, 2000. ECI reserves the right to reject all proposals if necessary.

Selection Criteria. Proposals will be evaluated based on the following "Best Value" criteria: past performance, quality of services, cost, ability to maximize local and federal income, ability to comply with state and federal program requirements, ability to deliver required services, and service area configuration. Review teams will make recommendations to the ECI Board for approval or denial of proposals received.

TRD-200000995
Donna Samuelson
Deputy Executive Director
Interagency Council on Early Childhood Intervention
Filed: February 9, 2000

Texas Department of Licensing and Regulation

Correction of Error

The Texas Department of Licensing and Regulation adopted 16 TAC §65.90 and §65.100 relating to the Boiler Division. The adopted rules appeared in the January 21, 2000, *Texas Register* (25 TexReg 385). The proposed rules appeared in the October 29, 1999, *Texas Register* (24 TexReg 9450).

Due to errors in the agency's submission, the word "sanction" should read "sections" in §65.90(a). The second sentence should read as follows.

"If a boiler has not been properly prepared for an internal inspection or a hydrostatic test as set for in these sections, the inspector may decline to make the inspection or witness the test, and the certificate of operation shall be withheld until the owner or operator complies with all requirements."

In §65.100(f)(1) the words "gages, gage glasses, and similar devices" were omitted from the last sentence. The sentence should read as follows.

"The safety devices, gages, gage glasses, and similar devices attached to the vessel shall also be included within these limits."

Texas Department of Mental Health And Mental Retardation

Public Hearing Notice on Reimbursement Rates for Services in Institutions for Mental Diseases (IMD)

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint

public hearing to receive public comment on proposed reimbursement rates for state-operated intermediate care facilities for the mentally retarded (ICFs/MR) effective January 1, 2000, through December 31, 2000. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on Monday, March 6, 2000, at 1:00 p.m. in the auditorium of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by **noon on Monday, March 6, 2000**. Interested parties may obtain a copy of the reimbursement briefing package ten days prior to the hearing by calling the reimbursement and Analysis Section at (512) 206-5753.

Persons requiring ADA accommodation should contact Tom Wooldridge by calling (512)206-5753, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tom Wooldridge through the Texas Relay operator by calling 1- (800) 735-2988. Health and Human Services Commission and Texas Department of Mental Health and Mental Retardation Notice of Joint Public Hearing on Reimbursement Rates for Services in Institutions for Mental Disease (IMD)

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint public hearing to receive public comment on proposed reimbursement rates for IMD services, effective April 1, 2000, through March 31, 2001. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on Monday, March 6, 2000, at 3:00 p.m. in the auditorium of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by **noon on Monday, March 6, 2000**. Interested parties may obtain a copy of the reimbursement briefing package ten days prior to the hearing by calling the reimbursement and Analysis Section at (512) 206-5753.

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TRD-200000953
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 7, 2000

Public Hearing Notice on Reimbursement Rates for State-Operated Intermediate Care Facilities for the Mentally Retarded (ICFs/MR)

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint public hearing to receive public comment on proposed reimbursement rates for state-operated intermediate care facilities for the mentally retarded (ICFs/MR) effective January 1, 2000, through December 31, 2000. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on Monday, March 6, 2000, at 1:00 p.m. in the auditorium of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by **noon on Monday, March 6, 2000**. Interested parties may obtain a copy of the reimbursement briefing package ten days prior to the hearing by calling the reimbursement and Analysis Section at (512) 206-5753.

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TRD-200000952
Charles Cooper

Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: February 7, 2000

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission proposed amendments to 30 TAC §§101.1, 101.6, 101.7, and 101.11 concerning General Air Quality Rules. The rules appeared in the January 28, 2000, issue of the *Texas Register* (25 TexReg 530).

Due to errors in the agency's submission the following references should be corrected.

In the preamble on page 531 under the heading "SECTION BY SECTION DISCUSSION" in the eighth paragraph, the reference should have been to §101.1(82)(B)(i), (ii), and (iii). In the ninth paragraph, the reference should have been to §101.1(82)(B)(iv).

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Invitation to Comment on the Draft January 2000 Update to the Water Quality Management Plan for the State of Texas

The Texas Natural Resource Conservation Commission (TNRCC) announces the availability of the draft January 2000 Update to the Water Quality Management Plan for the State of Texas.

The Water Quality Management Plan (WQMP) for the State of Texas is developed and promulgated pursuant to the requirements of the Federal Clean Water Act, §208. The draft January 2000 WQMP Update for the State of Texas includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the TNRCC certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the TNRCC.

A copy of the draft January 2000 Update for the State of Texas may be found on TNRCC's web page at *http://www.tnrcc.state.tx.us/water/quality/wqmp*. A copy of the draft may also be viewed at the TNRCC Library located at Texas Natural Resource Conservation Commission, Building A, 12100 Park Thirty- Five Circle, Austin, Texas 78753.

Written comments on the draft January 2000 Update to the Water Quality Management Plan for the State of Texas shall be submitted to Ms. Suzanne Vargas, Texas Natural Resource Conservation Commission, Water Permits and Resource Management Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on March 20, 2000. For further information or questions, please contact Ms. Vargas at (512) 239-4619 or by e-mail at svargas@tnrcc.state.tx.us.

TRD-200000960
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: February 8, 2000

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC staff proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §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 **March 20, 2000**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Orders is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 20, 2000**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1) COMPANY: Amelia Flores; DOCKET NUMBER: 1999-0791-EAQ-E; TNRCC IDENTIFICATION (ID) NUMBER: 13837; LOCATION: Elijah Clark Survey Number l, Track 13, Northwest Hills, San Marcos, Hays County, Texas; TYPE OF FACILITY: residential development site; RULES VIOLATED: 30 TAC §213.4(a) by engaging in the clearing of the site and other activities that alter or disturb the topographic, geologic, or existing recharge characteristics of the site prior to receiving TNRCC approval of an Edwards Aquifer Protection Plan; PENALTY: $2,500; STAFF ATTORNEY: William Puplampu, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Sultan A. Mohamand, Ali A. Mohamand, And Fahim Mohmand dba Texas Food Store; DOCKET NUMBER: 1999-0643-PST-E; TNRCC ID NUMBER: 0070037; LOCATION: 1101 California Lane, Arlington, Tarrant County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: 30 TAC §115.245(2) and Texas Health & Safety Code (THSC), §382.085(b) by failing to perform the annual pressure decay testing within the preceding 12 months; 30 TAC §115.248(1) and THSC, §382.085(b) by failing to have a facility representative trained in the operation and maintenance of the Stage II vapor recovery system

(VRS); 30 TAC §115.246(7)(A) and THSC, §382.085(b) by to keep all the Stage II records on-site at the facility and immediately available for review upon request; 30 TAC §334.50(a)(1)(A) and §26. 3475 by failing to provide a method of release detection capable of detecting a release from any portion of the UST system; and 30 TAC §334.93(a) and (b) by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily and property damage caused by accidental releases arising from the operation of petroleum from the USTs; PENALTY: $30,625; STAFF ATTORNEY: William Puplampu, Litigation Division, MC 175, (512) 0677; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3) COMPANY: Hassan Abu Nejmeh dba Savway Food Stores; DOCKET NUMBER: 1999- 0017-PST-E; TNRCC ID NUMBER: 13012; LOCATION: 4620 Old Granbury Road, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: UST; RULES VIOLATED: 30 TAC §115.242(3) and THSC, §382.085(b) by failing to maintain the Stage II VRS; and 30 TAC §115.246(7)(A) and THSC, §382.085(b) by failing to maintain all Stage II records on-site at the station to be made immediately available for review upon request; PENALTY: $6,250; STAFF ATTORNEY: Heather Otten, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-200000777
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: February 4, 2000

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (the Code), §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC 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* not later than the 30th day before the date on which the public comment period closes, which in this case is **March 20, 2000**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold 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 TNRCC's Orders and permits issued pursuant to the TNRCC'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 of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 20, 2000**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys 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 TNRCC in **writing**.

(1) COMPANY: Robert Deaton dba Oak Hill Development; DOCKET NUMBER: 1999-0657- PWS-E; TNRCC IDENTIFICATION (ID) NUMBER: 1840114; LOCATION: 3883 Fort Worth Highway, Weatherford, Parker County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.39(c)(1) and (g) by failing to provide the required written notification to the executive director of the increased ground storage capacity; 30 TAC §290.41(c)(3)(B) and (J) by failing to extend the well casing to eighteen inches above the ground level and by failing to provide the proper concrete sealing block on the well casing; 30 TAC §290.43(e) by failing to provide an intruder-resistant fence which encloses the ground storage tank (GST) and the pressure tank; 30 TAC §290.46(f)(1)(A) and (2)(B) by failing to maintain the free chlorine residual of 0.2 milligram per liter throughout the distribution system and by failing to perform the required weekly chlorine residual tests; and 30 TAC §290.46(i) by failing to adopt an adequate plumbing ordinance, regulation, or service agreement; PENALTY: $1,375; STAFF ATTORNEY: I-Jung Chiang, Litigation Division, MC 175, (512) 239-6122; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2) COMPANY: Erath Recycling Company, Incorporated; DOCKET NUMBER: 1999 0730- IHW-E; TNRCC ID NUMBER: 364; LOCATION: 1 1/2 mile southwest of the city of Stephenville on Highway 377, Erath County, Texas; TYPE OF FACILITY: metal salvage and recycling; RULES VIOLATED: 30 TAC §335.4 and the Code, §26.121 by causing the unauthorized discharge of industrial solid waste into or adjacent to the waters in the state; 30 TAC §335.6(a) and (d) by failing to notify the executive director prior to the transportation and disposal of hazardous waste; 30 TAC §335.9(a)(1) and (2) by failing to maintain required records of hazardous and industrial solid waste activities and by failing to submit an annual waste summary; 30 TAC §335.62 by failing to conduct a hazardous waste determination on the industrial solid waste generated by the facility's operations; 30 TAC §335.63 by failing to obtain a required United States Environmental Protection Agency (EPA) identification number prior to generating hazardous waste; 30 TAC §335.69(f)(2) by failing to keep containers closed except when adding or removing waste and by failing to conduct weekly inspections on containers; 30 TAC §335.69(f)(4) by failing to label hazardous waste containers with the words "hazardous waste" and an accumulation start date; 30 TAC §335.69(f)(5)(C) by failing to demonstrate that all employees are thoroughly familiar with proper waste handling and emergency procedures; 30 TAC §335.69(g) by failing to meet accumulation time requirements; 30 TAC §335.92 by failing to obtain a required EPA identification number prior to transporting or offering for transportation hazardous waste; 30 TAC §335.431(c) by failing to determine if a waste has to be treated prior to land disposal; and 30 TAC §335.503(a)(4) by failing to classify nonhazardous waste generated by the facility's operations; PENALTY: $11,250; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington Texas 76010-6499, (817) 469-6750.

(3) COMPANY: Erath Recycling Company, Incorporated and The City of Stephenville; DOCKET NUMBER: 1999-0731-IHW-E; TNRCC ID NUMBER: 364; LOCATION: Highway 67 and 377 on the west side of County Road 359 near Stephenville, Erath County, Texas; TYPE OF FACILITY: metal salvage and recycling; RULES VIOLATED: 30 TAC §335.2(a) and (b), §335.4, and §335.5(e)(7) by causing the unauthorized disposal of industrial solid waste and hazardous waste at a Type IV municipal solid waste landfill; 30

TAC §335.10(a) by transporting hazardous waste without a manifest; PENALTY: $3,350; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington Texas 76010-6499, (817) 469-6750.

(4) COMPANY: Fletcher Animal Clinic, P.C. dba Cattail Creek Mobile Home Park and Donald S. Fletcher dba Equestrian Estates; DOCKET NUMBER: 1999-0516-PWS-E; TNRCC ID NUMBERS: 0720033 and 0720034; LOCATION: Cattail Creek Mobile Home Park, 1/2 mile west on County Road 387 off Highway 377 near Stephenville, Erath County, Texas and Equestrian Estates, County Road 351, approximately 3/4 mile west of Highway 377, Erath County, Texas; TYPE OF FACILITY: public water systems; RULES VIOLATED: 30 TAC §290.46(e)(1) by failing to operate the system at all times under the direct daily supervision of a competent water works operator holding a Grade "D" or higher operator's certificate of competency; 30 TAC §290.106(a)(1) and Texas Health and Safety Code (THSC), §341.031 by failing to collect water samples for bacteriological analysis for the months of September 1998 through April 1999 and by failing to develop and submit to the commission for review a written sample siting plan for the collection of routine bacteriological samples; 30 TAC §290.46(f)(1)(A) by failing to maintain a free chlorine residual of 0.2 mg/L in the far reaches of the distribution system at all times; 30 TAC §290.42(e)(4) by failing to install mechanical chlorination equipment to provide continuous and effective disinfection of the water; 30 TAC §290.46(h) by failing to keep a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service; 30 TAC §290.45(b)(1)(B)(ii), (iii), and (iv) by failing to provide a total storage capacity of 200 gallons per connection, to provide two or more service pumps with a total rated capacity of 2.0 gallons per minute per connection, and to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.41(c)(3)(A) and (B) by failing to submit well completion data to the commission before placing a well into service and by failing to extend the well casing to a point 18 inches above the elevation of the finished floor of the pump room or natural ground surface and a minimum of one inch above the sealing block or pump motor foundation block; 30 TAC §290.39(d)(1) by failing to ensure that "as-built" plans and specifications, signed and sealed by a registered professional engineer, are submitted for commission review; 30 TAC §290.41(c)(3)(I), (J), (K), (M), (N), and (O) by failing to fine grade the well site, to provide the well with a concrete sealing block extending at least three feet from the well casing in all directions, to seal the wellhead with a gasket or a pliable crack- resistant caulking compound, to provide the well with a screened casing vent, to provide the well with a suitable sampling cock on the well discharge line prior to any treatment, to provide the well with a flow meter to provide for the accumulation of water production data, and to enclose the well unit with an intruder-resistant fence or a locked, ventilated well house; 30 TAC §290.38 and §290.43(e) by failing to enclose the GST with an intruder-resistant fence with lockable gates; 30 TAC §290.43(c)(2), (3), (4), and (7) by failing to provide the GST with an access ladder, to provide a properly designed roof access opening and overflow pipe which is equipped with a hinged flap valve, to provide the GST with a liquid level indicator located at the tank site and to provide the GST with a properly constructed drain so that it is not a potential agent in the contamination of the stored water; 30 TAC §290.43(d)(2) and (3) by failing to provide the pressure tank with a pressure release device and an easily readable pressure gauge and by failing to provide the pressure tank with facilities for maintaining the air-water-volume at the design water level and working pressure; 30 TAC §290.46(p) by failing to annually inspect the GST and pressure tank and make the results of those inspections available for commission review; 30 TAC §290.42(i) by failing to insure that all chemicals used in the treatment of water conforms to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 60 for direct additives and ANSI/NSF Standard 61 for indirect additives; 30 TAC §290.46(i) and (j) by failing to adopt an agreement with each water customer that would allow an inspection of the individual water facilities prior to providing service and by failing to complete a customer service inspection certification prior to providing continuous water service on any existing service when the water purveyor has reason to believe that cross-connections or other unacceptable plumbing practices exist; and 30 TAC §290.46(w) by failing to post a legible sign at each of the facility's production, treatment, or storage facilities; Equestrian Estates: 30 TAC §290.46(e)(1) by failing to operate the system at all times under the direct daily supervision of a competent water works operator holding a Grade "D" or higher operator's certificate of competency; 30 TAC §290.106(a)(l) and THSC, §341.033(d) by failing to develop and submit to the commission for review a written sample siting plan for the collection of routine bacteriological samples and by failing to collect water samples for bacteriological analysis for the months of September 1998 through April 1999; 30 TAC §290.46(f)(1)(A) by failing to maintain a free chlorine residual of 0.2 mg/L in the far reaches of the distribution system at all times; 30 TAC §290.46(f)(2)(B) by failing to test the chlorine residual using a test kit which employs a diethyl-p-phenylenediamine indicator at least once every seven days; 30 TAC §290.46(h) by failing to keep a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service; 30 TAC §290.45(b)(1)(B)(ii), (iii), and (iv) by failing to provide a total storage capacity of 200 gallons per connection, to provide two or more service pumps with a total rated capacity of 2.0 gallons per minute per connection, and to provide a pressure tank capacity of 20 gallons per connection with a maximum of three tanks at the pump station site; 30 TAC §290.41(c)(3)(A) and (B) by failing to submit well completion data to the commission before placing a well into service and by failing to extend the well casing to a point 18 inches above the elevation of the finished floor of the pump room or natural ground surface and a minimum of one inch above the sealing block or pump motor foundation block ; 30 TAC §290.39(d)(1) by failing to ensure that "as-built" plans and specifications, signed and sealed by a registered professional engineer, are submitted for commission review; 30 TAC §290.41(c)(3)(I), (J), and (K) by failing to fine grade the well site, to provide the well with a concrete sealing block extending at least three feet from the well casing in all directions, to seal the wellhead with a gasket or a pliable crack-resistant caulking compound, and by failing to provide the well with a screened casing vent; 30 TAC §290.43(c)(3)(M) and (N) by failing to provide the well with a suitable sampling cock on the well discharge line prior to any treatment and by failing to provide the well with a flow meter to provide for the accumulation of water production data; 30 TAC §290.41(c)(3)(O) by failing to enclose the well unit with an intruder-resistant fence or a locked, ventilated well house; 30 TAC §290.43(e) by failing to enclose the GST with an intruder-resistant fence with lockable gates; 30 TAC §290.43(c)(1), (2), (3), (4), and (7) by failing to provide the GST with an access ladder, to provide a gooseneck or roof ventilator with the opening protected by a 16-mesh or finer corrosion- resistant screen, to provide the GST with a properly designed roof access opening and overflow pipe which is equipped with a hinged flap valve, to provide the GST with a liquid level indicator located at the tank site, and to provide the GST with a properly constructed drain; 30 TAC ;290.43(d)(2) and (3) by failing to provide the pressure tank with a pressure release device and an easily readable pressure gauge and by failing to provide the pressure tank with facilities for maintaining the air-water- volume at the design water level and working pressure; 30 TAC §290.46(p)

by failing to annually inspect the GST and pressure tank; 30 TAC §290.42(i) by failing to insure that all chemicals used in the treatment of water conforms to ANSI/NSF Standard 60 for direct additives and ANSI/NSF Standard 61 for indirect additives; 30 TAC §290.46(i) and (j) by failing to adopt an agreement with each water customer that would allow an inspection of the individual water facilities prior to providing service and by failing to complete a customer service inspection certification prior to providing continuous water service on any existing service when the water purveyor has reason to believe that cross-connections or other unacceptable plumbing practices exist; 30 TAC §290.46(w) by failing to post a legible sign at each of the facility's production, treatment, and storage facilities; and 30 TAC §290.46(y) by failing to install electrical wiring in a securely mounted conduit; PENALTY: $24,800; STAFF ATTORNEY: Tracy Gross, Litigation Division, MC 175, (512) 239- 1736; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(5) COMPANY: Genico Distributors, Incorporated; DOCKET NUMBER: 1998-1294-PST-E; TNRCC ID NUMBER: 27379; LOCATION: 7047 Bruton Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: 30 TAC §115.246(4), (5), (6), (7)(A), and (B) and THSC, §382.085(b) by failing to maintain a record of the representative's Stage II training onsite, to maintain documentation of the annual Stage II testing, to make these records immediately available, to maintain daily inspection logs of the Stage II vapor recovery system (VRS), and to maintain a copy of the California Air Resources Board (CARB) executive order for the Stage II VRS; and 30 TAC §115.242(9) and THSC, §382.085(b) by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II VRS; PENALTY: $6,050; STAFF ATTORNEY: Camille Morris, Litigation Division, MC 175, (512) 239-3915; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6) COMPANY: Sammy's Memorial Texaco, Incorporated; DOCKET NUMBER: 1999-0932- PST-E; TNRCC ID NUMBER: 0023177; LOCATION: 14403 Memorial Drive, Houston, Harris County, Texas; TYPE OF FACILITY: USTs; RULES VIOLATED: 30 TAC §115.242(3)(A) and THSC, §382.085(b) by failing to install a vent monitor for the Stage II VRS; 30 TAC §115.242(9) and THSC, §382.085(b) by failing to post operating instructions on the fuel dispensers; 30 TAC §115.222(1) and THSC, §382.085(b) by failing to have a fill tube gasket on the fill tube adapter; and 30 TAC §115.246(6) and THSC, §382.085(b) by failing to maintain a record of Stage II daily inspections at the facility; PENALTY: $5,000; STAFF ATTORNEY: I-Jung Chiang, Litigation Division, MC 175, (512) 239-6122; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: R. J. Smelley Company, Incorporated; DOCKET NUMBER: 1997-0956-AGR- E; TNRCC ID NUMBER: 02422; LOCATION: west side of Cattlebaron Drive, approximately 2.8 miles east of Farm-to-Market Road (FM) 3325 and approximately 2 miles south of FM 1886, Parker, Tarrant County, Texas; TYPE OF FACILITY: dairy; RULES VIOLATED: 30 TAC §321.35(a)(2), Special Provision (SP) 1.1.2 of TNRCC Water Quality Permit Number 02422, and the Code, §26.121(a) and (c) by allowing the unauthorized discharge of waste from RCS 2A; the Code, §26.121(c) and SP 1.1.3 of TNRCC Water Quality Permit Number 02422 by failing to have permanent measuring devices visible from the top of the dairy's levees and by failing to show stormwater capacity within the containment ponds; the Code, §26.121(c) and SP 2.4 of TNRCC Water Quality Permit Number 02422 by failing to annually analyze and by failing to submit to the TNRCC Arlington Regional Office the analysis of waste and irrigation wastewater for total Kjeldahl nitrogen, total phosphorous, and total potassium; the Code, §26.121(c) and SP 2 of TNRCC Water Quality Permit Number 02422 by failing to give oral notice of discharges to the TNRCC Arlington Regional Office within 24 hours of discharging and by failing to provide written notice of discharges to the executive director in Austin within five days of the discharge; the Code, §26.121(c) and SP 2.6 of TNRCC Water Quality Permit Number 02422 by failing to maintain records of all waste and wastewater disposal for a three-year period and by failing to make such records available for inspection; 30 TAC §321.37(b), SP 4.2 of TNRCC Water Quality Permit Number 02422, and the Code, §26.121(c) by failing to isolate waste stockpiles from run-on storm waters by dikes, terraces, berms, ditches, or other similar structures; the Code, §26.121(c) and SP 1.1.2 of TNRCC Water Quality Permit Number 02422 by failing to have waste control facilities to retain all process generated wastewater produced by the dry cow area; 30 TAC §321.37(a)(1)(D), SP 2.2.2 of TNRCC Water Quality Permit Number 02422, and the Code, §26.121(c) by failing to cease irrigation activities when the ground became saturated; the Code, §26.121(c) and SP 2.2.4 of TNRCC Water Quality Permit Number 02422 by failing to manage irrigation practices so as to prevent ponding and puddling of irrigated wastewater; and 30 TAC §321.37(a)(2), SP 2.2.1 of TNRCC Water Quality Permit Number 02422, and the Code, §26.121(a) and (c) by applying wastewater in such concentrations or at such intervals so as to result in the discharge of wastewater runoff into waters in the state; PENALTY: $13,125; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-200000776
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: February 4, 2000

Notice of Water Quality Applications.

The following notices were issued during the period of December 31, 1999 through February 7, 2000.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF BALMORHEA has applied for a renewal of Permit Number 12194-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 83,000 gallons per day via evaporation and surface irrigation of 8 acres of City-owned non-public access land adjacent to the plant site. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 3500 feet south of State Highway 17 (formally U.S. Highway 290), approximately 5000 feet east of the intersection of State Highway 17 (formally U.S. Highway 290) and Farm-to-Market Road 2903 and east of the City of Balmorhea in Reeves County, Texas

CAPE ROYALE UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 10997-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed

150,000 gallons per day. The plant site is located approximately 5.5 miles north of the City of Coldspring in the northwest corner of the Cape Royale Subdivision, on the shore of Lake Livingston in San Jacinto County, Texas.

COASTAL REFINING AND MARKETING, INC. has applied for a major amendment to TNRCC Permit Number 00465 to authorize the removal of effluent limitations for amenable cyanide at Outfall 001, and an increase in effluent limits at Outfall 001 based on an increase in production following the construction of a new delayed coker unit. The current permit authorizes the discharge of treated process, treated storm water, treated utility and treated ballast wastewaters at a daily average flow not to exceed 3,000,000 gallons per day via Outfall 001, which will remain the same; and the discharge of uncontaminated storm water on an intermittent and flow variable basis via Outfalls 002, 003, and 004, which will remain the same. The applicant operates a petroleum refinery. The facility is located east of Navigation Boulevard and approximately 0.5 mile north of Interstate Highway 37, northwest of the City of Corpus Christi, Nueces County, Texas.

DUVAL COUNTY CONSERVATION AND RECLAMATION DISTRICT has applied for a renewal of Permit Number 10067-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation of 80 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 1.5 miles east of the City of Benavides on the north side of Farm-to-Market Road 2298 in Duval County, Texas.

CITY OF MARFA has applied for a renewal of Permit Number 10109-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via irrigation 62 acres of pasture land. The draft permit authorizes the disposal of treated domestic wastewater at an annual average flow not to exceed 120,000 gallons per day via irrigation of 62 acres of pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 3,000 feet southeast of the intersection of U.S. Highway 90 and U.S. Highway 67 in Presidio County, Texas.

MIDLOTHIAN DEVELOPMENT AUTHORITY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14108-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The plant site is located approximately 700 feet east of Soap Creek and 450 feet south of U.S Highway 67 in Ellis County, Texas.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a major amendment to TNRCC Permit Number 12446-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 32,000,000 gallons per day to an annual average flow not to exceed 64,000,000 gallons per day. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000,000 gallons per day. The plant site is located southwest of Wilson Creek at the confluence with Lake Lavon and approximately five miles southeast of the City of McKinney in Collin County, Texas.

PALM VALLEY ESTATES UTILITY DISTRICT has applied for a renewal of Permit Number 10972-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day via irrigation of 145 acres of land. The current permit authorizes land application of sewage sludge for beneficial use on 20 acres. The draft permit does not authorize land application of sewage sludge for beneficial use on the 20 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located at 5400 Bougainvillea Drive in Harlingen, Cameron County, Texas.

CITY OF STINNETT has applied for a renewal of Permit Number 10291-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day via irrigation of 400 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities are located approximately 1.2 miles north-northwest of the intersection of Farm-to-Market Road 2277 and State Highway 136, and approximately 0.65 mile south of the intersection of State Highway 136 and State Highway 152. The irrigated pasture land is located approximately 1 mile north of the intersection of Farm-to-Market Road 2277 and State Highway 136, south of Stinnett in Hutchinson County, Texas.

TEXAS UTILITIES ELECTRIC COMPANY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 01251 to authorize an additional discharge point as a component of Outfall 002. The current permit authorizes the discharge of low volume waste sources, cooling tower blowdown and stormwater at a daily average flow not to exceed 2,300,000 gallons per day via Outfall 001, which will remain the same, and the discharge of cooling tower blowdown and stormwater at a daily average flow not to exceed 2,300,000 gallons per day via Outfall 002. The applicant operates the Parkdale Electric Station. The plant site is located at 5770 Parkdale Drive, on the east side of White Rock Creek at the confluence of Forney Branch and White Rock Creek, in the City of Dallas, Dallas County, Texas.

ROBERT H. THERIOT has applied for a new permit, Proposed Permit Number 14102-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 6,500 gallons per day via drip irrigation with a minimum area of 57,725 square feet. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 6,500 gallons per day via drip irrigation with an area of 65,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 0.8 mile north of the intersection of Comanche Trail and Ranch Road 620 on Comanche Trail in Travis County, Texas.

U.S. ARMY CORPS OF ENGINEERS has applied for a new permit, Proposed Permit Number 14058-001, to authorize the disposal of treated domestic wastewater at an annual average flow not to exceed 750 gallons per day via evaporation on two non public access storage/ evaporation ponds with a total surface area of 0.28 acres and total capacity of 1.3 acre-feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 0.75 mile east of south end of Willis Bridge in Juniper Point Public Use Area in Grayson County, Texas.

U.S. ARMY CORPS OF ENGINEERS has applied for a new permit, Proposed Permit Number 14059-001, to authorize the disposal of treated domestic wastewater at an annual average flow not to exceed 750 gallons per day via evaporation on two non public access storage/ evaporation ponds with a total surface area of 0.28 acres and total capacity of 1.3 acre-feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 0.25 mile south-southwest

of Willis Bridge in Juniper Point Public Use Area in Grayson County, Texas.

VALLEY MUNICIPAL UTILITY DISTRICT NUMBER 2 has applied for a renewal of Permit Number 11348-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day via evaporation and surface irrigation of approximately 300 acres of surrounding golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located on the west side of U.S. Highways 77 & 83 approximately two (2) miles northwest of Olmito, Texas in Cameron County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 10 DAYS OF THE ISSUED DATE OF THIS NOTICE

EAST CENTRAL INDEPENDENT SCHOOL DISTRICT has applied for a minor amendment of Permit Number 13844-001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day via irrigation of 4 acres of publicly accessible land (school athletic field), which will remain the same. The minor amendment would authorize a decrease in the daily average flow from 22,500 gallons per day to 17,000 gallons per day; to correspondingly decrease the storage requirement from 1,400,000 gallons to 1,080,000 gallons. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located at the southwest corner of New Sulphur Springs Road and Gardner Road and approximately 3.8 miles east of the intersection of New Sulphur Springs Road and Interstate Highway Loop 410 in Bexar County.

CONCENTRATED ANIMAL FEEDING OPERATION

Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

MAIKO HESSELL BOUMA and TJITZE BOUMA have applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Permit Number WQ0004145-000 to authorize the applicant to operate a dairy at a maximum capacity of 500 head in Hopkins County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the south side of County Road 2408, approximately one-half mile southwest of the intersection of State Highway 11 and County Road 2408, approximately one and one-half miles northwest of Winnsboro in Hopkins County, Texas. The facility is located in the drainage area of Big Sandy Creek in Segment Number 0514 of the Sabine River Basin.

TRD-200000987
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 9, 2000

North Texas Workforce Development Board

Request for Proposal (WIA Youth Program)

Proposals are requested for the Workforce Investment Act (WIA) youth program to serve economically disadvantaged youth, ages 14-21. Youth programs should provide for comprehensive youth services which improve educational achievement, prepare youth for succeeding in employment, supports youth, and offer services intended to develop the potential of youth as citizens and leaders.

North Texas Workforce Development Area includes the following 11 counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young.

To obtain Request for Proposal packets contact Barbara A. Young, Administrative Technician, North Texas Workforce Development Board, 1101 Eleventh Street, Wichita Falls, Texas, 76301. Call (940) 767-1432 (TDD#1-800-RELAYTX or 1-800-735-2989) for more information. Deadline to submit proposals is 4:00 p.m., Friday, March 31, 2000.

A Bidders' Conference will be held 10:00 a.m. Tuesday, march 7, 2000, Nortex Regional Planning Commission small conference room, 4309 Jacksboro Highway, Suite 200, Wichita Falls, Texas, 76302.

WIA services are offered in accordance with Equal Employment Opportunity policies. Auxiliary aids and services are available upon request to individuals with disabilities. Program operation dependent upon availability of funds from Texas Workforce Commission.

TRD-200000977
Mona Williams Statser
Executive Director
North Texas Workforce Development Board
Filed: February 8, 2000

Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On February 1, 2000, ClearWorks.net, 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 60267. Applicant intends to expand its geographic area to include the entire state of Texas.

The Application: Application of ClearWorks.net, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 22082.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings, should make appropriate filings or comments to the commission at the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326 no later than February 23, 2000. You may contact the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22082.

TRD-200000749
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 3, 2000

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 1, 2000, for a service provider certificate of operating authority

(SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Maxcess, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22080 before the Public Utility Commission of Texas.

Applicant intends to provide resale and data services including local exchange service, switched local exchange service, non-switched local service, Centrex and/or Centrex-like service, digital subscriber line, ISDN, frame relay and other high capacity line services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company, GTE Southwest, Inc., United Telephone Company of Texas, Inc. and Central Telephone Company of Texas, Inc., doing business as Sprint.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 23, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000747
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 3, 2000

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 1, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Dynamic Cable Construction Company, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22081 before the Public Utility Commission of Texas.

Applicant intends to provide a multiple conduit system and placement of fiber optic cable enabling it to provide long distance services.

Applicant's requested SPCOA geographic area includes the Austin, Bryan, Dallas, Houston and Waco Local Access and Transport Areas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 23, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000748
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 3, 2000

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 2, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Grande Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22087 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, Digital Subscriber Line, ISDN, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 23, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000787
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 4, 2000

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 4, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Williams Local Network, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22092 before the Public Utility Commission of Texas.

Applicant intends to provide Digital Subscriber Line, T1-Private Line, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 23, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000954
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 8, 2000

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February

7, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Pathwayz Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22095 before the Public Utility Commission of Texas.

Applicant intends to provide all forms of intrastate local exchange telecommunications services including local exchange services for business customers, switched local exchange services such as flat-rate and measure-rated local services, vertical services, Direct Inward and Outward dialed trunks, carrier services, public and semi-public coin telephone services, non-switched local services, Centrex and/or Centrex-like services, Digital Subscriber Line, ISDN, and Frame Relay services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company, GTE Southwest, Inc., United Telephone Company of Texas, Inc., and Central Telephone Company of Texas, Inc., doing business as Sprint.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than February 23, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200000955
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 8, 2000

Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 2, 2000, to amend a certificated service area boundary in Maverick County pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supp. 1999) (PURA). A summary of the application follows.

Docket Style and Number: Joint Application of Central Power & Light Company (CPL) and Rio Grande Electric Cooperative, Inc. (RGEC) to Amend Certificated Service Area Boundaries Within Maverick County. Docket Number 22085.

The Application: CPL and RGEC request the boundary change to allow all affected parties to more readily determine which utility is to provide service, as well as allow the utilities to provide the service more efficiently. The proposal should lessen the number of poles and wires that would otherwise be needed to serve the affected areas. Copies of the joint application and additional associated maps are available for reviewing at the CPL office, 539 North Carancahua, Corpus Christi, Texas 78401 and/or the RGEC office, U.S. Highway 90 and State Highway 131, Bracketville, Texas 78832. Persons with questions about this project should contact Michael Desselle at (214) 777-1826 or Daniel G. Laws at (830) 563-2444.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention.

TRD-200000774
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 3, 2000

Public Notice of Amendment to Interconnection Agreement

On January 28, 2000, Southwestern Bell Telephone Company and Logix Communications Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22068. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22068. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 24, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may

conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22068.

TRD-200000743
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 3, 2000

Public Notice of Amendment to Interconnection Agreement

On February 1, 2000, Southwestern Bell Telephone Company and Tel-Star Utility Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22083. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22083. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 1, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22083.

TRD-200000772
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 3, 2000

Public Notice of Amendment to Interconnection Agreement

On February 3, 2000, Southwestern Bell Telephone Company and InfoCom Services, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22088. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22088. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 3, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22088.

TRD-200000957
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 8, 2000

Public Notice of Interconnection Agreement

On February 2, 2000, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and Excel Telecommunications, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22084. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22084. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 3, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22084.

TRD-200000958
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 8, 2000

Public Notice of Interconnection Agreement

On February 4, 2000, E.Spire Communications, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22093. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22093. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by March 7, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22093.

TRD-200000950
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 7, 2000

Public Notice of Workshop on Rulemaking to Address Prepaid Calling Service Disclosures

The staff of the Public Utility Commission of Texas (commission) will host a workshop to discuss a rulemaking to address prepaid calling services disclosures. Project Number 21424 has been established for this proceeding. The workshop will be held on Thursday, March 2, 2000, beginning at 9:00 a.m. in the Commissioners' Hearing Room on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Through this workshop, the commission will gather information from interested persons on Public Utility Regulatory Act (PURA) §55.253, *Telephone Prepaid Calling Services.* The agenda and a draft rule for this workshop will be available in Central Records and through the commission's web page no later than Friday, February 18, 2000. Project Number 21424 addresses the ability of the commission to prescribe standards regarding the information a prepaid calling card company shall disclose to customers in relation to the rates and terms of service for prepaid calling services offered in this state. Both substantive and procedural issues will be open for discussion at the workshop. The workshop agenda will not be confined solely to questions proposed by commission staff; a portion of the workshop will be reserved for open discussion of general or specific issues of interest to attendees.

Before the workshop commences, the commission requests that interested persons file comments addressing the questions below and to propose draft rule language.

QUESTIONS

1. What should be the scope or parameters of this rulemaking? Please explain your answer.

2. What issues should be addressed in this rule? Please offer support or justification for each issue.

3. How and when should the rule be implemented? Please explain your position.

PROPOSED RULE LANGUAGE

Please attach proposed rule language.

Sixteen copies of answers to the questions and proposed rule language may be filed with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within ten days of the date of publication of this notice. Reply comments may be submitted within 15 days after publication. All comments should reference Project Number 21424. To the extent possible, answers to the questions, proposed rule language, and reply comments should be provided to the commission and all interested participants in an electronic format.

On or before February 25, 2000, the commission will file an agenda for the workshop and a draft rule for discussion at the workshop which will be available in Central Records and on the commission's web page at http://www.puc.state.tx.us/telecomm/projects/21016/21424.cfm under Project Number 21424. Copies of the agenda and draft rule will also be available at the workshop.

Questions about Project Number 21424 may be referred to Denise E. Taylor, Office of Customer Protection, (512) 936-7124, denise.taylor@puc.state.tx.us. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200000773
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 3, 2000

Public Notice of Workshop on System Benefit Fund

The Public Utility Commission of Texas (commission) will hold a workshop regarding rulemaking on the System Benefit Fund. The workshop will be held on Tuesday, March 7, 2000, at 9:30 a.m. 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 21187, *System Benefit Fund Administration*, has been established for this proceeding. This rulemaking is designed to develop rules regarding the fund structure, setting and collection of fees, and administration and review of the fund.

Seven days prior to the workshop, on March 1, 2000, the commission shall make available in Central Records under Project Number 21187 an agenda for the format of the workshop. A strawman will also be filed on March 1, 2000, for parties to review. Any written comments on the strawman may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by March 15, 2000. All comments should reference Project Number 21187. The commission requests comments be limited to ten pages. This notice is not a formal notice of proposed rulemaking; however, the parties' written responses and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Questions concerning the workshop or this notice should be referred to Margarita Fournier, Senior Economic Analyst, Office of Policy Development, at (512) 936-7207. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200000786
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 4, 2000

Revised Notice of Petition for a Good Cause Exemption to P.U.C. Substantive Rule §25.196(B)(4)

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on January 26, 2000 for good cause exemption to P.U.C. Substantive Rule §25.196(B)(4).

Docket Title and Number: Application of Reliant Energy, Inc. for Good Cause Exemption to P.U.C. Substantive Rule §25.196(B)(4). Docket Number 22057.

The Application: Reliant Energy, Inc. requests exemption to the requirements of P.U.C. Substantive Rule §25.196(B)(4) regarding the construction of a generating plant by a utility's affiliate in the utility's service territory. Reliant Energy Wholesale Group is developing approximately 60 megawatts of landfill gas generation at 12 sites in the State of Texas. Two of the sites are in Reliant Energy HL&P's service territory. The current transmission rules limit a utility's affiliate from constructing new generation in the utility's retail service area. Reliant seeks a good cause exception to this provision in the rule under P.U.C. Substantive Rule §25.3, and requests that the commission process this case on an expeditious basis.

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 call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 28, 2000. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 22057.

TRD-200000859
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 7, 2000

San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposals

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to acquire **Digital Aerial Photography (Digital Orthophotography)** for the Year 2000 for Bexar, Comal, Guadalupe, Kendall, Wilson and the eastern portion of Medina Counties. The aerial photography must be flown prior to May 30, 2000 but not before January 1, 2000, and the delivery of products must be made by August 30, 2000.

A copy of the Request for Proposals (RFP) may be requested by calling Jeanne Geiger, Senior Transportation Planner, at (210) 227-8651. Anyone wishing to submit a proposal must do so by 12:00 PM (CST), March 6, 2000, at the MPO office:

Janet A. Kennison, Administrator

Metropolitan Planning Organization

1021 San Pedro, Suite 2200

San Antonio, Texas 78212

The contract award will be made by the MPO's Transportation Steering Committee based on the recommendation of the project's consultant selection committee. The Digital Aerial Photography Consultant Selection Committee will review the proposals based on the evaluation criteria listed in the RFP.

Funding for this study, in the amount of $300,000, is contingent upon the availability of Federal transportation planning funds.

TRD-200000744
Janet A. Kennison
Administrator
San Antonio-Bexar County Metropolitan Planning Organization
Filed: February 3, 2000

Texas Department of Transportation

Public Notice - Aviation Public Hearings

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", and then click on "Aviation Public Hearing". Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200000983
Richard D. Monroe
General Counsel
Texas Department of Transportation
Filed: February 9, 2000

Texas Workforce Commission

Correction of Error

The Texas Workforce Commission proposed the repeal of 40 TAC §§841.11-841.13 and new §841.11, concerning the One-Stop Service Delivery Network. The rules appeared in the January 21, 2000, *Texas Register*, (25 TexReg 372).

Due to an error by the *Texas Register* the subchapter heading was omitted for the proposed new section. With the adoption of the repeal and new section, the subchapter will change to "One-Stop Service Delivery Network."

Request for Qualifications for Selection of Real Estate Appraisal Firm

The Texas Workforce Commission (TWC), Technology and Facilities Planning Department, 101 E. 15th Street, Austin, Texas 78778-0001,

hereby issues this request for statement of interest and qualification (RFQ) for the purpose of selecting a professional real estate appraisal firm to prepare fair market appraisals of the agency-owned buildings and/or land at the following locations in Texas:

Abilene - 826 Hickory

Crystal City - 700 E. Lake

Denton - 510 I-35 East, North

Greenville - 4515 Stonewall

Eagle Pass - 415 S. Monroe

Houston - 2918 San Jacinto

Midland - 501 N. Lorraine

Odessa - 315-317 E. 5th

The contract will require the appraisal firm to develop three bound copies of the appraisal report to be delivered 30 days from the date of the authorization to proceed.

Interested real estate appraisers who hold a current General Real Estate Appraiser Certification through the Texas Appraiser Licensing and Certification Board are invited to submit their qualifications for consideration to the Texas Workforce Commission, Attention: Christopher Walsh, 101 E. 15th Street, Room 153, Austin, Texas 78778-0001. Firms should specify the sites for which they are available to perform appraisals. Copies of some or all of the complete RFQs are available by calling Christopher Walsh at (512) 463-3180. All qualifications must be received before **5:00 p.m. on Friday, March 3, 2000**.

TWC recognizes the benefits of aiding and stimulating the growth of small disadvantaged and small woman-owned business enterprises, and therefore requires that your firm consider in its proposal the participation of qualified, certified Historically Underutilized Businesses (HUBs) as subcontractors. It is TWC's intention that qualified HUBs receive a minimum of 20% of this professional services contract. If your firm is not a certified HUB, your response to this RFQ should include a plan for utilization of HUBs in providing real estate appraisal or support services in connection with any contractual agreement awarded to you as the result of this RFQ.

Selection of a professional real estate appraisal firm will be in accordance with the Texas Government Code, Chapter 2254, Subchapter A.

TRD-200000996
J. Ferris Duhon
Assistant General Counsel
Texas Workforce Commission
Filed: February 9, 2000

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 24 (1999) is cited as follows: 24 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 “23 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 23 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. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), 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 8, April 9, July 9, and October 8, 1999). 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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