

Texas Review and Comment System: Rules

Introduction and General Provisions of the Texas Review and Comment System

Sec. 5.191 Introduction and Purpose

The purpose of this rule is to establish a statewide system that provides state and local officials with opportunities to review and to comment upon state plans, applications for federal or state financial assistance, and environmental impact statements related to projects or programs that affect their jurisdiction before the proposals are approved or funded. Comments made during the review process are for the applicant's use in improving the project, if necessary, and for the funding agency's use in deciding whether to approve the application. The rule designates the regional review agencies and the state single point of contact; lists the programs for which reviews will be required; delineates the respective responsibilities of applicants, state agencies, and review agencies; establishes uniform review procedures and criteria; and describes procedures for seeking accommodation of review comments. This rule specifically incorporates by reference Executive Order (EO) 12372, as amended by EO 12416, the Demonstration Cities and Metropolitan Development Act of 1966, Sec. 204 (42 United States Code Sec. 3334); the Intergovernmental Cooperation Act of 1968, Sec. 401(a) (42 United States Code Sec. 4231(a)); and the National Environmental Policy Act of 1969, Sec. 102(2)(C) (42 United States Code Sec. 4332(2)(C)).

The provisions of this Sec. 5.191 adopted to be effective May 1, 1984, 9 TexReg 2195.

Sec. 5.192 Applicability

This rule applies to all review agencies, applicants for state or federal assistance, state and federal agencies proposing or carrying out direct development, and state and federal agencies providing financial or other assistance, unless specifically exempted by state or federal law.

The provisions of this Sec. 5.192 adopted to be effective May 1, 1984, 9 TexReg 2195.

Sec. 5.193 Goals

Major goals of the Texas Review and Comment System (TRACS) include:

- (1) providing opportunities for intergovernmental consultation on applications, with a view toward strengthening proposals before they are submitted to the appropriate federal or state agency for approval;
- (2) fostering intergovernmental cooperation and coordination;
- (3) discouraging unnecessary duplication;
- (4) providing a mechanism for the timely exchange of information among the various levels of government on proposals potentially affecting them;
- (5) providing public agencies responsible for enforcing or furthering civil rights laws

with an opportunity to participate in the review process; and
(6) providing the state and local governments with information about the distribution of federal and state funds throughout Texas.

Source: The provisions of this Sec. 5.193 adopted to be effective May 1, 1984, 9 TexReg 2195.

Sec. 5.194 Definitions

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

Accommodation--The process requiring a federal or state funding agency or implementing agency to respond to the single point of contact when local or state officials oppose funding or implementing a project that directly impacts their jurisdiction. If the Office of the Governor, a state agency, the governing body of a regional review agency, a local government, or other jurisdiction opposes the project based on acceptable review criteria, the federal or state funding agency or implementing agency must follow specific procedures in providing for a consultation process. In accordance with federal regulations, the state single point of contact is the only authorized entity to transmit an accommodation request to the funding or implementing agency.

Application--

- (A) A proposal to a federal or state agency requesting financial assistance;
- (B) a proposal by a federal or state agency to directly develop a project or to directly administer a program; or
- (C) an environmental impact assessment or statement related to subparagraph (A) or (B) of this paragraph.

Covered program--Any state or federal direct development activity or assistance program subject to review under TRACS. Covered federal programs are listed in Table I, Sec. 5.195(c) of this title (relating to Program Coverage); state programs subject to review are contained in Table II, Sec. 5.195(d).

Direct federal or state development--Planning and construction of public works, physical facilities, and land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the federal government or the State of Texas or any of their respective agencies; or the leasing of real property for federal or state use where the use or intensity of use of such property will be substantially altered.

Executive Order (E.O.) 12372; Executive Order 12372, as amended; or executive order--The presidential executive order issued July 14, 1982, rescinding Office of Management and Budget Circular A-95 and providing states an opportunity to structure, in consultation with local officials, their own intergovernmental review and comment procedures. The executive order requires federal agencies to accept state or local views or explain why those agencies should not. It also allows states to simplify, substitute, or consolidate plans required of the state by federal agencies.

Federal agency--Any department, agency, or instrumentality in the executive branch of the United States government and any wholly owned United States government corporation.

Federal assistance or federally assisted programs --Programs that provide assistance through grant or contractual arrangements, including technical assistance programs, loans, loan guarantees, or insurance.

Funding agency--The federal or state agency responsible for final approval of an application for assistance.

Jurisdiction--

(A) The geographic area over which a governmental unit exercises authority; or

(B) the authority of a unit of government to exercise certain powers.

Local government--Any Texas city, town, or county.

OMB Circular A-95--The federal circular issued in 1969 that prescribed procedures for state and local review and comment on specific federal assistance programs. Executive Order 12372, as amended by E.O. 12416, rescinded OMB Circular A-95 on September 30, 1983.

Regional review agency (RRA)--One of the 24 Texas regional councils of governments; designated as the regional review agency under the Texas Review and Comment System for its respective state planning region. Each council of government is responsible under Texas Civil Statutes, Article 1011m, and these sections for conducting reviews of applications which affect its state planning region.

SAI--The state application identifier number assigned to an application by the appropriate regional review agency or the state single point of contact to facilitate tracking and reporting and to verify that an application has been submitted to the appropriate review agency.

Standard Form 424 or SF424--The standard cover sheet required by most federal funding agencies.

State--The State of Texas or any of its agencies or instrumentalities with statewide jurisdiction.

State plan--A document prepared by a state agency as a condition of obtaining federal funds or a document used to describe the state agency's projected allocation of federal or state resources. An agency's biennial budget request is not considered a state plan under TRACS.

State planning region--One of 24 contiguous, multicounty geographic areas of the state designated by the governor.

State single point of contact (SPOC)--The governor's office staff person named by the governor to deal with review and comment issues, to sign official review letters, and to transmit an accommodation request and to receive the funding or

implementing agency's response for subsequent dissemination to the governmental entity seeking accommodation.

Threshold criteria--The criteria used by a review agency to determine whether an application is subject to or requires review.

TRACS--The Texas Review and Comment System, which replaces and revises review and comment procedures on federal programs previously authorized by OMB Circular A-95. Certain state programs are also included under TRACS, pursuant to state law.

Source: The provisions of this Sec. 5.194 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5247.

Sec. 5.195 Program Coverage

(a) Federal program coverage under the Texas Review and Comment System (TRACS) is constrained by the dictates of Executive Order 12372, which stipulates the list of programs states may select for review and on which accommodation may be sought. In addition, federal statutes, particularly the Demonstration Cities and Metropolitan Development Act of 1966, Sec. 204, the Intergovernmental Cooperation Act of 1968, Sec. 401(a), and the National Environmental Policy Act of 1969, Sec. 102(2)(C), mandate certain programs for review.

(b) Program coverage will be reviewed for changes at least annually. New state and federal assistance programs not specifically exempted by law will be automatically covered under TRACS. Program coverage changes will be published in the Texas Register.

(c) Federal programs included for review under TRACS pursuant to these laws, plus selected other activities, including all direct federal and state development not specifically excluded by law, are shown, respectively, in Tables I and II. Copies of these tables may be obtained from the State Single Point of Contact, Governor's Budget and Planning Office, Post Office Box 12428, Austin, Texas 78711. As required by state law (Government Code, Sec. 772.005), all state agencies must notify the governor's office when applying for federal funds.

Source: The provisions of this Sec. 5.195 adopted to be effective January 1, 1976; amended to be effective November 1, 1988, 13 TexReg 5247; amended to be effective October 27, 1992, 17 TexReg 7207; amended to be effective June 10, 1994, 19 TexReg 4175; amended to be effective March 22, 1996, 21 TexReg 2071.

Cross Reference: This Section cited in 1 TAC Sec. 5.194, (relating to Definitions).

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Source: The provisions of this Sec.167 5.195 adopted to be effective January 1, 1976; amended to be effective November 1, 1988, 13 TexReg 5247; amended to be effective October 27, 1992, 17 TexReg 7207; amended to be effective June 10, 1994, 19 TexReg 4175; amended to be effective March 22, 1996, 21 TexReg 2071.

Cross Reference: This Section cited in 1 TAC Sec. 5.194, (relating to Definitions).

Sec. 5.196 State Plan Simplification, Substitution, or Consolidation

(a) Executive Order 12372 allows states, subject to federal approval, to simplify federally required plans, substitute state plans for federally required plans, or consolidate plans.

(b) All state agencies are strongly encouraged to review their plans to identify opportunities to use internal or other state required planning and budget documents in lieu of federally mandated documents; to simplify plans; or to consolidate plans dealing with similar programs or clients.

Source: The provisions of this Sec.167 5.196 adopted to be effective May 1, 1984, 9 TexReg 2195.

RESPONSIBILITIES OF REVIEW PARTICIPANTS

Sec. 5.211 State Single Point of Contact Responsibilities

The state single point of contact shall:

(1) provide the primary point of receipt and serve as the review entity or the review coordinator, as appropriate, for state agency programs, plans, projects, or environmental impact statements; for applications with interstate or statewide impact; and for federal or state direct development proposals;

(2) assign a state application identifier (SAI) number to each notification of intent or application received, following standard procedures;

(3) notify relevant state and substate entities in a timely manner of statewide, multiregional, or interstate applications or direct federal or state development

activities affecting their jurisdictions, and solicit comments thereon;

(4) review projects of special significance, at his or her discretion;

(5) attach to state review letters any written comments received from other jurisdictions, agencies, or parties that differ from the state single point of contact comments (supporting views may be attached at the state single point of contact's discretion);

(6) serve as the state's contact point for accommodation requests to state and federal agencies and responses therefrom;

(7) serve as liaison with the state single point of contact in contiguous states, as appropriate, on interstate projects and other review issues;

(8) maintain a list of the state single point of contact for contiguous states and provide the list to appropriate regional review agencies;

(9) monitor and, in cooperation with the regional review agencies, state agencies, and local governments, refine the Texas Review and Comment System (TRACS) procedures and program coverage;

(10) solicit from each state agency the name of its intergovernmental review coordinator and, in cooperation with the agencies, maintain a list of such individuals on a continuing basis;

(11) ensure, to the greatest degree practicable, that all reviews under TRACS are conducted in accordance with these rules and that comments are based on law, fact, or regulation; and

(12) provide, as appropriate, TRACS training and policy guidance.

Source: The provisions of this Sec. 5.211 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5269.

Sec. 5.212 Regional Review Agency Responsibilities

A regional review agency shall:

(1) serve as the primary point of contact for applicants with projects wholly within a single state planning region;

(2) assign a state application identifier (SAI) number to each notification of intent or application received following the format prescribed by the state single point of contact;

(3) review, on the basis of law, fact, or regulation, local and regional programs, projects, plans, or environmental impact statements (EISs);

(4) review state or federal programs, projects, plans, or EISs affecting its respective state planning region;

(5) attach to its review letter any written comments received from other jurisdictions, agencies, or parties that differ from the regional review agency comments (supporting review comments may be attached at the RRA's discretion);

(6) transmit, in accordance with standard procedures, project review data to the state single point of contact; and

(7) assist in monitoring and refining the Texas Review and Comment System.

Source: The provisions of this Sec. 5.212 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5269.

Sec. 5.213 Conflict of Interest

(a) No regional review agency shall review its own application when the RRA is in direct competition with other applicants within its state planning region for the same funding.

(b) When the regional review agency falls within the provisions of subsection (a) of this section, it shall transmit its application and the competing applications to all affected governments in the project area and to the state single point of contact. Affected governments include any jurisdiction that may benefit or be adversely impacted by the proposed project. Each affected government is to send its comments directly to the state single point of contact and a copy to the regional review agency.

(c) Comments received by the state single point of contact shall be compiled into a review letter that will be transmitted to the funding agency and to the applicable regional review agency.

(d) The regional review agency, in its review letter accompanying any competing application(s), shall clearly state its interest as an applicant in the program for which the review was provided.

(e) This section on conflict of interest will not apply when the funding agency asks the councils of governments to rank projects within its region as a normal work element of a regional planning program.

Source: The provisions of this Sec. 5.213 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5269.

Sec. 5.214 Use of Other Public Bodies in the Review Process

(a) Regional review agencies are encouraged to use existing bodies with specialized knowledge which can contribute to the review process.

(b) Reviews of specified applications or types of applications may be delegated to such bodies by a regional review agency. Any such delegation must be made pursuant to a written agreement between the RRA and the entity to which the delegation of authority is made, and must incorporate by reference the procedures, standards, and criteria set forth in these rules with assurances that reviews will be conducted in conformity with the TRAC's rules.

(c) All such agreements shall be made and approved in accordance with RRA procedures for similar agreements.

(d) Two copies of any document delegating review authority shall be provided to the state single point of contact within five working days following execution of the delegation agreement.

(e) Review comments made under a delegation of authority agreement must receive the formal approval of the RRA's governing body to be an official TRAC's review recommendation.

(f) The regional review agency always has the authority to waive the formal TRAC's review of an application when a review by other public bodies indicates that proper coordination has occurred. However, it is important that the regional review agency be notified of each application, for record purposes, even when a formal TRAC's review has been waived.

Source: The provisions of this Sec. 5.214 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5269.

Sec. 5.215 Sharing of Application Information Among Review Agencies

(a) Applications or plans of interstate, statewide, or multiregional scope or direct federal or state development proposals submitted to the state single point of contact for review will be summarized and transmitted to the regional review agencies potentially affected by the applications, plans, or proposals. Regional review agencies choosing to review such applications will so notify the applicant and request the number of copies of the application needed for review purposes.

(b) Local or regional applications submitted to a regional review agency will be summarized and transmitted to the state single point of contact. If the state single point of contact chooses to review the application, the applicant will be notified and requested to provide the number of copies of the application needed for review purposes. The affected regional review agency will also be notified of the state single point of contact's interest.

Source: The provisions of this Sec. 5.215 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5269.

Sec. 5.216 State Agency Responsibilities

(a) State agencies with programs covered under TRACS will develop appropriate procedures for:

(1) informing potential applicants for assistance under such programs of TRACS requirements and encouraging early contact between applicants and appropriate review agencies;

(2) assuring that all applications for assistance under covered programs have been submitted to appropriate review agencies prior to their submission to the funding

agency. If an SAI number is not on the application, the funding agency shall notify the applicant that the application will not be processed until the TRACS procedures are followed. If an SAI number has been assigned but no review agency response is attached, the funding agency shall not take funding action prior to receipt of the review agency's response or until 60 days have elapsed from the date the review agency assigned the SAI number;

(3) in special situations where federal or state grant programs cannot be implemented in accordance with the review schedule identified in Sec. 5.236 of this title (relating to Review Schedule), the state funding agency may submit a letter to the SPOC requesting a concurrent review by the reviewing agency and the funding agency. In a concurrent review, the applicant submits the application simultaneously to the appropriate review agency and the funding agency. To enable the SPOC to determine the appropriateness of a concurrent review, the state funding agency must submit a written request to the SPOC stating:

(A) why the review cannot be accomplished using normal procedures (e.g., delayed congressional appropriation or other delays outside the control of the funding agency);

(B) date the announcement is to be distributed to potential applicants;

(C) date it is to be submitted to the review agency and funding agency; and

(D) projected date the grants would be awarded.

(4) SPOC approval of a concurrent review on a grant program will be for no longer than one year or one grant cycle. The reviewing agency will have a maximum of 60 days to review an application even when concurrent review procedures are approved.

(5) The state funding agency must notify the appropriate review agency(s) within seven working days of any major action on applications within the agency's jurisdiction reviewed by such review agency(s). Major actions include awards, rejections, returns for amendment, deferrals, or withdrawals. The Standard Form 424 cover sheet will be used for this purpose, unless a waiver has been granted by the state single point of contact.

(6) When a review agency has requested accommodation on an application, the state agency shall respond in accordance with Sec.167 5.252 of this title (relating to State Accommodation of Local Review Comments).

(7) In accordance with House Bill 1172, 64th Legislature (Texas Civil Statutes, Article 4413(32a)), state agencies applying for federal funding must complete and submit one copy of Budget and Planning Office (BPO) Form 1172 to the state single point of contact along with the other notice of intent requirements. Copies of this form and instructions for completing it may be obtained from the State Single Point of Contact, Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711.

(8) State agencies submitting applications covered under House Bill 1172, 64th Legislature (Texas Civil Statutes, Article 4413(32a)), must keep a record of the amount of federal loan or grant funds received and transmit this and other related information to the state single point of contact on October 1, after the close of the

previous fiscal year. Copies of Form 1172 and detailed instructions are available from the State Single Point of Contact, Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711.

(b) At the request of the state single point of contact, each state agency shall designate an intergovernmental review coordinator within the agency to:

(1) serve as the agency's review coordinator and as liaison between the agency and the state single point of contact for the review and comment process on state and federal applications and activities;

(2) serve as the liaison for regional review agencies on TRACS questions and problems as they relate to that agency;

(3) attend TRACS training or briefing sessions; and

(4) assist in evaluating the review process and make suggestions on ways to improve the review process and procedures.

Source: The provisions of this Sec. 5.216 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5269.

Sec. 5.217 Applicant Responsibilities

Applicants are strongly encouraged to follow the notification of intent procedures in Sec. 5.233 of this title (relating to Notification of Intent) in order to minimize delays and to provide opportunities for resolving any problems at an early stage in the application and review process. Applicants must:

(1) provide a copy of a notification of intent (NOI) or application to the appropriate review agency(s) 45 days prior to submitting a new application to a state or federal funding agency.

(A) Applicants with projects, plans, environmental impact statements, or programs with statewide impacts should send their notification of intent or full application to the State Single Point of Contact, Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711.

(B) Applicants with projects, plans, environmental impact statements, or programs affecting more than one contiguous state planning region, but less than the entire state, should send their notification of intent or full application to the regional review agency within the region in which the applicant's principal offices are located for assignment of the state application identifier. Upon receipt of the SAI, the applicant must provide copies of the NOI or application to all other regional review agencies in whose regions the applicant proposes to provide services. A list of the 24 regional review agencies appears in Table III and a list of counties by state planning region and council of governments is shown in Table IV. Copies of Tables III and IV may be obtained from the State Single Point of Contact, Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711.

(C) Applicants located outside the State of Texas with projects, plans, environmental impact statements, or programs affecting more than one state planning region are to

send a notification of intent or full application to the State Single Point of Contact, Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711.

(2) provide a copy of their application to the appropriate review agency(s) at least 30 days in advance of submitting a noncompetitive continuation application to a state or federal funding agency. Applicants are encouraged to submit NOIs 15 days in advance of submitting a noncompetitive continuation application for review;

(3) providing, upon request, additional copies of their full application to the appropriate review agency(s);

(4) providing complete and accurate information for review;

(5) incorporate suggested changes to the degree possible or respond to the suggestion(s) made by the reviewing agencies. Where timing permits, the comments should be responded to before submitting the application to the funding agency. When comments are not received prior to filing the application with the funding agency, the applicant should respond or make changes to the application as quickly as possible upon receipt from the reviewing agency;

(6) resubmitting for review any application that has been reviewed but not approved by funding agency, if the application has been substantially amended or revised to change:

(A) scope of work;

(B) dollar amount;

(C) area of project impact; or

(D) probable environmental impact.

Source: The provisions of this Sec. 5.217 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5269.

Cross Reference: This Section cited in 1 TAC Sec. 5.233, (relating to Notification of Intent).

REVIEW PROCEDURES

Sec. 5.231 Review Procedures

(a) All reviews shall be conducted in conformity with these rules and any other review guidelines and policies issued by the state single point of contact.

(b) The regional review agency (RRA) must ensure, to the greatest degree practicable, that proposals accepted for review are disseminated to all jurisdictions expected to be significantly affected to provide adequate opportunity for review and comment.

(c) Regional review comments and recommendations must be formally adopted by the regional review agency's governing body to constitute an official TRACS review.

Source: The provisions of this Sec. 5.231 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5269.

Sec. 5.232 Review of Projects with Mandated Public Participation

Applicants with projects, plans, or programs that are legislatively or otherwise required to incorporate public participation prior to funding or implementation will coordinate those activities with the review process at the earliest practicable point. Review agencies and governmental applicants are strongly encouraged to conduct reviews and public participation activities in parallel to minimize unnecessary delays, without diminishing elected officials' opportunities to comment on proposals affecting their jurisdictions.

Source: The provisions of this Sec. 5.232 adopted to be effective May 1, 1984, 9 TexReg 2195.

Sec. 5.233 Notification of Intent

(a) An applicant under a covered federal or state program should, at least 45 days prior to the final submission of an application to the federal or state agency from which assistance is sought, submit to the appropriate review agency either one copy of a notification of intent (NOI) or one copy of the full application. By submitting an NOI, the applicant has an additional 15 days to prepare the full application.

(1) Notifications of intent should be sent to the regional review agency having jurisdiction over the state planning region affected by the proposed project or program. Regional review agency addresses and the counties included in each region are contained in Sec. 5.217(a)(2)(Table V) of this title (relating to Applicant Responsibilities).

(2) State agencies, federal agencies proposing direct development, or other governmental applicants with proposals affecting an interstate metropolitan area, the whole state, or more than one contiguous planning region should submit one copy of their notification of intent to the State Single Point of Contact, Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711.

(3) Nongovernmental applicants with proposals affecting more than one contiguous planning region but less than the entire state should submit a copy of their notification of intent to the regional review agency within the region in which the applicant's principal offices are located for assignment of the state application identifier. Upon receipt of the SAI, the applicant must provide copies of the NOI or application to all other regional review agencies in whose regions the applicant proposes to provide services.

(4) Applicants located outside the State of Texas with projects, plans, environmental impact statements, or programs affecting more than one state planning region are to send a notification of intent to the State Single Point of Contact, Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711.

(5) Notifications of intent for state plans covered by the Texas Review and Comment System must be submitted to the state single point of contact 75 days prior to

submittal to the federal funding agency.

(b) Notification of intent content.

(1) The notification of intent for local applicants consists of completing appropriate portions of the Standard Form 424 (SF424). Copies of this form generally can be obtained from the federal agency to which application is being made. A one page description of the project must be provided, including:

(A) how the project addresses identified need;

(B) the target population and geographic area;

(C) scope of services and expected results;

(D) coordination efforts, including organizations or key individuals involved in developing the project; and

(E) identification of support from related projects and government agencies.

(2) When a state agency is applying for federal funds or submitting a state plan, the notification of intent will consist of completing appropriate portions of the Standard Form 424 and Budget and Planning Office Form 1172. If funding is not known at the time of submitting a state plan, the Form 424 and Form 1172 may be eliminated. A one page description of the project must be provided, including:

(A) how the project addresses identified need;

(B) the target population and geographic area;

(C) scope of services and expected results;

(D) coordination efforts, including organizations or key individuals involved in developing the project; and

(E) identification of support from related projects and government agencies.

(3) Federal agency notification of intent for direct development activities will be provided in the manner and format prescribed by federal law or regulation.

(c) Review agency action based upon notification of intent. Upon receipt of the notification of intent, the state single point of contact or the appropriate regional review agency will determine whether the application should be reviewed.

(1) If the application does not need to be reviewed, the reviewing agency will notify the applicant in writing as quickly as possible but no later than 10 days.

(2) If the application does need to be reviewed, the reviewing agency will notify the applicant and direct the applicant to provide a specified number of copies of the full application to a list of reviewers. No response by the reviewing agency within 15 days after the NOI has been submitted indicates intent to review, and the applicant must submit two copies of the application.

(3) If an application is covered solely by House Bill 1172, 64th Legislature (Texas Civil Statutes, Article 4413(32a)), the applicant will be notified only if the state single point of contact wishes to review the application. These applications will only be reviewed if, in the judgment of the state single point of contact, they are of statewide impact or could be strengthened through the comments of reviewing agencies. Grant applications of a technical or specialized nature and others that do not appear to have a significant potential for improvement through the review process generally will not be reviewed.

(4) Irrespective of whether the application is selected for review, the review agency will assign a state application identifier number (SAI) to the application for tracking and reporting purposes. If the application is less than statewide in scope but affects two or more contiguous state planning regions, the regional review agency in which the applicant maintains its principal office will assign the SAI and notify the other affected review agencies. It is the applicant's responsibility to then provide copies of the application to affected review agencies.

(5) Although state plans normally will be reviewed, an NOI is requested to be sent to the single point of contact for use in scheduling the review, to coordinate the review with any public hearings, and to determine the number of copies needed for the review.

Source: The provisions of this Sec. 5.233 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5269.

Cross Reference: This Section cited in 1 TAC Sec. 5.217, (relating to Applicant Responsibilities).

Sec. 5.234 Determining Eligibility for Review

Prior to accepting an application for review, the review agency shall determine whether:

(1) the program under which assistance is sought or direct development is proposed is required by the TRACS rules or other law to be reviewed;

(2) the application contains sufficient detail to allow for review, including information on the scope, geographic, environmental, and programmatic impacts, and applicant eligibility to apply;

(3) the proposal is of statewide or regional significance, including:

(A) whether it is likely to significantly affect more than the applicant or implementing jurisdiction(s) or, in the case of a nongovernmental applicant, whether it is likely to significantly affect jurisdictions other than the one in which the project or program is to be developed or operated;

(B) whether the project has a high probability of significant adverse impacts on the environment; and

(C) whether the project type has a high probability of duplicating existing services or facilities or has a demonstrated need for coordination.

(4) Application of threshold criteria.

(A) A negative answer to paragraph (1) of this section automatically precludes an application from being reviewed, unless the applicant requests that it be.

(B) A negative answer to paragraph (2) of this section will result in the application being returned to the applicant for additional information, thereby delaying the proposal's review, and consequently, its progress toward approval or funding.

(C) An affirmative answer to any of the questions under paragraph (3) of this section will make the application subject to review.

Source: The provisions of this Sec.167 5.234 adopted to be effective May 1, 1984, 9 TexReg 2195.

Sec. 5.235 Project Review Criteria

(a) If one or more of the threshold criteria are met and an application is accepted for review, the following questions will guide the review agency.

(1) Does the project comply or furnish reasonable assurances of compliance with applicable federal, state, and local laws, regulations, and ordinances?

(2) Is the project consistent with state, areawide, and/or local planning, or does it contribute toward goals or objectives identified at one or more of these governmental levels?

(3) Does the project address a clearly defined need?

(4) Is the project likely to produce any significant adverse effects on the environment?

(5) Are the project's goals identified, specific, measurable, and achievable?

(6) Does the proposal demonstrate a feasible delivery strategy?

(7) Does the project contribute to a balanced delivery of services among political subdivisions covered by the application?

(8) Do the anticipated accomplishments of the project justify the amount of funds requested? (cost/benefit analysis)

(9) Does the applicant's prior performance indicate a high probability that the proposed objectives will be accomplished?

(b) Other review criteria. Regional review agencies may utilize additional review criteria reflective of the unique characteristics and concerns of their regions and of the governments within their regions, provided the criteria are consistent with law, fact, or regulation.

Source: The provisions of this Sec. 5.235 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5269.

Sec. 5.236 Review Schedule

(a) The NOIs should be submitted to the reviewing agency as early as possible but no later than 45 days prior to the due date to the funding agency.

(b) If an NOI is submitted as noted in subsection (a) of this section and a review is necessary, the full application must be submitted no later than 30 days prior to the filing deadline of the funding agency.

(c) If an NOI is not submitted, a full application must be submitted to the reviewing agency 45 days prior to the filing deadline of the funding agency.

(d) Applications accepted for review must be reviewed within a maximum of 60 days if no NOI was submitted, and within a maximum of 45 days if an NOI was submitted as required in subsection (a) of this section.

(e) Certain applications, such as noncompetitive continuation grants and those to the U.S. Department of Housing and Urban Development for specified mortgage insurance programs and for urban development action grants must be reviewed with 30 days.

(f) The review period shall commence upon receipt of the full application by the reviewing agency. Full applications will include all information contained in the notification of intent, if such was provided, plus all other information required by the funding agency.

(g) Review agencies shall have as a goal the completion of reviews within 45 days. When applicants obtain comments from the review agency prior to the application filing deadline of the funding agency, the applicant shall make changes to the application, where appropriate, or respond to the comments. The review letter and the written response must be made a part of the application.

(h) In cases where the applicant must submit the application to the funding agency prior to the end of the review period, the applicant must obtain a state application identifier (SAI) number from the reviewing agency. In submitting the application, it should be made clear to the funding agency that the TRACS review is in progress. When comments are received, the applicant shall make appropriate amendments to the application or shall respond to the comments in writing. The appropriate amendments, the written response, and a copy of the review comments must be forwarded to the funding agency.

(i) In cases where the review agency chooses to waive or not review an application, the applicant should complete appropriate portions of the federal Standard Form 424 (SF424) and enter the SAI number assigned by the review agency in the space provided, enclose a copy of the review agency's waiver letter in the application package, and transmit the completed application to the funding agency.

Source: The provisions of this Sec. 5.236 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5269.

Cross Reference: This Section cited in 1 TAC Sec. 5.216, (relating to State Agency

Responsibilities).

ACCOMMODATION OF REVIEW COMMENTS

Sec. 5.251 Federal Accommodation of Review Comments

(a) At the direction of the governor, by written request from the administrative head of an affected state agency that can demonstrate a probable adverse impact on programs under the agency's jurisdiction, or at the written request of the governing body of a regional review agency, the state single point of contact shall, in writing, inform the federal agency proposing direct federal development or from which financial assistance is requested that the State of Texas or its political subdivisions have serious objections with regard to the proposal for which funding is sought. This determination can be made irrespective of whether the program or activity was selected for coverage under the Texas Review and Comment System (TRACS). Objections must be based on law, fact, or regulation and may address any aspect of a project or proposal, including environmental concerns, that make it unacceptable to the jurisdiction(s) in the project area. Recommendations or objections can represent a consensus of all commenting parties or may reflect a particular view with dissenting opinions. The letter shall specify the title of the project, the applicant's name, the purposes of the grant proposal or direct development, the state application identifier number, and the specific objections to the proposal, with proposed remedies, if applicable. Views which differ from the state or regional recommendation must be included in the letter.

(b) The federal funding agency, as required by law, will respond in writing to the state's accommodation request, concurring with the state's position, stating why it intends to fund the proposal over the objections (nonaccommodation), or reaching a mutually agreeable solution. Federal rules require the funding agency to wait 15 days after sending a nonaccommodation to the state single point of contact before taking final action. As soon as possible, but no later than two working days following receipt of the federal response, the state single point of contact (SPOC) shall transmit the federal response to the originating agency or political subdivision. Within the 10 days from receipt provided by federal rules, during which the federal agency will not fund the proposal in controversy, the SPOC will, at the request of the originating state or substate entity, transmit the originator's written rebuttal to the federal agency in cases in which the federal agency has refused to accommodate.

Source: The provisions of this Sec. 5.251 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5270.

Cross Reference: This Section cited in 1 TAC Sec. 5.253, (relating to Right of a Dissenting Political Subdivision To Request Accommodation).

Sec. 5.252 State Accommodation of Local Review Comments

(a) At the written request of the governing body of a regional review agency (RRA) the state single point of contact shall, in writing, inform the state agency from which financial assistance is requested that the RRA has serious objections to the proposal for which funds are sought or, in the case of direct state development, with regard to a project or program the state proposes to construct or operate. Objections must be based on law, fact, or regulation and may address any aspect of a project or

proposal, including environmental concerns, that makes it unacceptable to the jurisdiction(s) in the project area. Recommendations or objections can represent a consensus of all commenting parties, or may reflect a particular view with dissenting opinions. The request from the RRA shall specify the title of the project, the applicant's name, the purposes of the grant proposal, or the direct development, the state application identifier number, and the specific objections to the proposal, with proposed remedies, if applicable. Views which differ from the regional recommendations must be included in the letter.

(b) The state funding agency will respond in writing to the regional accommodation request, concurring with the regional position, stating why it intends to fund the proposal over the objections, or reaching a mutually agreeable solution. The state funding agency must wait 15 days after sending a nonaccommodation to the state single point of contact before taking final action. As soon as possible, but no later than two working days following receipt of the state agency response, the state single point of contact shall transmit the agency's response to the originating regional review agency. Within 10 days from receipt by the regional review agency, during which the agency will not fund the proposal in controversy, the SPOC will, at the request of the originating jurisdiction transmit the originator's written rebuttal to the state agency in cases in which the state agency has refused to accommodate.

Source: The provisions of this Sec.167 5.252 adopted to be effective May 1, 1984, 9 TexReg 2195; amended to be effective November 1, 1988, 13 TexReg 5270.

Cross Reference: This Section cited in 1 TAC Sec. 5.216, (relating to State Agency Responsibilities); 1 TAC Sec. 5.253, (relating to Right of a Dissenting Political Subdivision To Request Accommodation).

Sec. 5.253 Right of a Dissenting Political Subdivision To Request Accommodation

Any political subdivision of the state which can demonstrate a probable adverse impact on its jurisdiction from a proposed project may, when the regional review agency gives the project a favorable review, request that the review, with dissents, be transmitted to the funding agency by the state single point of contact, thereby initiating the federal or state accommodation process as described in Sec.167 5.251 of this title (relating to Federal Accommodation of Review Comments) and Sec.167 5.252 of this title (relating to State Accommodation of Local Review Comments).

Source: The provisions of this Sec. 5.253 adopted to be effective May 1, 1984, 9 TexReg 2195.

<http://www.governor.state.tx.us/TRACS/rules.html> 7/12/00 2:04 PM

Texas Review and Comment System

TABLE II, State Programs Requiring TRACS Review

Housing & Urban Development

None TDHCA PLANNING/CAPACITY BUILDING PROGRAM

None TDHCA SPECIAL IMPACT FUND

None TDHCA/TDED TEXAS CAPITAL FUND

None TEXAS RENTAL REHAB PROGRAM

Reclamation, Historic Preservation and Recreation

None TEXAS HISTORIC PRESERVATION GRANTS

None TEXAS RECREATION & PARKS ACCOUNT

Workforce Development

None STATE INDUSTRIAL START-UP TRAINING

None STATE APPRENTICESHIP TRAINING

None WORKFORCE DEVELOPMENT INCENTIVES

Arts

None TEXAS COMMISSION ON THE ARTS FINANCIAL ASSIS.

Environmental Protection

None MUNICIPAL SOLID WASTE TIPPING FEE-FUNDED
PROJECTS (TNRCC)

Energy

None STATE OF TEXAS OIL OVERCHARGE PROGRAM

Education

None LIBRARY SYSTEMS ACT

None TELECOMMUNICATIONS INFRASTRUCTURE FUND

Health and Human Services

None STATE FUNDS FOR COMMUNITY-BASED

ALCOHOL/DRUG PROBLEMS

ALL STATE AGENCIES: All federal programs covered in
Table I administered by state agencies are subject to
TRACS review.

ALL STATE AGENCIES: All direct state development
that meets TRACS threshold criteria and is not
specifically excluded by law from review is subject to
TRACS review.

Texas Review and Comment System

All Federal Agencies: All Federal Direct Development Not Specifically Excluded By Law From Review Is Subject To TRACS Review. Please select the links below.

[**Agriculture/Rural Development**](#)

[**Arts**](#)

[**Corporation for National and Community Service**](#)

[**Disaster Assistance**](#)

[**Economic Development**](#)

[**Education**](#)

[**Energy**](#)

[**Environmental Protection**](#)

[**General Services**](#)

[**Health and Human Services**](#)

[**Housing/Urban Development**](#)

[**Law Enforcement/Substance Abuse Control**](#)

[**National Science Foundation**](#)

[**Reclamation, Historic Preservation and Recreation**](#)

[**Small Business Development**](#)

[**Transportation**](#)

[**U.S. Army Corps of Engineers**](#)

[**Veterans Affairs**](#)

[**Workforce Development**](#)