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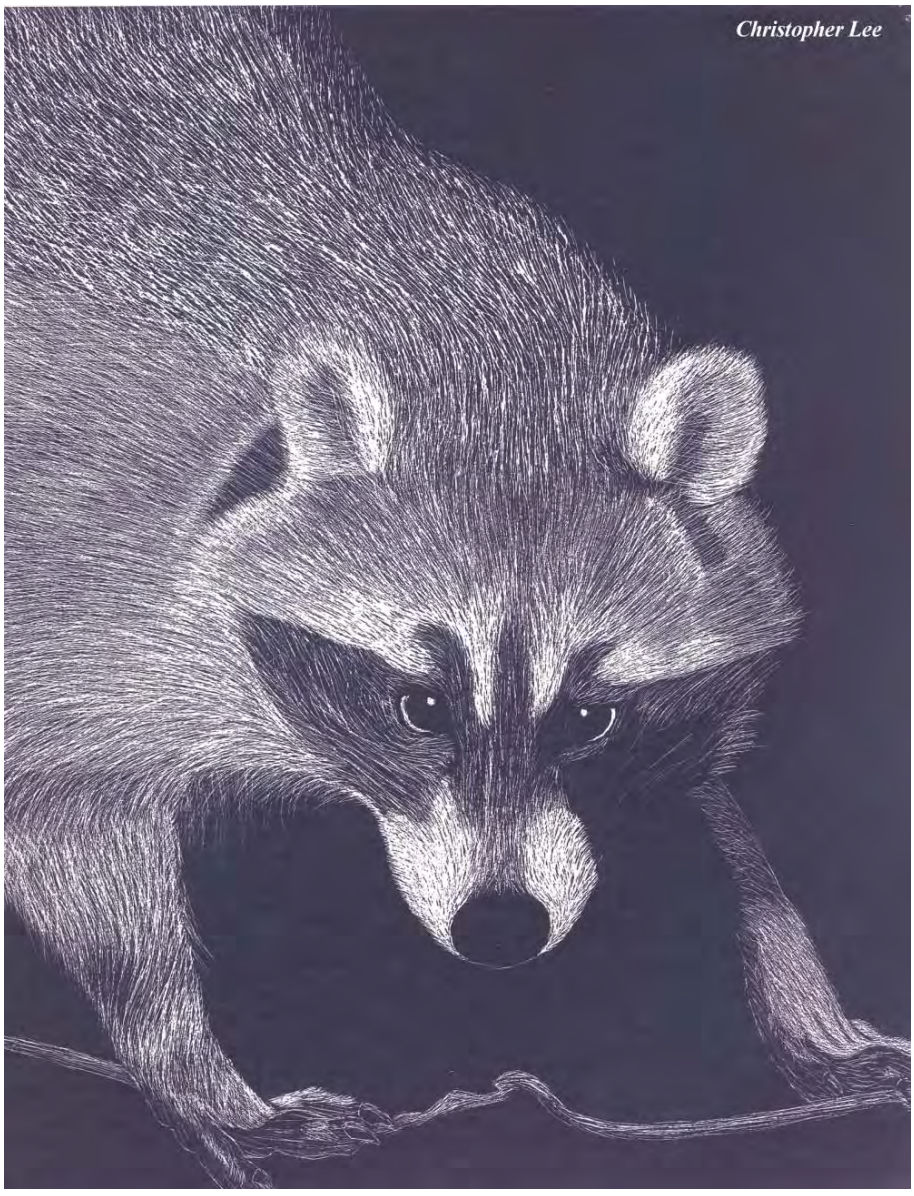

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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Open Meetings

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Request for Opinion

RQ-0845-GA

Requestor:

The Honorable Joe Deshotel

Chair, Committee on Business & Industry

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of Spindletop Mental Health Mental Retardation Services to sell or lease certain real property and use the resulting proceeds to provide community-based health, mental health, or mental retardation services (RQ-0845-GA)

Briefs requested by January 18, 2010

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

TRD-200905944

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: December 18, 2009

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PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER A. TEXAS COMMODITY REFERENDUM LAW

DIVISION 1. GENERAL RULES

4 TAC §17.12

The Texas Department of Agriculture (the department) proposes new §17.12, concerning the disposition of funds held by the Southern Rolling Plains Cotton Producers Board (Board). The new section is proposed in accordance with Texas Agriculture Code (the Code), §41.126, to provide for the disposition of funds held by the Board.

The Board was established under the Texas Commodity Referendum Law, the Code, Chapter 41 (Chapter 41) and has been in an inactive status since 1993, as provided in the Code, §41.125. The department has received a request from a representative of the former Board, on behalf of the Board, wishing to dispose of funds held in its bank account for purposes allowed by Chapter 41. Section 41.126 of the Code allows the department by rule to provide for the disposition of funds of an inactive Board. Section 41.127 of the Code also provides for reactivation of the Board and seating of a new Board, where all Board terms have expired, which is the case for this Board. The amount of funds remaining in the Board's account is of such a small amount that conducting a board election to seat a new Board for purposes of voting to distribute the funds would not be in the best interests of producers whose assessments make up the funds. It has, therefore, been requested that the Commissioner adopt a rule directing the disposition of funds to the Southern Rolling Plains Partnership in Research, Innovation, Demonstration and Education (SRP-PRIDE) Program, to be designated for cotton root rot research being conducted by Texas A&M University staff. Proposed new §17.12 provides for disposition of funds held by the Board to the SRP-PRIDE Program, as requested.

Brian Murray, assistant commissioner for external relations, has determined that, for the first five-year period the new section is in effect, there will be no fiscal implications for state or local government as a result of the administration and enforcement of the new section. The funds collected by the Board are not state funds.

Mr. Murray also has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administration and enforcement of the new section will be the disposition of Board funds for the purposes intended under the Code, Chapter 41, for the benefit of cotton producers in the Southern Rolling Plains area. There will be no adverse fiscal impact on microbusinesses, or small businesses or individuals required to comply with the new section.

Written comments on the proposal may be submitted to Brian Murray, Assistant Commissioner for External Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under the Texas Agriculture Code (the Code), §41.126, which provides the department with the authority to provide by rule for disposition of funds held by an inactive commodity board; and the Code, §12.016, which provides the department with the authority to adopt rules for administration of its duties under the Code.

The proposal affects the Texas Agriculture Code, Chapters 12 and 41.

§17.12. Disposition of Funds Held by the Southern Rolling Plains Cotton Producers Board.

(a) Purpose of the Board. The Southern Rolling Plains Cotton Producers Board was established under the Texas Agriculture Code (the Code), Chapter 41 to develop, carry out, and participate in programs of research, disease and insect control, predator control, education, and promotion designed to encourage the production, marketing, and use of cotton produced in the Southern Rolling Plains, and to set and collect an assessment from cotton producers in the Southern Rolling Plains to fund such programs.

(b) Inactive Status of the Board. The Board became inactive in 1993, in accordance with §41.125 of the Code, and has remained inactive to date.

(c) Unexpended Funds. The Board currently has in its bank account unexpended funds that are available for disbursement for purposes allowed by Chapter 41 of the Code, as described in subsection (a) of this section.

(d) Authority of the Department. Pursuant to §41.127(f) of the Code, the department may, by rule, provide for disposition of unexpended funds of the Board.

(e) Disposition. The Board may dispose of its unexpended funds for participation in programs of research, as authorized by §41.001 of the Code. The Board is directed to dispose of its unexpended funds by distributing such funds to the Southern Rolling Plains Partnership in Research, Innovation, Demonstration and Education (SRP-PRIDE) Program, administered by the Texas Pest Management Association, to be designated for cotton root rot research being conducted by Texas A&M University staff.

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 December 17, 2009.

TRD-200905917
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

7 TAC §§84.301, 84.302, 84.308

The Finance Commission of Texas (commission) re-proposes amendments to 7 TAC §84.301, concerning Definitions, and to §84.302, concerning Authorized Credit Insurance and Debt Cancellation Agreements, and re-proposes new 7 TAC §84.308, concerning Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle, offered in connection with motor vehicle retail installment sales contracts. As a result of comments received, the commission withdraws the original proposal of the amendments to 7 TAC §84.301 and §84.302 and the original proposal of new 7 TAC §84.308 that appeared in the *Texas Register* on September 4, 2009 (34 TexReg 6026).

Debt cancellation agreements were authorized to be offered as part of consumer loans in 2003, but at that time the legislature did not address the sale of these products with regard to motor vehicle retail installment sales. With the enactment of Senate Bill (SB) 1966, the 81st Texas Legislature amended the Texas Finance Code to allow the sale of debt cancellation agreements in connection with Chapter 348 retail installment sales contracts, with certain limitations and restrictions. Specifically, the Texas Legislature added §348.124 to the Texas Finance Code and amended §348.001 (adding a definition of "debt cancellation agreement"), §348.005 (authorizing a fee for debt cancellation agreements as an itemized charge), and §348.208 (conforming changes).

During the 2009 legislative session, the Texas Legislature also passed SB 1965 relating to the regulation of retail installment sales contracts for commercial vehicles. Certain provisions within Chapter 348 of the Texas Finance Code are not applicable to transactions involving commercial vehicles. Furthermore, these consumer-oriented provisions prevent commercial buyers from contracting for services related to commercial uses that would not be relevant to a consumer purchase. The intent of SB 1965 is to exempt retail installment sales contracts for commercial vehicles from certain provisions of the Texas Finance Code. Among other things, SB 1965 adds §348.0051 which outlines additional charges permitted for commercial vehicles, including a provision allowing fees for debt cancellation agreements.

As a note of background regarding the original proposal, the debt cancellation products authorized by SB 1965 and SB 1966 are offered by diverse market segments that do not have the same interests or needs. The agency learned of the specialized perspectives of franchised motor vehicle dealers, independent motor vehicle dealers, gap waiver providers, as well as insurance companies with regard to debt cancellation agreements. The agency decided that it would be in the best interest of consumers as well as these diverse market providers to gather information from interested stakeholders in order to prepare an informed and well-balanced proposal for the commission. Accordingly, the agency distributed rule drafts to the growing list of stakeholders for specific early or pre-comment prior to the original presentation of the rules to commission.

Following the original proposal of these rules, the agency received comments from interested stakeholders. These comments further revealed the contrast among the various market segments, as well as the differing needs and interests of these providers. A review of the industry's comments led the agency to the determination that the re-publication of a revised proposal of rules §§84.301, 84.302, and 84.308 would be beneficial to the industry, consumers, and the agency. The agency believes that the comments received and participation of stakeholders in the rulemaking process has greatly benefited the resulting re-proposal. The re-proposal incorporates the industry's input throughout the rules and achieves a more appropriate balance between the interests of the industry and of consumers.

This re-proposal includes several improvements on the original proposal. The following paragraphs include a brief description of the more notable changes. After the description of broad changes made since the proposal, the specific purposes of the rule amendments and new rule follow.

First, the original proposal used terminology including words and phrases such as "payment," "amount due," or "amount owed." Concerns were raised regarding whether a licensee "pays amounts" under a debt cancellation agreement. A licensee either posts amounts received from debt cancellation providers, or when the licensee is the provider itself, cancels the debt in the event of a total loss or theft. Therefore, in order to provide more appropriate language to clarify the actions of licensees with regard to debt cancellation agreements, this re-proposal utilizes more accurate terms throughout, such as "cancellation," "canceling the debt," and "amount to be cancelled."

Second, another global change reflected all through the rules clarifies which parties are responsible for different duties (e.g., providing disclosures, refunding, maintaining or requesting documents, etc.). The agency has conducted a thorough review and carefully selected the obligated party, whether licensee, retail seller, holder, administrator, or a combination of these parties. To that end, new §84.308(j) has been added regarding assignment and delegation.

Third, regarding §84.308(c), this re-proposal provides clarity concerning the inclusion of necessary contract formation language, incorporates provisions suggested by stakeholders, and offers greater flexibility to licensees by allowing the advance, written approval of additional exclusions by the commissioner.

Fourth, concerning the proposed fees under §84.308(e), the agency has reviewed comments received, conducted additional

meetings with stakeholders, and performed an analysis of the different fee structures submitted. The fee charts included in this re-proposal (Figures §84.308(e)(1) and (e)(2)) have experienced significant revisions. Through these changes, the agency hopes to strike the appropriate balance between the interests of the industry and of consumers. Additionally, some technical corrections and clarifications have been made regarding calculations under §84.308(h).

The purpose of the amendments to §84.301 and §84.302 is to provide clarifying and conforming changes relating to the different types of debt cancellation products that may be offered in connection with motor vehicle installment sales contracts. The changes serve to harmonize the implementation of SB 1965 and SB 1966 through the use of common terms in 7 TAC Chapter 84. Additionally, some of the amendments provide clarification as to the types of products authorized for transactions involving ordinary vehicles, i.e. those used primarily for personal, family, or household use, as opposed to commercial vehicles. The term "ordinary vehicle" is currently used in §84.202 and §84.808 and has been utilized here for consistency purposes. Definitions of both "ordinary vehicle" and "commercial vehicle" have been recently adopted in §84.102.

The amendments to §84.301 add definitions delineating the particular types of debt cancellation agreements that may be offered with Chapter 348 contracts. The proposed new definitions outline the scope of authorized debt cancellation products in the following situations: the death of the retail buyer (subsection (a)), the disability of the retail buyer (subsection (b)), and the total loss or theft of the motor vehicle (subsection (c)). The first sentences in proposed subsections (a) and (b) are modeled after language in SB 1965, as these products are only authorized to be offered on commercial vehicles. The definition proposed in §84.301(c)(1) for ordinary vehicles closely tracks the definition found in Texas Finance Code, §348.001(1-a), as enacted by SB 1966. For commercial vehicles, proposed §84.301(c)(2) is modeled after the language found in Texas Finance Code, §348.0051(a)(4), as enacted by SB 1965. For the definitions proposed in new §84.301(a) - (c), parallel language is included that explains to which parties the debt cancellation fee may be paid. In addition, the two existing definitions under §84.301 have been relettered accordingly along with other technical corrections.

Proposed new §84.301(f) contains two definitions outlining how a total loss or theft will be determined regarding debt cancellation agreements for total loss or theft of an ordinary vehicle. These definitions are proposed to coordinate with new §84.308 by discussing total loss or theft in connection with two specific situations: (1) where insurance coverage is part of the retail buyer's responsibility to the holder, or (2) where the holder bears complete responsibility for canceling the debt.

In reference to §84.302, the title and purpose provision in subsection (a) include proposed amendments incorporating the topic of debt cancellation to the current provisions concerning authorized credit insurance. In addition, throughout §84.302, descriptive tag lines have been added at the beginning of each subsection for consistency purposes.

Section 84.302(g) regarding authorized insurance and surplus lines insurance companies has been subdivided into two paragraphs in order to accommodate the products authorized for ordinary vehicles as opposed to commercial vehicles. Proposed §84.302(g)(1) contains the existing language relating to ordinary vehicles, whereas paragraph (2) contains new language for commercial vehicles. Similarly, subsection (h) concerning debt cancellation agreements has also been separated into two paragraphs. In particular, proposed §84.302(h)(1) eliminates the prohibition on debt cancellation agreements for the total loss or theft of an ordinary vehicle as authorized by SB 1966. Both subsection (h)(1) and (h)(2) include statutory references relating to the respective provisions for debt cancellation agreements authorized for ordinary and commercial vehicles. Additionally, a new sentence has been added to subsection (h)(1) concerning ordinary vehicles stating that reasonable access to debt cancellation documents held by the administrator must be provided to the commissioner for a debt cancellation fee to be considered reasonable.

The purpose of proposed new §84.308 is to outline the parameters under which a retail seller may provide a debt cancellation agreement for total loss or theft of an ordinary vehicle in connection with a Chapter 348 retail installment sales contract. One of the principal consumer protections in SB 1966 is that the amount charged for a debt cancellation agreement must be reasonable; the rule establishes a maximum reasonable fee structure accompanied by certain limitations that may be addressed within a debt cancellation agreement. The individual purposes of each new subsection are provided in the following paragraphs.

Section 84.308(a) provides the purpose of the rule, as described in the first sentence of the preceding paragraph.

Section 84.308(b) clarifies the disclosure requirements of a debt cancellation agreement, including provisions relating to delivery and multiple applicants.

Section 84.308(c) outlines the provisions that are authorized to be included in a debt cancellation agreement. Subsection (c) is divided into two distinct situations where debt cancellation agreements may be offered involving total loss or theft: (1) where insurance coverage is part of the retail buyer's responsibility to the holder, or (2) where the holder bears complete responsibility for canceling the debt. From the information gathered by the agency, it became apparent that these two sets of circumstances required separate treatment under the new rule. With this bifurcated approach, the agency intends to accommodate different market segments offering debt cancellation agreements while maintaining appropriate consumer protections.

Proposed paragraphs (1) and (2) of subsection (c) each contain an exclusive list of provisions that may be included in a debt cancellation agreement offered in conjunction with the respective situation, i.e. those involving insurance coverage or those involving the holder bearing complete responsibility. In particular, §84.308(c)(1)(B) and (c)(2)(B) contain lists of allowable exclusions for each situation. These exclusions were compiled from review of related insurance products and from input provided by stakeholders. As discussed earlier, this re-proposal clarifies that necessary contract formation language may be included in a debt cancellation agreement, and provides flexibility so that licensees may submit additional exclusions for written approval by the commissioner.

Section 84.308(d) discusses the content and timing requirements under which a copy of the debt cancellation agreement must be provided to the retail buyer.

Section 84.308(e) and its accompanying figures explain the allowable fees that can be charged for debt cancellation agreements as well as the financing of those fees. Continuing with the bifurcated approach, subsection (e) is divided into two paragraphs and figures to appropriately address the maximum fees that are deemed reasonable for each situation. The agency re-

ceived numerous comments from stakeholders concerning allowable fees, not only regarding actual amounts but also relating to calculation approaches and structure. With the proposed rate structure, the agency has attempted to achieve an appropriate balance that is reasonable to consumers while providing a certain degree of profitability to licensees. Note that the fee schedules have been revised extensively for this re-proposal, as outlined earlier.

Provisions common to both of the rate schedules contained in figures §84.308(e)(1) and §84.308(e)(2) include: a structure including tiers, the amount of the fee being based on the amount financed, fee adjustment permitted to the nearest whole dollar, and that the fee may be included in the amount financed and a finance charge may be charged on that fee. Additionally, both rate schedules set a minimum fee of $50 for a debt cancellation agreement.

Section 84.308(f) outlines how unearned debt cancellation agreement fees must be refunded. The notification of cancellation triggering a refund is described by §84.308(f)(1), as added by this re-proposal. Paragraph (2) states that a refunding method that is at least as favorable to the retail buyer as the Rule of 78s must be used and that in the event of a cancelled debt, the fee paid for the debt cancellation agreement is fully earned and no refund is due. Proposed §84.308(f)(3) explains how the cancellation date must be determined. Paragraph (4) states that a refund credit may be rounded to the nearest whole dollar, and paragraph (5) provides that a refund credit of less than $1.00 is not required. The $1.00 figure has been used in §84.308(f)(5) in order to maintain consistency with the refunding requirements of Texas Finance Code, §348.120. Proposed §84.308(f)(6) provides that a retail buyer must receive a complete refund for the debt cancellation fee if the debt cancellation agreement is cancelled within 30 days from the date of the contract or the issuance of the debt cancellation agreement, whichever is later, or such later day as may be provided under the debt cancellation agreement. In addition, paragraph (6) also states that a retail buyer may not cancel the debt cancellation agreement and then receive any benefits under the agreement.

Section 84.308(g) explains that a licensee must comply with the payment terms of a debt cancellation agreement within 60 days of receiving a debt cancellation request form and all necessary information needed by the holder or administrator to process the request.

Section 84.308(h) delineates the allowable methods of calculating the amount to be cancelled under a debt cancellation agreement, including two separate sets of provisions to maintain the rule's bifurcated approach. As noted earlier, some technical corrections and clarifying changes have been made to subsection (h) for this re-proposal.

Section 84.308(i) discusses the proper calculations of refunds for insurance and other cancelable items, and for time price differential. All refunds should be calculated as of the date of loss.

Section 84.308(j), as added for this re-proposal, relates to assignment and delegation of duties under a debt cancellation agreement. Paragraph (1) states that a retail seller or subsequent holder may delegate its duties under a debt cancellation agreement, but that the delegating party remains liable for those duties. The retail seller or subsequent holder remains responsible for complying with the Texas Finance Code. This continuing responsibility includes obtaining access to documentation in order to determine the proper amount of cancellation, the verification of outstanding amounts, or the application of finance charges for usury purposes. Paragraph (2) outlines recordkeeping requirements, and paragraph (3) provides that the requirements under §84.308(j)(2) also apply to a retail seller who negotiates a debt cancellation agreement and subsequently assigns the retail installment sales contract.

Section 84.308(k) outlines the practices that are prohibited by licensees providing debt cancellation agreements.

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

For each year of the first five years the amendments and new rule are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposal will be increased stability in the industry by providing uniform parameters and standards which can have the effect of lowering the cost of credit. Because the new rule implements the "reasonable" standard in the statute, retail sellers will have more confidence in offering debt cancellation agreements.

Licensees will have the option of not offering debt cancellation agreements, in which case, there will be no fiscal implications for those licensees. For licensees who opt to provide debt cancellation agreements in connection with their motor vehicle retail installment sales contracts, the fees charged in conjunction with the debt cancellation agreements are anticipated to cover the costs associated with creating and maintaining the agreements. Thus, due to the fees that licensees may charge offsetting the costs of the debt cancellation agreements, a neutral cost will result to persons who are required to comply with the proposal. There will be no effect on individuals required to comply with the amendments and new rule as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule revisions, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposed amendments and new rule may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments and new rule are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments and new rule are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. The rule revisions are also proposed under Texas Finance Code, §348.513, which grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter. Additionally, the amendments concerning ordinary vehicles are proposed under Texas Finance Code, §348.0015, as enacted by SB 1965 (Acts 2009, 81st Leg.), which authorizes the commission to determine by rule a motor vehicle that is of a type typically used for personal, family, or household use.

The statutory provisions affected by the proposed amendments and new rule are contained in Texas Finance Code, Chapter 348.

§84.301. Definitions.

(a) Debt Cancellation Agreement for Death of Retail Buyer--The agreement between the retail buyer and the retail seller or the holder of a retail installment sales contract in which a holder agrees to waive all or part of the amount owed under the retail installment sales contract in the event of the death of the retail buyer. The fee amount of the debt cancellation agreement may be paid to the retail seller, holder, or any other party designated by the retail seller or holder.

(b) Debt Cancellation Agreement for Disability of Retail Buyer--The agreement between the retail buyer and the retail seller or the holder of a retail installment sales contract in which a holder agrees to waive one or more payments owed under the retail installment sales contract in the event of the disability of the retail buyer. The fee amount of the debt cancellation agreement may be paid to the retail seller, holder, or any other party designated by the retail seller or holder.

(c) Debt Cancellation Agreement for Total Loss or Theft of Motor Vehicle.

(1) Ordinary vehicles. For a retail installment sales transaction involving an ordinary vehicle, a debt cancellation agreement for total loss or theft of a motor vehicle is a retail installment sales contract term or a contractual arrangement modifying a retail installment sales contract term under which a retail seller or holder agrees to cancel all or part of an obligation of the retail buyer to repay an extension of credit from the retail seller or holder on the occurrence of the total loss or theft of the motor vehicle that is the subject of the retail installment sales contract but does not include an offer to pay a specified amount on the total loss or theft of the motor vehicle. The fee amount of the debt cancellation agreement may be paid to the retail seller, holder, or any other party designated by the retail seller or holder.

(2) Commercial vehicles. For a retail installment sales transaction involving a commercial vehicle, a debt cancellation agreement for total loss or theft of a motor vehicle is a retail installment sales contract provision or agreement under which a holder agrees to waive all or part of the difference between the amount owed under a retail installment sales contract and the amount paid under a physical damage insurance policy maintained by the retail buyer or its assignee in the event the motor vehicle is a total loss. The fee amount of the debt cancellation agreement may be paid to the retail seller, holder, or any other party designated by the retail seller or holder.

(d) [~~(a)~~] Prepaid Maintenance Agreement--A maintenance agreement as defined in Texas Occupations Code, §1304.004.

(e) [~~(b)~~] Service Contract--A service contract as defined [~~Has the meaning assigned~~] in Texas Occupations Code, §1304.003[~~,~~]. Pursuant to Texas Occupations Code, §1304.004, a prepaid maintenance agreement is a type of service contract.

(f) Total Loss or Theft for Debt Cancellation Agreement for Total Loss or Theft of an Ordinary Vehicle.

(1) Insurance coverage part of retail buyer's responsibility to holder. Under §84.308(e)(1) of this title (relating to Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle), a total loss or theft of a covered motor vehicle will be determined by the retail buyer's physical damage insurer, or other responsible party's liability insurer. If there is no primary insurance, the holder will make the determination based on a value established from a recognized retail value guide.

(2) Holder bears complete responsibility for canceling the debt. Under §84.308(e)(2) of this title, a total loss means direct or accidental physical damage loss of or damage to the motor vehicle subject to the debt cancellation agreement which results in a determination by the holder of the retail installment sales contract that the total cost of the repair is greater than or equal to the retail value of the motor vehicle. The value of the motor vehicle subject to the debt cancellation agreement must be determined by an established retail value guide as of the date immediately prior to loss. Under §84.308(e)(2) of this title, theft means the motor vehicle subject to the debt cancellation agreement is stolen and deemed to be not recoverable.

§84.302. Authorized Credit Insurance and Debt Cancellation Agreements.

(a) Purpose. This section only applies to a motor vehicle retail installment sales transaction under Texas Finance Code, Chapter 348 where a charge for insurance or debt cancellation agreement is included in the balance due under the retail installment sales contract. This section does not apply to insurance sold outside of the retail installment sales transaction.

(b) Authorized credit insurance. Authorized credit insurance includes credit life, credit accident and health insurance, credit involuntary unemployment insurance, and dual-interest gap insurance. The retail seller may but is not required to offer the authorized credit insurance products described in this section.

(c) Decreasing term coverage for credit life, credit accident and health, and involuntary unemployment insurance. Credit life insurance, credit accident and health insurance, and involuntary unemployment insurance written in connection with a Texas Finance Code, Chapter 348 motor vehicle retail installment sales contract must be decreasing term insurance.

(d) Lawful rates and terms for credit life and credit accident and health insurance. Credit life insurance and credit accident and health insurance must be written in compliance with Texas Insurance Code, Chapters 1131 and 1153, and any regulations issued by the Texas Department of Insurance under the authority of those provisions.

(e) Lawful rates and terms for involuntary unemployment insurance. Involuntary unemployment insurance must be written in compliance with Texas Insurance Code, Chapter 3501, and any regulations issued by the Texas Department of Insurance under the authority of that chapter.

(f) Lawful rates and terms for dual-interest gap insurance. Dual-interest gap insurance, authorized by Texas Finance Code, §348.208(b)(4), must be written at rates and on forms set and filed in accordance with Texas Insurance Code, Chapters 2251 and 2301, and any regulations issued by the Texas Department of Insurance under the authority of those provisions.

(g) Authorized insurance and surplus lines insurance companies.

(1) Ordinary vehicles. For retail installment sales transactions involving ordinary vehicles, credit [~~Credit~~] insurance must be procured from an insurance company authorized to do business in this state. Surplus lines insurance companies are not authorized to offer credit insurance on a Chapter 348 motor vehicle retail installment sales contract.

(2) Commercial vehicles. For retail installment sales transactions involving commercial vehicles, credit insurance must be procured from an insurer that is authorized to do business in this state or an eligible surplus lines insurer.

(h) Debt cancellation agreements. Debt cancellation[~~, debt suspension, and gap waiver~~] agreements are not credit insurance.

(1) Ordinary vehicles. For retail installment sales transactions involving ordinary vehicles, debt [~~Debt~~] cancellation[~~, debt suspension, and gap waiver~~] agreements that cancel all or part of the retail buyer's obligation to repay the retail installment sales contract based upon the occurrence of death, disability, or unemployment of the retail buyer are not authorized to be sold or written with a Chapter 348 motor vehicle retail installment sales contract. A debt cancellation agreement written in compliance with Texas Finance Code, §348.124 and §84.308 of this title (relating to Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle) for the total loss or theft of a motor vehicle may be offered in connection with a Chapter 348 motor vehicle retail installment sales transaction and included as a term of, or modification to, the retail installment sales contract. In order for a debt cancellation agreement fee to be considered reasonable, the debt cancellation agreement must allow the commissioner reasonable access to any documents relating to the creation, processing, or resolution of the debt cancellation agreement that are in the possession of the debt cancellation administrator or provider.

(2) Commercial vehicles. For retail installment sales transactions involving commercial vehicles, a debt cancellation agreement written in compliance with Texas Finance Code, §348.0051 may only be offered in connection with a Chapter 348 motor vehicle retail installment sales contract if the debt cancellation agreement involves the cancellation of all or part of the retail buyer's obligation to repay the retail installment sales contract based upon the occurrence of one or more of the following events: death or disability of the retail buyer or the total loss or theft of the motor vehicle.

§84.308. Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle.

(a) Purpose. The Texas Finance Code allows a debt cancellation agreement to be included in a motor vehicle retail installment sales contract involving an ordinary vehicle subject to Texas Finance Code, Chapter 348 as an itemized charge. This section outlines the parameters under which a retail seller or holder may provide a debt cancellation agreement for total loss or theft of an ordinary vehicle in connection with a Chapter 348 retail installment sales contract.

(b) Disclosure under Texas Finance Code, §348.124.

(1) Delivery. A retail seller must provide the retail buyer with a notice that a debt cancellation agreement for total loss or theft of an ordinary vehicle is not required in order to purchase the motor vehicle if a retail seller offers to sell a debt cancellation agreement for total loss or theft to a retail buyer. This notice can be provided to the retail buyer either in a debt cancellation agreement for total loss or theft of an ordinary vehicle or in a separate disclosure. The notice must not be in the retail installment sales contract. A retail seller may request that the retail buyer authenticate the debt cancellation agreement for total loss or theft of an ordinary vehicle disclosure acknowledging the applicant's receipt of the disclosure or notice. A retail seller may rely upon a verifiable procedure to show that a debt cancellation agreement for total loss or theft of an ordinary vehicle notice was provided to an applicant.

(2) Multiple applicants. In the case of multiple applicants, it is only necessary for the retail seller to deliver the debt cancellation agreement for total loss or theft of an ordinary vehicle notice to one applicant.

(c) Authorized debt cancellation agreement for total loss or theft of an ordinary vehicle provisions. A debt cancellation agreement under this section may contain any language necessary to form a contract in Texas, but aside from the necessary contract formation language the debt cancellation agreement must only contain provisions or exclusions from one of the following two paragraphs.

(1) Debt cancellation agreement for total loss or theft of ordinary vehicle that includes insurance coverage as part of retail buyer's responsibility to holder:

(A) a statement that explains the calculation of the unpaid net balance;

(B) a statement that excludes loss or damage as a result of one or more of the following:

(i) an act occurring after the original maturity date or date of holder's acceleration of the retail installment sales contract;

(ii) any dishonest, fraudulent, criminal, illegal or intentional act of any authorized driver that directly results in the total loss;

(iii) conversion, embezzlement, or secretion by any person in lawful possession of the motor vehicle;

(iv) lawful confiscation by an authorized public official;

(v) the operation, use, or maintenance of the motor vehicle in any race or speed contest;

(vi) war, whether or not declared, invasion, civil war, insurrection, rebellion, revolution, or act of terrorism;

(vii) normal wear and tear, freezing, mechanical or electrical breakdown or failure;

(viii) use of the motor vehicle for primarily commercial purposes;

(ix) damage that occurs after the motor vehicle has been repossessed;

(x) damage to the motor vehicle prior to the purchase of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(xi) unpaid insurance premiums, salvage, towing, and storage charges relating to the motor vehicle;

(xii) damage related to any personal property attached to or within the vehicle;

(xiii) damages associated with falsification of documents by any person not associated with the retail seller or the debt cancellation provider;

(xiv) any unpaid debt resulting from exclusions in the retail buyer's primary physical damage coverage not included in the debt cancellation agreement;

(xv) abandonment of the motor vehicle by the retail buyer only if the retail buyer voluntarily discards, or leaves behind, or otherwise relinquishes possession of the motor vehicle to the extent that the relinquishment shows intent to forsake and desert the motor vehicle so that the motor vehicle may be appropriated by any other person;

(xvi) any amounts deducted from the primary insurance carrier's settlement due to prior damages;

(xvii) any loss occurring outside the continental United States of America, Alaska, or Hawaii (holder may opt to cover losses in Canada);

(xviii) any exclusion or limitation approved in writing by the commissioner;

(C) a statement that the retail buyer is required to notify the holder within 75 days, or a longer period as agreed to in the debt cancellation agreement, of any potential loss under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(D) a statement that requests the retail buyer to provide or complete some or all of the following documents and provide those documents to the holder:

(i) a debt cancellation request form;

(ii) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(iii) verification of the retail buyer's primary insurance deductible;

(iv) a copy of the police report, if any, filed in connection with the total loss or theft of the motor vehicle;

(v) a copy of the damage estimate;

(E) a statement that the holder will cancel amounts as provided in the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(F) a statement naming the refunding method to be used to calculate refunds under subsection (f) of this section;

(G) a statement explaining the calculation of the amount cancelled under the debt cancellation agreement for total loss or theft of an ordinary vehicle that is in accordance with subsection (h) of this section;

(H) a statement that the debt cancellation agreement is not required to obtain credit and will not be a factor in the credit approval process;

(I) a statement that a partial loss of the motor vehicle is not subject to relief under the debt cancellation agreement;

(J) a statement that contains or includes contract provisions pertaining to the following issues, so long as the provisions comply with state and federal law:

(i) a notice provision regarding how notice may be given or delivered by either party under the debt cancellation agreement;

(ii) a severability provision;

(iii) an arbitration provision.

(2) Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for canceling the debt after total loss or theft:

(A) a statement that the holder will cancel the amount currently owed by the retail buyer on the date of total loss or theft of the motor vehicle on the date of the total loss or theft of the motor vehicle;

(B) a statement that excludes loss or damage as a result of one or more of the following:

(i) an act occurring after the original maturity date or date of holder's acceleration of the retail installment sales contract;

(ii) any dishonest, fraudulent, criminal, illegal or intentional act of any authorized driver that directly results in the total loss;

(iii) conversion, embezzlement, or secretion by any person in lawful possession of the motor vehicle;

(iv) lawful confiscation by an authorized public official;

(v) the operation, use, or maintenance of the motor vehicle in any race or speed contest;

(vi) war, whether or not declared, invasion, civil war, insurrection, rebellion, revolution, or act of terrorism;

(vii) normal wear and tear, freezing, mechanical or electrical breakdown or failure;

(viii) use of the motor vehicle for primarily commercial purposes;

(ix) loss that occurs after the motor vehicle has been repossessed;

(x) damage to the motor vehicle prior to the purchase of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(xi) damage related to any personal property attached to or within the vehicle;

(xii) damages associated with falsification of documents by any person not associated with the retail seller or the debt cancellation provider;

(xiii) abandonment of the motor vehicle by the retail buyer only if the retail buyer voluntarily discards, or leaves behind, or otherwise relinquishes possession of the motor vehicle to the extent that the relinquishment shows intent to forsake and desert the motor vehicle so that the motor vehicle may be appropriated by any other person;

(xiv) any amounts deducted from the primary insurance carrier's settlement due to prior damages;

(xv) any loss occurring outside the continental United States of America, Alaska, or Hawaii (holder may opt to cover losses in Canada);

(xvi) any exclusion or limitation approved in writing by the commissioner;

(C) a statement that the retail buyer is required to notify the holder within 75 days, or a longer period as agreed to in the debt cancellation agreement, of any potential loss under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(D) a statement that requests the retail buyer to provide or complete a debt cancellation agreement for total loss or theft of an ordinary vehicle debt cancellation request form and a copy of the police report, if any, filed in connection with the total loss or theft of the motor vehicle;

(E) a statement that the holder will cancel amounts as provided under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(F) a statement naming the refunding method to be used to calculate refunds under subsection (f) of this section;

(G) a statement that the holder may not be named as loss payee on any insurance policy covering the motor vehicle or receive any of the proceeds from an insurance policy on the motor vehicle;

(H) a statement that the holder may not require property insurance on the motor vehicle;

(I) a statement that the debt cancellation agreement is not required to obtain credit and will not be a factor in the credit approval process;

(J) a statement that a partial loss of the motor vehicle is not subject to relief under the debt cancellation agreement;

(K) a statement that contains or includes contract provisions pertaining to the following issues, so long as the provisions comply with state and federal law:

(i) a notice provision regarding how notice may be given or delivered by either party under the debt cancellation agreement;

(ii) a severability provision;

(iii) an arbitration provision.

(d) Copy of debt cancellation agreement for total loss or theft of ordinary vehicle provided to retail buyer. If a retail buyer purchases a debt cancellation agreement for total loss or theft of an ordinary vehicle, the retail seller must provide the retail buyer, within a reasonable amount of time not to exceed 10 days from the date of the retail installment sales contract, a true and correct copy of the agreement that clearly sets forth:

(1) the name of the retail buyer, and the name, address, and telephone number of the place where requests for debt cancellation are processed;

(2) the amount and term of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(3) the cost of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(4) the terms, including the limitations, exclusions and restrictions; and

(5) a statement that the holder will cancel certain amounts under the debt cancellation agreement for total loss or theft of an ordinary vehicle substantially similar to the following: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT."

(e) Fee or rate for debt cancellation agreement for total loss or theft of an ordinary vehicle. The amount of the fee is based upon the amount financed. The fee for a debt cancellation agreement can be adjusted to the nearest whole dollar. The fee may be included in the amount financed and a finance charge may be charged on the fee. The minimum fee for a debt cancellation agreement under this subsection is $50.

(1) Debt cancellation agreement for total loss or theft of ordinary vehicle that includes insurance coverage as part of retail buyer's responsibility to holder. A retail seller may charge a reasonable debt cancellation agreement fee for total loss or theft of an ordinary vehicle. The following figure contains a rate schedule of maximum fees that are deemed to be reasonable for debt cancellation agreements for total loss or theft of an ordinary vehicle that are in compliance with subsection (c)(1) of this section.
Figure: 7 TAC §84.308(e)(1)

(2) Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for canceling the debt after total loss or theft. The following figure contains a rate schedule of maximum fees that are deemed to be reasonable for debt cancellation agreements for total loss or theft of an ordinary vehicle that are in compliance with subsection (c)(2) of this section.
Figure: 7 TAC §84.308(e)(2)

(f) Refund of unearned debt cancellation agreement fee.

(1) Notification of cancellation triggering refund. A holder may require that the retail buyer notify the holder, retail seller, or any administrator appointed by the holder in writing should the retail buyer decide to cancel the debt cancellation agreement.

(2) Refunding method. Upon termination of a debt cancellation agreement prior to the scheduled maturity date of a retail installment sales contract, the holder or administrator will provide the retail buyer a refund or credit calculated using a method that is at least as favorable to the buyer as the Rule of 78s. In the event of a cancelled debt under the debt cancellation agreement, the fee paid for the debt cancellation agreement is fully earned and no refund is due.

(3) Cancellation date. The refund of the debt cancellation agreement fee, if any, must be based upon the earlier date of:

(A) the prepayment of the retail installment sales contract in full prior to the original maturity date;

(B) a demand by the holder for payment in full of the unpaid balance or acceleration;

(C) a request by the retail buyer for cancellation of the unearned debt cancellation agreement fee; or

(D) the total denial of a debt cancellation request based on one of the exclusions contained in subsection (c)(1)(B) or (2)(B) of this section, except in the case of a partial loss of the covered motor vehicle.

(4) Rounding of unearned debt cancellation agreement fee. The refund credit for the debt cancellation agreement can be rounded to the nearest whole dollar.

(5) Refund credit less than $1.00 not required. A refund credit is not required if the amount of the refund credit is less than $1.00.

(6) Flat cancellation within 30 days. If no total loss has occurred, the retail buyer may cancel the debt cancellation agreement within 30 days from the date of the retail installment sales contract or the issuance of the debt cancellation agreement, whichever is later, or such later day as may be provided under the debt cancellation agreement. Upon such cancellation, the holder or administrator will refund the entire debt cancellation agreement fee. A retail buyer may not cancel the debt cancellation agreement and then receive any benefits under the agreement.

(g) Prompt cancellation under debt cancellation agreement. A holder must comply with the terms of a debt cancellation agreement within 60 days of receiving a debt cancellation request form and all necessary information needed by the holder or administrator to process the request. If the holder or administrator has all of the information that a retail buyer would provide in the completion of a debt cancellation request form, the holder must comply with the terms of the debt cancellation agreement within 60 days of receipt of all the necessary information needed by the holder or administrator to process the request.

(h) Calculation of amount to be cancelled under debt cancellation agreement for total loss or theft of ordinary vehicle. The calculation of the amount to be cancelled under this section will be figured in compliance with one of the following methods:

(1) Debt cancellation agreement for total loss or theft of ordinary vehicle that includes insurance coverage as part of retail buyer's responsibility to holder.

(A) If the retail installment sales transaction uses the scheduled installment earnings method or is a regular payment contract using the sum of the periodic balances method, the holder or administrator will calculate the amount to be cancelled by:

(i) adding the remaining originally scheduled installments owed by the retail buyer, including any payment that is not more than 15 days past due, on the retail installment sales contract as of the date of loss;

(ii) subtracting the greater of either:

(I) the total loss payment made by the primary insurance carrier; or

(II) the retail value of the motor vehicle as of date of loss as determined by an established retail value guide; and

(iii) subtracting any refunds received by the holder as of the date of total loss.

(B) If the retail installment sales contract uses the true daily earnings method, the holder or administrator will calculate the amount to be cancelled by:

(i) computing the originally, scheduled principal balance due as of the date of total loss, including any accrued time price differential for any scheduled installment that is not more than 15 days past due;

(ii) subtracting the greater of either:

(I) the total loss payment made by the primary insurance carrier; or

(II) the retail value of the motor vehicle as of date of loss as determined by an established retail value guide; and

(iii) subtracting any refunds received by the holder as of the date of total loss.

(2) Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for canceling the debt after total loss or theft. The amount currently owed by the retail buyer on the date of total loss or theft of the motor vehicle on the retail installment sales contract will be the amount cancelled under the debt cancellation agreement for total loss or theft of an ordinary vehicle.

(i) Prepayment of retail installment sales contract by debt cancellation agreement. If the debt cancellation agreement is triggered by the total loss or theft of the motor vehicle, all refunds should be calculated as of the date of loss.

(1) Insurance refunds and other cancelable items. Examples of refunds that should be calculated as of the date of loss include credit life premium, credit accident and health insurance premium, credit involuntary unemployment insurance premium, collateral protection insurance premium, and service contract refunds.

(2) Time price differential refund. If the retail installment sales contract uses the scheduled installment earnings method or is a regular payment contract using the sum of the periodic balances method, the time price differential refund should be calculated as of the date of loss. If the retail installment sales contract uses the true daily earnings method, the holder should not earn any time price differential charge after the date of loss.

(j) Assignment and delegation.

(1) The retail seller or subsequent holder of a retail installment sales contract may not assign any of its rights under a debt cancellation agreement unless the retail seller or subsequent holder assigns the retail installment sales contract that the debt cancellation agreement modifies. The retail seller or subsequent holder of the retail installment sales contract may delegate its duties under a debt cancellation agreement, but the delegating party remains liable for the performance it delegated and the conduct of the persons to whom the duties are delegated.

(2) For any documents relating to the creation, processing, or resolution of a debt cancellation agreement, the licensee must:

(A) maintain documents that come into its possession; and

(B) upon request by the agency, cooperate in requesting and obtaining access to documents not in its possession.

(3) Paragraph (2) of this subsection also applies to a retail seller who negotiates a debt cancellation agreement and subsequently assigns the retail installment sales contract.

(k) Prohibited practices. A debt cancellation agreement cannot be offered if:

(1) the retail installment sales contract is already protected by gap insurance;

(2) the purchase of the debt cancellation agreement is required for the retail buyer to obtain the extension of credit.

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 December 18, 2009.

TRD-200905965
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 936-7621

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes the repeal of §25.125, relating to Adjustments Due to Meter Errors, and §25.126, relating to Meter Tampering; new §25.125, relating to Adjustments Due to Meter Errors, Meter Tampering, or Theft in Areas Where Customer Choice Is Not Available, §25.126, relating to Adjustments Due to Meter Errors, Meter Tampering or Theft in Areas in Which Customer Choice is Available, and §25.132, relating to Definitions; and amendments to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities. The proposed repeals and new rules will provide a deterrent to electricity theft, meter diversion, and unjust enrichment through the authorization of the disconnection of electric service at the premises where such activities have occurred; prevent a switch or move-in to accounts that might be used to circumvent the disconnection at locations where tampering has occurred; require special notice by the transmission and distri-

bution utility (TDU) to both the retail customer and retail electric provider (REP) if it detects electricity theft, meter tampering, or diversion; and allow the market to begin taking advantage of the Advanced Metering Systems (AMS) being deployed by TDUs through more timely disconnection and reconnection of customers. Sections 25.125, 25.126, and 25.132 are competition rules subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 37291 is assigned to this proceeding.

The commission is seeking comments on the proposed new rules, amendments, and repeals listed above, as well as comments on the following questions, which may result in changes to the proposed or amended rules:

(1) Should the proposed rules provide TDUs the right or obligation to issue REPs back-billings in excess of six months for a limited number of extraordinary cases of meter tampering or diversion (such as wiring to bypass a meter that is buried or hidden behind or beneath walls, floors or other structures, or cases of businesses that consume electricity for years with no reported usage) and, if so, what types of cases should qualify, what processes should be required before such back-billing is permitted or required, how many cases should be allowed, and should the burden of proof be different than proposed in new §25.125(e) and §25.126(f)?

(2) For a customer whose premises has a switch-hold placed on it pursuant to new §25.126(g) and whose term rate contract expires during the duration of the switch-hold, what guidelines or limitations, if any, should be placed on the electric rates or plans offered to or imposed on the customer during the remainder of the switch-hold?

(3) Given the proposed language for placing a switch-hold for ESI IDs once tampering is discovered for attempted switches and move-ins, should the rule also address move-outs? If so, how?

(4) In what ways can the TDUs enhance the prevention of electricity theft, tampering, or diversion with the deployment of advanced metering systems (AMS)?

(5) Should the rule address a switch-hold in the case of a mass transition due to a provider of last resort (POLR) event? If so, how?

(6) Should the notice from the TDU to the customer described in §25.126(e) be different in the situation where the tampering predated the current occupant? If so, how?

(7) Should the time period in which the customer can receive a credit for inaccurate meter readings referenced in §25.125(b)(3) and §25.126(b)(3) be changed to 24 months or different time period?

Christine Wright, Senior Market Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the new rules and amended rule are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rules and amended rule.

Ms. Wright has determined that for each year of the first five years the new rules and amended rule are in effect the public benefit anticipated as a result of enforcing the rules will be greater clarity regarding the timeline for reconnection for both premises with and without provisioned advance meters with remote disconnection and reconnection capabilities; and decreased electricity theft and related costs. The decrease in electricity theft and related costs will result in lower costs to electric utilities (including TDUs), REPs and their customers over time. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the new rules and amended rule. Therefore, no regulatory flexibility analysis is required. There may be economic costs to persons who are required to comply with the new rules and amended rule. For example, electric utilities will have some increased costs of detecting, documenting, and reporting theft, tampering, and diversion required by these rules; electric utilities and REPs will have small increased costs associated with back-billing and collecting additional amounts allowed under these rules; and TDUs and REPs will face small increased costs to implement switch-blocking provisions required by the proposed rules. These costs are the result of increasing enforcement of meter theft, tampering, and diversion, and are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits accruing from implementing the new rules and amended rule, which include increasing collections related to electricity theft, tampering, and diversion, will substantially outweigh these costs.

Ms. Wright has also determined that for each year of the first five years the new rules and amended rule are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, January 28, 2010, at 10:00 a.m. The request for a public hearing must be received by Friday, January 22, 2010 (21 days after publication).

Initial comments on the new rules and amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Friday, January 22, 2010 (21 days after publication). Reply comments may be submitted by February 1, 2010 (31 days after publication). Sixteen copies of comments on the new rules and amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the new rules and amendment. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the new rules and amendment. The commission will consider the costs and benefits in deciding whether to adopt the new rules and amendment. All comments should refer to Project Number 37291.

SUBCHAPTER F. METERING

16 TAC §25.125, §25.126

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

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §14.001, which provides the commission the general power to regulate and su-

pervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.003, which authorizes the commission to require reports from public utilities; §17.004(a)(7) and (b), which provide that a buyer of retail electric service is entitled to accuracy of metering and that the commission may adopt and enforce rules relating to termination of service; §38.002, which provides the commission the authority to adopt standards for measuring the furnishing of electric service and for ensuring the accuracy of equipment used to measure service; §39.101, which authorizes the commission to adopt and enforce rules that ensure retail electric customer protections and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999; and §39.101(e), which provides the commission with the authority to adopt and enforce rules relating to termination of service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 17.004(a)(7) and (b), 38.002, and 39.101(e).

§25.125. Adjustments Due to Meter Errors.

§25.126. Meter Tampering.

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 December 18, 2009.

TRD-200905953
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 936-7223

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16 TAC §§25.125, 25.126, 25.132

The new rules are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.003, which authorizes the commission to require reports from public utilities; §17.004(a)(7) and (b), which provide that a buyer of retail electric service is entitled to accuracy of metering and that the commission may adopt and enforce rules relating to termination of service; §38.002, which provides the commission the authority to adopt standards for measuring the furnishing of electric service and for ensuring the accuracy of equipment used to measure service; §39.101, which authorizes the commission to adopt and enforce rules that ensure retail electric customer protections and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999; and §39.101(e), which provides the commission with the authority to adopt and enforce rules relating to termination of service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 17.004(a)(7) and (b), 38.002, and 39.101(e).

§25.125. Adjustments Due to Meter Errors, Meter Tampering, or Theft in Areas Where Customer Choice Is Not Available.

(a) Applicability. This section applies to an electric utility in an area in which customer choice is not available.

(b) Back-billing and meter tampering charges. If any meter is found not to be in compliance with the accuracy standards required by §25.121(e) of this title (relating to Meter Requirements), readings for the time the meter was in service since last tested shall be corrected only as allowed below, and adjusted bills shall be rendered, except that previous readings shall not be corrected for any period in which the current customer was not the customer. The utility shall also bill the customer for any tampering, meter repair, or restoration charges due to meter tampering, if the current customer was the customer when the meter tampering began. Back-billing under this subsection shall not exceed a period of:

(1) three months, if the utility discovers a non-compliant meter that has not been affected by meter tampering and the back-billing would result in additional electricity charges to the customer;

(2) six months, if the utility discovers a non-compliant meter that has been affected by meter tampering and the back-billing would result in additional charges and/or fees to the customer; or

(3) twelve months, if the utility discovers a non-compliant meter or has provided incorrect meter readings and the back-billing would result in a credit to the customer.

(c) Calculation of charges. The charge for any period in which the meter was not in compliance with the accuracy standard shall be based on an estimate of consumption under conditions similar to the conditions when the meter was not registering accurately, during a prior or subsequent period for that location or a similar location, to the extent such information is available.

(d) Electric utility responsibilities concerning metering accuracy. An electric utility shall undertake all reasonable efforts to minimize losses associated with inaccurate meters, by carrying out a program to promptly detect and investigate circumstances in which a meter is not accurately recording and reporting consumption and to detect and deter meter tampering. The utility shall take the steps necessary to mitigate the adverse impacts of inaccurate meters on the metering and billing of electricity consumption. The utility shall identify and collect information relating to meter tampering. Once meter tampering is discovered, the utility shall restore normal meter registration and reading within three business days. If the tampering involves a bypass of the meter, and the utility cannot eliminate the bypass, the utility shall, within this period, disconnect service to the premises. The utility shall document any meter tampering and retain the following information for each case of tampering, and promptly make it available to the customer upon request:

(1) Photographs of the premises including a general photograph of the residence/business (showing address number if available), a wide shot photograph of the meter against the wall or where attached to the premises, and close-ups of the meter and/or diversion evidence (prior to removing the meter cover if tampering is obvious and after

removing the meter cover if the damage is inside the meter), and any other relevant evidence that can be photographed;

(2) A description of the detection and investigation methodology employed by the utility;

(3) Documentation of the methodology or rationale used by the utility to determine the date or approximate date upon which the meter ceased accurately registering consumption at the premises and the detailed calculation and methodology for estimating consumption subject to back-billing;

(4) The affected meter and metering equipment that the utility removed from the premises and any object used to tamper with or bypass the meter;

(5) Any other reliable and credible information that supports its conclusion that the meter was tampered with;

(6) A sworn affidavit from an employee or other representative of the utility attesting to the veracity of the information; and

(7) Videotape footage of the premises and the meter, and fingerprints if available, for tampering in excess of 15,000 kilowatt-hours in back-billing.

(e) Burden of proof. If a customer challenges the utility's allegation of meter tampering or the imposition of charges based on any such allegation in a contested case proceeding before the commission, the utility bears the burden of proof that meter tampering occurred.

(f) Additional requirements. The electric utility is responsible for the following:

(1) The utility shall maintain a dedicated staff responsible for monitoring suspicious activity related to meter tampering in its service territory. This dedicated staff shall remain after deployment of advanced metering systems (AMS).

(2) The utility shall set up a process for the public to report meter tampering. The utility shall also include a customer hotline on its website, prominently displayed on its front page.

(3) The utility shall engage in a customer information campaign to educate customers on the safety hazards associated with meter tampering.

(4) By April 1 of each calendar year, each electric utility shall file with the commission a report detailing the following for the previous calendar year concerning meter tampering:

(A) Total number of customers for which meter tampering was determined by the utility;

(B) The number of customers back-billed and the average of the following charges per customer:

(i) utility delivery charges; and

(ii) meter tampering, repair, and restoration charges; and

(C) Total number of cases referred to law enforcement for prosecution that included photographs, a descriptive incident report, affidavit, and notification to law enforcement of the availability of physical evidence in the case.

§25.126. Adjustments Due to Meter Errors, Meter Tampering or Theft in Areas in Which Customer Choice is Available.

(a) Applicability. This section applies to a transmission and distribution utility (TDU) and retail electric providers (REPs) in an area in which customer choice is available.

(b) Back-billing and meter tampering charges. If any meter is found to be non-compliant with the accuracy standards required by §25.121(e) of this title (relating to Meter Requirements), or if the TDU has provided incorrect meter readings to the REP, then previous meter readings shall be corrected, and adjusted bills shall be rendered. The TDU shall not back-bill for any period in which the current customer was not the customer of record at the time of the tampering, or the current REP was not the REP of record. Back-billing under this subsection shall not exceed a period of:

(1) three months, if the TDU discovers a non-compliant meter that has not been affected by meter tampering and the back-billing would result in additional electricity charges to the customer;

(2) six months, if the TDU discovers a non-compliant meter that has been affected by meter tampering and the back-billing would result in additional charges and/or fees to the customer; or

(3) twelve months, if the TDU discovers a non-compliant meter or has provided incorrect meter readings and the back-billing would result in a credit to the customer.

(c) Calculation of charges. The charge for any period in which the meter was not in compliance with the accuracy standard shall be based on an estimate using the standards for calculation as stated in the Tariff for Retail Delivery Service, Section 4.8.1.4, adopted pursuant to §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).

(d) TDU responsibilities concerning metering accuracy. A TDU shall undertake all reasonable efforts to minimize losses associated with inaccurate meters, by carrying out a program to promptly detect and investigate circumstances in which a meter is not accurately recording and reporting consumption and to detect and deter meter tampering. The TDU shall take the steps necessary to mitigate the adverse impacts of inaccurate meters on the metering and billing of electricity consumption. The TDU shall identify and collect information relating to meter tampering, document the findings, and promptly make it available to the REP and retail customer upon request. Once meter tampering is discovered, the TDU shall restore normal meter registration and reading within three business days. If the tampering involves a bypass of the meter, and the TDU cannot eliminate the bypass, the TDU shall, within this period, disconnect service to the premises.

(1) The TDU shall, concurrent with the back-billing, supply the REP with the revised estimated meter read resulting from consumption at the premises that the TDU alleges was not previously billed as a result of the meter tampering. The electronic transaction transmitting the estimated meter read to the REP shall clearly denote that the meter read is an estimate and shall state the reason for the estimation.

(2) The TDU shall also bill the REP for any tampering, meter repair, or restoration charges due to meter tampering, if the current customer was the customer and the current REP was the REP when the meter tampering began. Back-billing as well as charges resulting from meter tampering shall be sent in one transaction by the TDU and shall not be spread over several months.

(3) Within five business days of a request of the Retail Customer or the Retail Customer's REP, the TDU must provide the customer and the REP with the methodology used to calculate the back-billings.

(4) The TDU may not invoice the current REP for any under-billed utility charges related to an allegation of meter tampering or for any meter tampering fees, until the TDU has placed a switch-hold

pursuant to subsection (g) of this section and collected and prepared the following information in support of an allegation of meter tampering.

(A) Photographs of the premises including a general photograph of the residence/business (showing address number if available), a wide shot photograph of the meter against the wall or where attached to the premises, and close-ups of the meter and/or diversion evidence (prior to removing the meter cover if the tampering is obvious and after removing the meter cover if the damage is inside the meter), and any other relevant evidence that can be photographed;

(B) A description of the detection and investigation methodology employed by the TDU;

(C) Documentation of the methodology or rationale used by the TDU to determine the date or approximate date upon which the meter ceased accurately registering consumption at the premises and the detailed calculation and methodology for estimating consumption subject to back-billing;

(D) The affected meter and metering equipment that the TDU removed from the premises and any object used to tamper with or bypass the meter;

(E) Any other reliable and credible information that supports its conclusion that the meter was tampered with;

(F) A sworn affidavit from an employee or other representative of the TDU attesting to the veracity of the information; and

(G) Videotape footage of the premises and the meter, and fingerprints if available, for tampering in excess of 15,000 kilowatt-hours in back-billing.

(e) Notification of meter tampering and disconnection of service. The TDU shall notify the REP within two hours of a determination of meter tampering through a standard market process. The TDU shall also notify the customer within two business days of the determination of meter tampering. In addition, after implementing the switch-hold described in subsection (g) of this section, if the TDU knows that the customer is a tenant, the TDU shall notify the landlord within two business days of the determination of meter tampering if the TDU has contact information for the landlord or can obtain contact information for the landlord through reasonable efforts. The notice to the customer shall be mailed to the premises address assigned to the ESI ID or an address provided by the REP if there is no valid postal premises address assigned to the ESI ID. A standardized electronic notification that includes the same information as the notice provided to the Retail Customer shall be concurrently provided to the current REP of record providing electric service to the premises where the alleged meter tampering occurred. The notice shall include the following information in the same format as follows:
Figure: 16 TAC §25.126(e)

(f) Burden of Proof. If a Retail Customer challenges the TDU's allegation of meter tampering, or the imposition of charges based on any such allegation, in a contested case proceeding before the commission, the TDU shall bear the burden of proof that meter tampering occurred.

(g) Switch-hold and disconnection of service. Upon determination by the TDU that tampering has occurred at a premise, the TDU shall immediately place a switch-hold on the ESI ID, which shall prevent a customer from switching service or submitting a move-in request to another REP. The switch-hold shall remain in effect for the lesser of six months or the date that the REP notifies the TDU that the customer has satisfied its payment obligations for back-billings due to tampering. The TDU shall create and maintain a secure list of ESI IDs that REPs may access. The list shall not include any customer information other than the ESI ID and date the switch-hold was placed. The list shall be updated daily, and made available through a secure means by the TDU. The TDU may provide this list in a secure format through the web portal developed as part of its AMS deployment.

(1) The REP via a standard market process shall submit a request to remove the switch-hold once satisfactory payment is received from the Retail Customer for the tampering and related charges.

(2) For a customer receiving service under §25.498 of this title (relating to Retail Electric Service Using a Customer Prepayment Device or System) a TDU shall disconnect service within two hours of the REP's request for disconnection.

(3) The TDU shall implement a switch-hold pursuant to subsection (g) of this section before back-billing for meter tampering.

(h) Move-ins with a valid switch-hold. If a retail applicant for electric service selects a REP and the selected REP submits a move-in transaction for an ESI ID that has an existing switch-hold as defined in subsection (g) of this section due to meter tampering, the TDU shall notify the selected REP that the move-in transaction is suspended via a standard market process. The selected REP shall use best efforts to promptly determine whether the applicant for electric service is a new occupant not associated with the customer for which the switch-hold was imposed and, if so, obtain adequate evidence to that effect. Adequate evidence may include a copy of a signed lease, an affidavit of a landlord, closing documents, or a certificate of occupancy in the name of the retail applicant for electric service, and shall include a signed statement from the applicant stating that the applicant is a new occupant of the premises and is not associated with the preceding occupant. Upon receipt of such information from the applicant, the selected REP shall notify and provide the information to the TDU using a standard market process; the TDU shall in turn promptly notify the current REP of record and share the information from the selected REP with the current REP of record; and, within 24 hours of receipt of the notice and information, the current REP of record shall make a determination of whether the switch-hold should be removed. If adequate evidence is not received, the current REP of record may deny the move-in request, and the switch-hold will remain in effect pursuant to subsection (g) of this section. If adequate evidence is received, the current REP of record shall grant the move-in request, the selected REP shall resubmit the move-in transaction, and the TDU shall complete the move-in.

(i) Additional requirements. The TDU is responsible for the following:

(1) The TDU shall maintain a dedicated staff responsible for monitoring suspicious activity related to meter tampering in its service territory. This dedicated staff shall remain after deployment of advanced metering systems (AMS).

(2) The TDU shall set up a process for REPs and customers to report meter tampering. The TDU shall also include a customer hotline on its website, prominently displayed on its front page.

(3) The TDU shall engage in a customer information campaign to educate customers on the safety hazards associated with electricity theft, diversion, and meter tampering.

(4) The TDU shall warrant that at the time of a change in REP of record that there is no evidence of electricity theft, diversion, or meter tampering.

(5) By April 1 of each calendar year, each TDU shall file with the commission a report detailing the following for the previous calendar year concerning meter tampering:

(A) Total number of customers for which meter tampering was determined by the TDU;

(B) The number of customers back-billed and the average of the following charges per customer:

(i) utility delivery charges; and

(ii) meter tampering, repair, and restoration charges.

(C) Total number of cases referred to law enforcement for prosecution that included photographs, a descriptive incident report, affidavit, and notification to law enforcement of the availability of physical evidence in the case.

§25.132. Definitions.

For purposes of this subchapter, the following terms have the following meanings unless the context indicates otherwise:

(1) Meter tampering--Any unauthorized alteration, manipulation, change, or modification of a meter or metering equipment, the diversion or bypass of the meter so that consumption is not properly registered and recorded, interference with or obstruction of meter communications, or alteration of meter data that could adversely affect the integrity of billing data or the electric utility's ability to collect, record, and process the data needed for billing or settlement. Meter tampering includes, but is not limited to, harming or defacing the electric utility's metering facilities, physically or electronically disorienting the meter, attaching objects to the meter, inserting objects into the meter, altering billing or settlement data, construction of electrical pathways that bypass the meter in whole or part, or other electrical or mechanical means of preventing the metering equipment from accurately registering, recording, and reporting accurate consumption information.

(2) Meter repair and restoration charges--Any fees or charges for replacing a meter, restoring the condition of metering facilities, or removing any device that permits the meter to be bypassed as authorized by the electric utility's tariff.

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 December 18, 2009.

TRD-200905954
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 936-7223

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SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.214

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 16 TAC §25.214 is not included in the print version of the Texas Register. The figure is available in the on-line version of the January 1, 2010, issue of the Texas Register.)

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.003, which authorizes the commission to require reports from public utilities; §17.004(a)(7) and (b), which provide that a buyer of retail electric service is entitled to accuracy of metering and that the commission may adopt and enforce rules relating to termination of service; §38.002, which provides the commission the authority to adopt standards for measuring the furnishing of electric service and for ensuring the accuracy of equipment used to measure service; §39.101, which authorizes the commission to adopt and enforce rules that ensure retail electric customer protections and which requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999; and §39.101(e), which provides the commission with the authority to adopt and enforce rules relating to termination of service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 17.004(a)(7) and (b), 38.002, and 39.101(e).

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

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

(d) Pro-forma Retail Delivery Tariff.

[~~(1)~~] Tariff for Retail Delivery Service.
Figure: 16 TAC §25.214(d)
[~~Figure: 16 TAC §25.214(d)(1)~~]

[~~(2) Compliance tariff. Compliance tariffs pursuant to this section must be filed by February 15, 2008.~~]

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 December 18, 2009.

TRD-200905955
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.15

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §71.15, concerning Recognized Specialties, to list the specialty in chiropractic orthopedics approved by the Board at its meeting on May 14, 2009; set forth the qualifications and continuing education requirements for this specialty; and renumber the rule accordingly. At this time, the Board is not imposing a fee for specialties.

Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that, for each year of the first five years that this amendment will be in effect, there will be no additional cost to state or local governments.

Mr. Parker has determined that, for each year of the first five years that this amendment will be in effect, the public benefit of this amendment will be greater clarity in the qualifications of chiropractic orthopedists.

Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro businesses during the first five years that this amendment will be in effect. Establishing a specialty in chiropractic orthopedic is optional for a doctor of chiropractic. Any additional costs due to the training requirements described in this rule should be de minimis and incidental to the doctor's decision to specialize in chiropractic orthopedic.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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

§71.15. Recognized Specialties.

The following chiropractic specialties have been approved by the board:

(1) Chiropractic Orthopedic.

(A) Requirements:

(i) Diplomate, Academy of Chiropractic Orthopedists;

(ii) Diplomate, American Board of Chiropractic Orthopedists; or

(iii) Fellow, Academy of Chiropractic Orthopedists.

(B) Continuing education requirements: Thirty-six hours of continuing education during the three years prior to recredentialing approved by the Academy of Chiropractic Orthopedists.

(2) Chiropractic Radiology.

(A) [~~(1)~~] Requirements: Diplomate, American Chiropractic Board of Radiology.

(B) [~~(2)~~] Continuing education requirements:

(i) [~~(A)~~] Sixty continuing education credits over a period of five years in the field of diagnostic imaging;

(ii) [~~(B)~~] Successfully completing an American Chiropractic Board of Radiology certification examination; or

(iii) [~~(C)~~] Another manner recognized and approved by the American Chiropractic Board of Radiology.

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 December 14, 2009.

TRD-200905839
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 305-6716

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CHAPTER 75. RULES OF PRACTICE

22 TAC §75.23

The Texas Board of Chiropractic Examiners (Board) proposes a new rule, §75.23, concerning spinal screenings. The proposed new rule sets forth the minimal standards for conducting out-of-facility spinal screenings, such as at a health fair or other community event. In drafting this rule, the Board consulted the rules of the Department of State Health Services, codified at 25 Texas Administrative Code (TAC), Chapter 37, in addition to other sources. The proposed new rule provides standards for the training required of persons conducting out-of-facility spinal screenings and for the information that must be provided to the public at such screenings. School spinal screenings would still need to be conducted in compliance with the rules and guidelines of the Texas Department of State Health Services.

Mr. Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that, for each year of the first five years that this rule will be in effect, there will be no additional cost to state or local governments.

Mr. Parker has also determined that, for each year of the first five years that this rule will be in effect, the public benefit of this rule will be clearer standards for conducting out-of-facility spinal screenings. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro businesses during the first five years that this rule will be in effect, other than for the minimal costs of preparing signs or placards and keeping records.

Comments on the proposal and any request for a public hearing may be submitted to Glenn Parker, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, TX 78701, fax: (512) 305-6705, no later than 30 days from the date that this rule is published in the *Texas Register.*

This new rule is proposed under Texas Occupations Code §201.152, relating to rules, and §201.1525, relating to rules clarifying scope of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1525 authorizes the Board to adopt rules

requiring a licensee to obtain additional training or certification to perform certain procedures or use certain equipment.

No other statutes, articles, or codes are affected by this proposed new rule.

§75.23. Spinal Screenings.

(a) The purpose of this section is to set forth the minimal standards for conducting out-of-facility spinal screenings. A licensee may offer a spinal screening outside of a registered facility only if they are in compliance with this section.

(b) At all out-of-facility spinal screenings, the following items must be prominently displayed:

(1) proof of licensure of the sponsoring licensee, such as a copy of their chiropractic license or the Board-issued wallet-size license;

(2) a copy of the current facility registration certificate for the facility at which the sponsoring licensee practices;

(3) a copy of the spinal screener certificate from the Texas Department of State Health Services for any person performing spinal screenings that is not licensed or that is not a student at an accredited chiropractic college as described in subsection (d) of this section; and

(4) a placard that complies with the following requirements:

(A) the placard must be placed in a location that can be readily viewed by the public;

(B) the placard must be legible from a distance of at least three feet; and

(C) the placard must include the following language: "This spinal screening is being offered free of charge and free of any commitment. The screening process does not diagnose a spinal deformity or condition. You are free to seek an opinion from the health care provider of your choice for a more thorough examination and treatment. Any complaints regarding the conduct at this spinal screening may be directed to the Texas Board of Chiropractic Examiners, www.tbce.state.tx.us, (512) 305-6707."

(c) A licensee sponsoring a spinal screening is responsible for ensuring compliance with §77.2 of this title (relating to Publicity).

(d) A licensee may allow or direct a student from an accredited chiropractic college who has credit for at least six trimesters of chiropractic education to conduct a spinal screening.

(e) A licensee may allow or direct any other person with a spinal screening certificate from Texas Department of State Health Services to conduct a spinal screening. When a licensee or a student that meets the requirements of subsection (d) of this section is present, they may allow or direct another person to assist with a spinal screening.

(f) A licensee shall create and maintain, for at least 24 months following the event, a log for each screening event that contains, at a minimum, the following information:

(1) date and location of the event;

(2) name and license number of the sponsoring licensee;

(3) name and registration number of the chiropractic facility of the sponsoring licensee;

(4) names of all persons performing spinal screenings; and

(5) the names of each person screened at the event.

(g) Any persons representing a licensee at an out-of-facility spinal screening must be qualified and properly trained as provided in §80.1 of this title (relating to Delegation of Authority).

(h) School spinal screening must be conducted in compliance with rules and guidelines of the Texas Department of State Health Services.

(i) The provisions for out-of-facility spinal screenings in this section supersede the requirements of §80.7 of this title (relating to Out-of-Facility Practice).

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 December 17, 2009.

TRD-200905924
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 305-6716

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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.24

(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 Appraiser Licensing and Certification Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Appraiser Licensing and Certification Board (Board) proposes the repeal of §153.24, concerning Processing a Complaint. The repeal is proposed because the subjects addressed in this section will be covered in new §153.24 the Board is simultaneously proposing. The proposed new rule, otherwise explained in this issue of the *Texas Register,* would more accurately and concisely describe the Standards and Enforcement Services Division's process for handling complaints and would incorporate peer investigative committee investigations into the complaint process.

Devon V. Bijansky, General Counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the proposed repeal. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the repeal. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Ms. Bijansky also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated

as a result of enforcing the repeal will be greater clarity for the public and licensees regarding the complaint process, as well as greater efficiency through the use of peer investigative committees.

Comments on the proposal may be submitted to Devon V. Bijansky, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The repeal is proposed under the Texas Appraiser Licensing and Certification Act (Texas Occupations Code, Chapter 1103), Subchapter D, Board Powers and Duties, which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certificates and Licenses and §1103.154, Rules Relating to Professional Conduct.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed repeal.

§153.24. Processing a Complaint.

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 December 18, 2009.

TRD-200905968
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 465-3938

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22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (Board) proposes new §153.24, concerning Complaint Processing, to replace the current §153.24 being proposed for repeal elsewhere in this issue. The proposed new section would modify the complaint processing provisions to better reflect the practices of the Board's Standards and Enforcement Services Division, increases the recommended penalties for violations of the Texas Appraiser Licensing and Certification Act and Board rules, and provides for investigation of certain complaints by peer investigative committees.

Devon V. Bijansky, General Counsel, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on local or state employment as a result of implementing the section. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the section. There is no anticipated economic cost to persons who are required to comply with the section.

Ms. Bijansky has also determined that the anticipated public benefit as a result of the new rule is greater efficiency through a streamlined complaint processing system and a more robust peer investigative committee program.

Comments on the proposed new section may be submitted to Devon V. Bijansky, General Counsel for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The new section is proposed under the Texas Appraiser Licensing and Certification Act (Texas Occupations Code, Chapter 1103), Subchapter D, Board Powers and Duties, which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certificates and Licenses, and §1103.154, Rules Relating to Professional Conduct.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed new section.

§153.24. Complaint Processing.

A complaint must be in writing and must be signed by the complainant. Board staff may initiate a complaint.

(1) Upon receipt of a complaint, staff shall:

(A) assign the complaint a case number in the complaint tracking system; and

(B) send written acknowledgement of receipt to the complainant.

(2) If the staff determines at any time that the complaint is not within the Board's jurisdiction or that no violation exists, the complaint shall then be dismissed with no further processing. The Board or the commissioner may delegate to Board staff the duty to dismiss complaints.

(3) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

(A) may be investigated covertly; and

(B) shall be referred to the appropriate prosecutorial authorities.

(4) Staff may request additional information necessary to proceed with the complaint.

(5) A copy of the complaint and all supporting documentation shall be sent to the respondent unless the complaint qualifies for covert investigation and the Standards and Enforcement Services Division deems covert investigation appropriate.

(6) The respondent shall submit a response within 20 days of receiving a copy of the complaint. The 20-day period may be extended for good cause upon request in writing or by e-mail.

(A) The response shall include the following:

(i) a copy of the respondent's work file;

(ii) a narrative response to the complaint, addressing each and every element thereof;

(iii) a list of any and all persons known to the respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the respondent's possession, contact information; and

(iv) the following statement in the letter transmitting the response: EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE.

(B) Any supporting documentation that was not in the work file must be conspicuously labeled as such and kept separate from the work file.

(C) The respondent may also address other matters not raised in the complaint that the respondent believes likely to be raised and may be supported by documentation contained in the work file.

(7) The complaint shall be assigned to a staff investigator and shall be investigated by the staff investigator or peer investigative committee, as appropriate.

(8) The staff investigator or peer investigative committee assigned to investigate a complaint shall prepare a report detailing its findings on a form approved by the Board for that purpose. Reports prepared by a peer investigative committee shall be reviewed by the Standards and Enforcement Services Division, which shall determine the appropriate disposition of the complaint.

(9) In determining the proper disposition of a complaint and subject to the maximum penalties authorized under Texas Occupations Code §1103.552, staff shall consider the following penalty matrix:
Figure: 22 TAC §153.24(9)

(A) For the purposes of the matrix in this paragraph, a person will not be considered to have had a prior occurrence unless the Board had taken final action against the person before the date of the appraisal that led to the subsequent disciplinary action.

(B) In addition to the guidelines outlined in the matrix, staff may recommend any or all of the following:

(i) reducing or increasing the recommended penalty based on documented factors that support the deviation, including but not limited to the number or seriousness of the violation(s) and degree of harm to the public;

(ii) probating all or a portion of a sanction or administrative penalty for a period not to exceed five years;

(iii) requiring additional reporting requirements; and

(iv) such other recommendations, with documented support, as will achieve the purposes of the Act, the Rules, and/or USPAP.

(10) Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1103.458 or §1103.459 must be signed by the respondent, a representative of the enforcement division, and the commissioner. Such agreements may become effective prior to being submitted to the board for approval at a future meeting.

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 December 18, 2009.

TRD-200905967
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 465-3938

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER I. LICENSES

22 TAC §535.93

The Texas Real Estate Commission (commission) proposes new §535.93 concerning Late Renewal Applications. New §535.93 would permit a person with an expired salesperson or broker license to retroactively renew the previous license if the application to renew was filed less than one year from the expiration of the previous license. The new rule would require the commission to renew the license in an active status except as provided by the section. In order to retroactively renew a salesperson's license on active status, a salesperson applicant must provide certification of sponsorship for the period from the day after the license expired to the day the license issued, and for the period beginning on the day after the renewal license is issued, and otherwise comply with the section. If Mandatory Continuing Education (MCE) requirements are not met prior to the previous license expiration date, an applicant who wishes to renew the license on active status must pay an additional $200 fee and complete the MCE not later than the 60th day after the expiration of the previous license. If the application to renew is filed more than 60 days but less than one year after the previous license expired and MCE requirements were not met before the license expired, the applicant must pay a $200 MCE deferral fee, a $250 late reporting fee, complete the MCE, and if a salesperson, provide certification of sponsorship for the period in which the license was expired to the day the license issued, and for the period beginning on the day after the renewal license is issued.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated economic effect on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be compliance with statutory requirements. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the new rule may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by this new rule is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed new rule.

§535.93. Late Renewal Applications.

(a) A licensee who files a late application to renew a previous license less than one year after the expiration of the license must do so on a form approved by the commission for that purpose and is subject to the requirements of this section and Tex. Occ. Code §1101.451(e). The commission shall renew the license in an active status except as

provided by this section. A license issued under this section is effective the day following the expiration of the previous license.

(b) To renew a license on active status without any lapse in active licensure, a salesperson must also submit a Salesperson Sponsorship Form certifying sponsorship for the period from the day after the previous license expired to the day the renewal license issued, and for the period beginning on the day after the renewal license issued. The same broker may be the sponsor for both periods. The commission shall renew the license on inactive status for the period(s) in which the salesperson was not sponsored.

(c) A licensee who has not completed all Mandatory Continuing Education (MCE) before the expiration of the previous license and who files a late application not later than the 60th day after the expiration of the previous license may renew the license on active status subject to the following conditions.

(1) Not later than the 60th day after the expiration of the previous license, the licensee must:

(A) pay an MCE deferral fee of $200, and

(B) complete the MCE.

(2) If, within 15 days after the end of the 60-day period set out in paragraph (1) of this subsection, the commission has not been provided with evidence that the licensee has completed the MCE and paid the MCE deferral fee of $200, the renewed license shall be placed on inactive status. In order to reactivate a license placed on inactive status under this subsection, the licensee must:

(A) provide the commission with evidence that the licensee has completed the MCE;

(B) pay the $200 MCE deferral fee if it has not yet been paid;

(C) complete and submit a Request to Return to Active Status Form if a broker or a Salesperson Sponsorship Form if a salesperson and pay the appropriate fee; and

(D) pay a late reporting fee of $250.

(d) If a licensee who has not completed all MCE before the expiration of the previous license files a late application to renew the license in an active status more than 60 days but less than one year from the expiration of the license, the licensee must:

(1) provide the commission with evidence that the licensee has completed the MCE;

(2) pay the $200 MCE deferral fee;

(3) complete and submit a Salesperson Sponsorship Form if a salesperson; and

(4) pay a late reporting fee of $250.

(e) If a licensee files a late application to renew a license in an active status and has completed all MCE before the expiration of the previous license, the licensee is not required to pay the $200 MCE deferral fee or the $250 late reporting fee.

(f) MCE completed after expiration of the previous license under this section may not be applied to any subsequent renewal of the license.

(g) A licensee may file a late application to renew a license on inactive status under this section.

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

Filed with the Office of the Secretary of State on December 16, 2009.

TRD-200905881
Loretta R. DeHay
Deputy Administrator and General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 465-3926

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.208

The Texas Real Estate Commission (TREC) proposes amendments to §535.208, Application for a License. The amendments would better implement the statutory requirement that applicants for inspector licenses who fail the examination three times must wait six months before reapplying. Currently, applicants may circumvent the six-month wait requirement by filing a new application after the second failure, so that a third failure is registered as occurring under a different application. The proposed amendment would prevent applicants from filing a new application while another application is pending.

Devon V. Bijansky, Deputy General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated economic cost to persons who are required to comply with the proposed amendments. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the amendments.

Ms. Bijansky also has determined that, for each year of the first five years the amendment as proposed are in effect, the public benefit anticipated as a result of enforcing the amendment will be more complete implementation of the statutory waiting period.

Comments on the proposal may be submitted to Devon V. Bijansky, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of Chapter 1102 to ensure compliance with the provisions of the chapter.

The statute affected by this proposal is Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the proposed amendments.

§535.208. Application for a License.

(a) - (d) (No change.)

(e) A person may not file an application while another application for the same license type is pending. An application submitted

while another is pending will be returned to the applicant with no further processing.

(f) [~~(e)~~] An application for a license may be denied if the commission determines that the applicant has failed to satisfy the commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines). Notice of the denial and any hearing on the denial shall be as provided in Texas Occupations Code, §1101.364, and §533.34 of this title (relating to Disapproval of an Application for a License or Registration). For the purposes of this section, the term "late renewal" means an application for a license by a person who held the same type of license no more than two years prior to the filing of the application.

(g) [~~(f)~~] Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the commission in an application for a license or late renewal of a license for an apprentice or a real estate inspector.

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 December 16, 2009.

TRD-200905882
Devon V. Bijansky
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 465-3926

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER F. SEXUALLY TRANSMITTED DISEASES INCLUDING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS) AND HUMAN IMMUNODEFICIENCY VIRUS (HIV)

25 TAC §97.136

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), proposes an amendment to §97.136, relating to Prophylaxis against Ophthalmia Neonatorum.

BACKGROUND AND PURPOSE

Health and Safety Code, §81.091, requires a physician, nurse, midwife, or other person in attendance at childbirth to use or cause to be used prophylaxis approved by the Texas Board of Health (now the Executive Commissioner of HHSC) to prevent ophthalmia neonatorum. This law provides for medical care for newborns to prevent neonatal conjunctivitis and complications such as blindness that may arise in the newborn through birth to a mother with untreated gonorrhea (neisseria gonorrhea) or chlamydia (chlamydia trachomatis) infection. The law provides that it is a criminal offense, a Class B misdemeanor, for a person to fail to perform a duty required under this law.

The approved prophylaxes are listed in the rule of the department at §97.136. Section 97.136 instructs persons attending the childbirth to administer 1.0% ophthalmic tetracycline solution or ointment, a 0.5% ophthalmic erythromycin solution or ointment, or two drops of 1.0% silver nitrate solution in each eye within two hours of birth. The rule does not allow for any alternates to these prophylaxes. Two of these medications, the 1.0% ophthalmic tetracycline and the 1.0% silver nitrate, are no longer available in the United States.

The third prophylactic medication is 0.5% ophthalmic erythromycin ointment. There is a nation-wide shortage of this prophylaxis. On August 31, 2009, the Centers for Disease Control and Prevention (CDC) issued a "Dear Colleague" letter identifying the reason for the shortage as a change in manufacturers. The new manufacturer is actively working to make the ointment available and that a second manufacturer is working to increase production during this time of shortage. The CDC and the United States Food and Drug Administration indicate that the shortage is expected to be resolved by the end of 2009.

An emergency rule was put in place to incorporate alternate medications described in guidance issued by the CDC to respond to shortage of 0.5% ophthalmic erythromycin ointment; this rule became effective September 15, 2009, and will expire on January 12, 2010, with a possibility of extension until March 13, 2010.

This rule change will update the list of available and recommended medications for prophylaxis, eliminating the two drugs no longer available in the United States, leaving 0.5% ophthalmic erythromycin ointment as the sole required treatment. It will direct those affected by the rule to guidance by the department or the CDC for alternate regimens in case of a future shortage of erythromycin ointment. It requires no practice changes, as it requires only continued use of erythromycin ointment, which is expected to have unrestricted availability at the time this revised rule is enacted.

SECTION-BY-SECTION SUMMARY

Proposed amendments to §97.136(a) delete the two prophylaxes not available in the United States, and directs those affected to guidance by the department or the CDC in the event of a manufacturing or distribution shortfall of 0.5% ophthalmic erythromycin ointment. No other subsections have substantive changes.

FISCAL NOTE

Casey Blass, Director, Disease Intervention and Prevention Section, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT AND REGULATORY ANALYSIS

Mr. Blass has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section, and an economic impact statement and regulatory flexibility analysis are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Blass has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section, as it will provide treatment alternatives to allow continued disease prevention in newborns.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Todd Logan, HIV/STD Prevention and Care Branch, TB/HIV/STD Unit, Mail Code 1873, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 533-3098 or by email to todd.logan@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, Chapter 81; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The amendment affects Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapter 531.

§97.136. Prophylaxis against Ophthalmia Neonatorum.

(a) A physician, nurse, midwife, or other person in attendance at childbirth shall apply, or cause to be applied, to the child's eyes a 0.5% ophthalmic erythromycin ointment in each eye within two hours after birth. If this ointment is not available due to a disruption in distribution or manufacturing, a physician, nurse, midwife, or other person subject to this section shall apply or cause to be applied to the child's eyes an alternative treatment included in guidance issued by the Department of State Health Services (department) or the Centers for Disease Control and Prevention. [~~one of the following:~~]

[~~(1) a 1.0% ophthalmic tetracycline solution (drops) or ointment in each eye within two hours after birth;~~]

[~~(2) a 0.5% ophthalmic erythromycin solution (drops) or ointment in each eye within two hours after birth; or~~]

[~~(3) two drops of 1.0% silver nitrate solution in each eye within two hours after birth.~~]

(b) Failure to perform is a Class B misdemeanor under the Texas Health and Safety Code, §81.091(g).

(c) The department [~~Department of State Health Services (department)~~] may provide an approved prophylaxis without charge to health-care providers if the newborn's financially responsible adult is unable to pay. The health-care provider shall not charge for the prophylaxis that is received free of charge from the department.

(d) Midwives shall follow the additional requirements in Texas Health and Safety Code, §81.091.

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 December 15, 2009.

TRD-200905843
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 120. COMPENSATION PROCEDURE--EMPLOYERS

28 TAC §120.2

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes amendments to §120.2, concerning the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System (Notice of Rights and Responsibilities). These amendments are necessary to implement Labor Code §404.109 which was

revised by House Bill (HB) 673, enacted by the 81st Texas Legislature, Regular Session, effective September 1, 2009. Labor Code §404.109 requires the Public Counsel of the Office of Injured Employee Counsel (Public Counsel) to adopt, in the form and manner prescribed by the Public Counsel and after consultation with the Commissioner of Workers' Compensation, a Notice of Rights and Responsibilities. The Notice of Rights and Responsibilities shall be distributed by the Division as provided by a Commissioner of Workers' Compensation or Commissioner of Insurance rule. The adopted Notice of Rights and Responsibilities shall be consistent with Labor Code Title 5 and applicable Division rules and not construed as establishing an entitlement to benefits to which a claimant is not otherwise entitled under the Labor Code.

Proposed §120.2 specifies that the Public Counsel, after consulting with the Commissioner of Workers' Compensation, shall adopt the form and manner of the Notice of Rights and Responsibilities to be distributed to injured employees by an employer. In addition, the proposed amendment to §120.2(e)(4) adds the physical address of the Office of Injured Employee Counsel where the Notice of Rights and Responsibilities may also be obtained.

Brent Hatch, Special Advisor for Health Care Management and System Monitoring, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Brent Hatch, Special Advisor for Health Care Management and System Monitoring, has determined that for each year of the first five years the proposed amendments will be in effect the anticipated public benefit will be Division rules that reflect HB 673's amendments to Labor Code §404.109 concerning the form and manner of the Notice of Rights and Responsibilities to be distributed to injured employees. Mr. Hatch has determined that there are no costs imposed upon system participants by these proposed amendments because these proposed amendments do not impose requirements upon these persons. Therefore these proposed amendments will not have an adverse economic effect on small and micro businesses and it is neither legal nor feasible to waive the requirements of the proposed amendments for small or micro-businesses.

In accordance with the Government Code §2006.002(c), the Division has determined that this proposal will not have an adverse economic effect on small or micro businesses. Because the proposal does not impose any new requirements or costs with which businesses, regardless of size, must comply, any costs to persons required to comply with these proposed amendments are the result of the enactment of HB 673 and not the result of the adoption, enforcement, or administration of the proposed amendments. In accordance with the Government Code §2006.002(c), the Division has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

To be considered, written comments on the proposal must be submitted to the Texas Department of Insurance, Division of Workers' Compensation no later than 5:00 p.m. on February 1, 2010. Comments may be submitted via the Internet through the Division's Internet website at *http://www.tdi.state.tx.us/wc/rules/proposedrules/index.html,* by email at *rulecomments@tdi.state.tx.us,* or by mailing or delivering your comments to the Texas Department of Insurance, Division of Workers' Compensation, Maria Jimenez, Legal Services, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing should be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Office of the General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas, 78744 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under Labor Code §§402.00111, 402.061 and 404.109.

Labor Code §404.109 allows the Public Counsel by rule to adopt the form and manner of the Notice of Rights and Responsibilities after consulting with the Commissioner of Workers' Compensation. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rule making authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

The following section is affected by this proposal: Labor Code §404.109.

§120.2. Employer's First Report of Injury and Notice of Injured Employee Rights and Responsibilities.

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

(d) The employer shall provide a written copy of the report and a written copy of the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System (Notice of Rights and Responsibilities) adopted by the Public Counsel of the Office of Injured Employee Counsel (Public Counsel) to the injured employee by personal delivery, mail, electronic submission or facsimile. The Notice of Rights and Responsibilities shall be in English and Spanish, or in English and any other language common to the employee. The written report may be the report specified in subsection (b) of this section, or at a minimum shall contain the information listed in §120.1(a) of this title (relating to Employer's Record of Injuries).

(e) The Public Counsel shall adopt the Notice of Rights and Responsibilities after consultation with the Commissioner of Workers' Compensation. Until the Public Counsel adopts any new notice in accordance with Labor Code §404.109, the notice previously adopted under this section shall remain in effect. A copy of the Notice of Rights and Responsibilities adopted by the Public Counsel [~~The Notice of Rights and Responsibilities is adopted by reference and may be obtained from:~~] shall be distributed through or provided at:

(1) the department's website at www.tdi.state.tx.us;

(2) the Office of Injured Employee Counsel's website at www.oiec.state.tx.us; [~~or~~]

(3) Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas, 78744; or [~~1609.~~]

(4) The Office of Injured Employee Counsel, 7551 Metro Center Drive, Suite 100, Austin, Texas, 78744.

(f) - (h) (No change.)

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

Filed with the Office of the Secretary of State on December 17, 2009.

TRD-200905910
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 518. GENERAL PROCEDURES
SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

31 TAC §518.5

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to §518.5, concerning Historically Underutilized Business Program, to make the rule compatible with references that have been revised since adoption. The specific changes involve deleting two references to the Texas Building and Procurement Commission and their rules and inserting the Comptroller of Public Accounts and their rules in 34 TAC Chapter 20, Subchapter B, §§20.11 - 20.28 as they now apply to historically underutilized business program. The State Board is deleting Certification from the title of the program. In addition the State Board's physical address has changed, so the old address is being deleted and the current address is inserted.

Kenny Zajicek, Fiscal Officer, Texas State Soil and Water Conservation Board, has determined that for the first five year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the amendments as proposed.

Mr. Zajicek has also determined that for the first five year period the amendments are in effect, the public benefit anticipated as a result of administering the amendments as proposed is the rule will be a better accountability of state funds.

There is no anticipated cost to small businesses or individuals resulting from the proposed amendments.

Comments on the proposed amendments may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, extension 231.

The amendments are proposed under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, article, or codes are affected by this proposal.

§518.5. Historically Underutilized Business Program.

The board adopts by reference the rules of the Comptroller of Public Accounts in 34 Texas Administrative Code Chapter 20, Subchapter B, §§20.11 - 20.28 [~~Texas Building and Procurement Commission in 1 Texas Administrative Code §§111.11 - 111.28~~], as amended, concerning Historically Underutilized Business [~~Certification~~] Program. Copies of the above cited [~~Texas Building and Procurement Commission~~] rules, as amended, are filed at the agency headquarters, located at 4311 South 31st [~~311 North 5th~~] Street, Suite 125, Temple, Texas.

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

Filed with the Office of the Secretary of State on December 14, 2009.

TRD-200905825
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: January 31, 2010
For further information, please call: (254) 773-2250 x252

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CHAPTER 529. FLOOD CONTROL

The Texas State Soil and Water Conservation Board (State Board or agency) proposes amendments to §529.2 and §529.3, concerning the operation and maintenance grant program, and new §§529.50 - 529.62, creating a separate structural repair grant program related to flood control dams.

BACKGROUND AND JUSTIFICATION

Nearly 2,000 floodwater retarding structures, or dams, have been built over the last 60 years within the State of Texas. The primary purpose of the structures is to protect lives and property by reducing the velocity of floodwaters, and thereby releasing flows at a safer rate. These are earthen dams that exist on private property, and were designed and constructed by the United States Department of Agriculture - Natural Resources Conservation Service (USDA-NRCS). They were built with the understanding that the private property owner would provide the land, the federal government would provide the technical design expertise and the funding to construct them, and then units of local government would be responsible for maintaining them into the future.

Local sponsors of the dams were required before a federal project was begun. Local sponsors signed a watershed agreement which outlined the duties and responsibilities of the federal and local sponsors. In general, local sponsors are required to obtain and enforce easements, conduct operation and maintenance (O&M) inspections, maintain the structures, and implement land treatment measures in the watershed. Soil and water conservation districts (SWCD) are one of the local sponsors in all watershed projects. Other local sponsors include counties, cities, and Water Control and Improvement Districts (WCIDs).

Due to the passage of time and difficulty in raising adequate funds locally, many SWCDs and other sponsors approached the State Board and expressed their concerns over the amount of needed O&M on flood control dams. In recognition that these dams will continue to serve as a critical protection for our state's infrastructure, private property, and lives, the State Board adopted Chapter 529, Subchapter A, §§529.1 - 529.8, creating a grant program to assist local SWCDs and other sponsors in carrying out their responsibilities regarding O&M with funding appropriated by the Texas Legislature for the 2010-2011 biennium. The State Board now proposes amendments to existing §529.2 and §529.3 to increase clarity of intent as previously adopted, and to create consistency with proposed new Chapter 529, Subchapter B, §§529.51 - 529.62, pertaining to the creation of a structural repair grant program.

SECTION-BY-SECTION DISCUSSION

The State Board proposes to amend §529.2, Definitions, by replacing "chapter" with "subchapter" to acknowledge the proposed existence of multiple subchapters to Chapter 529; no substantive change in meaning would occur.

The State Board proposes to amend §529.2(9), the definition of operation and maintenance, to improve the readability of the definition; no substantive change in meaning would occur.

The State Board proposes to amend §529.2(9)(P) by inserting an additional activity that would be defined as operation and maintenance; this insertion would define the maintenance of roads that provide access to flood control dams as operation and maintenance, however, the act of performing road maintenance would be limited to a in-kind match contribution; reimbursement of the act would not qualify for reimbursement with state funds. Existing §529.2(9)(P), relating to another activity, would be relettered as §529.2(9)(Q).

The State Board proposes to amend §529.3(b) to replace the word "a" with "each" for improved readability; no substantive change in meaning would occur.

The State Board proposes to amend §529.3(f) to require that in-kind match contributions must be reported to the State Board on an "in-kind match reporting form" rather than a reimbursement request form. Upon initial adoption of this rule, the State Board intended to administer the program with a single form that would serve both purposes, but has since chosen to use separate forms. This amendment is proposed to acknowledge that adjustment in administration; no substantive change in program functions would occur.

Proposed new §529.50, Statutory Authority and Policy Statement, would explain the agency's intent and authority for administering a Structural Repair Grant Program for flood control dams.

Proposed new §529.51, Definitions, would provide a list of terms and their definitions for the purposes of new Subchapter B.

Proposed new §529.52, Administration of Funds, would establish general fiscal provisions, identify sources of program funding, stipulate that the program is on a reimbursement only basis, specify the activities that are eligible for reimbursement, describe the non-state funded matching requirement for grants, allow for in-kind services to be utilized as required match, specify limits for administrative costs and the conditions under which operation and maintenance activities may be conducted with repair grant funds.

Proposed new §529.53, Prioritization of Structural Repair Needs, would establish the State Board's intent that flood control dam sponsors would be responsible for prioritizing repair needs within their respective jurisdiction.

Proposed new §529.54, Request for Applications, would establish that the State Board may publish a request for applications for structural repair grant project activities.

Proposed new §529.55, Submitting an Application, would require that applications for structural repair grant funds be submitted on forms provided by the State Board, copies of applicable watershed agreements be submitted in conjunction with applications, that all applications must have certification signatures by authorized individuals from all dam sponsors, each application must identify one individual as an authorized point of contact for all communications regarding the application, each application must specify the anticipated length of time the project would require until completion, and that each application must characterize the amount, type, and source of match funding the sponsors intend to acquire for the application.

Proposed new §529.56, Review and Selection of Applications, would specify that the State Board will perform an administrative and technical review of all applications based on accuracy and completeness, risk of dam failure, potential loss of life due to failure, potential damage to infrastructure, the extent and type of repair needed, and the ability of sponsors to provide match funding.

Proposed new §529.57, Contracts Between the State Board and Sponsors, would specify that the State Board may obligate repair grant funds to any entity listed as a sponsor on a watershed agreement or the USDA-NRCS, and specify that contracts between the State Board and sponsors shall not allow for the State Board to pay for more than 95-percent of the total project cost.

Proposed new §529.58, Solicitation of Bids by Contracted Sponsors, would require sponsors to solicit for bids in accordance with the Local Government Code.

Proposed new §529.59, Subcontracting Requirements, would establish applicable requirements for contracts between sponsors and subcontractors.

Proposed new §529.60, Engineering Design and Inspection, would establish the conditions under which repair grant funds may be applied toward design and inspection activities.

Proposed new §529.61, Reimbursements, would establish the requirements for requesting reimbursement of an activity included in a contract scope of work.

Proposed new §529.62, Structural Repair Grants Used as Match for Federal Watershed Rehabilitation Projects, would establish the conditions by which repair grant funds could be contributed toward a federal rehabilitation project.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Kenny Zajicek, Fiscal Officer, Texas State Soil and Water Conservation Board, has determined that for the first five year period the amended and new rules are in effect there will be no fiscal implications for state or local government as a result of administering this proposal.

PUBLIC BENEFITS AND COSTS

Mr. Zajicek has also determined that for the first five year period the amended and new rules are in effect, the public bene-

fit anticipated as a result of administering this proposal will be an understanding of the administrative requirements associated with grant funds available through the State Board for performing O&M activities.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ASSESSMENT

There is no anticipated cost to small businesses or individuals resulting from this proposal.

SUBMITTAL OF COMMENTS

Comments on the proposed amended and new rules may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, extension 231.

SUBCHAPTER A. OPERATION AND MAINTENANCE GRANT PROGRAM

31 TAC §529.2, §529.3

STATUTORY AUTHORITY

The amendments are proposed under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this proposal.

§529.2. Definitions.

The following words and terms, when used in this subchapter [~~chapter~~], have the following meanings:

(1) - (8) (No change.)

(9) Operation and maintenance (O&M)--The act of performing an activity or [~~a specific set of~~] activities associated with maintaining optimal physical conditions and functioning of a flood control dam. O&M is not an activity defined as structural repair. The State Board may adopt technical standards, as defined by this subchapter, for certain O&M activities which must be met prior to reimbursement being approved. [~~Specific~~] O&M activities include:

(A) - (N) (No change.)

(O) repair of erosion in auxiliary (emergency) spillway from minor storm damage or livestock/wildlife trailing; [~~and~~]

(P) minor maintenance of roads within an easement used in gaining access to a flood control dam for the purpose of performing O&M minor maintenance of roads may not be reimbursed by the State Board, but may be considered as an in-kind contribution of match; and

(Q) [~~(P)~~] any other activity approved by the State Board at their discretion if it is not defined as structural repair in this chapter; activities in this category must be approved by the State Board prior to performance of the activity to ensure reimbursement.

(10) - (19) (No change.)

§529.3. Administration of Funds.

(a) (No change.)

(b) Sources of funding. Any funding available for O&M grants during each [~~a~~] fiscal year will be determined by the State Board out of general revenue appropriated by the Texas Legislature. The amount of funding available for O&M grants will be determined by the State Board for a fiscal year. Other sources of funding may be used for O&M grants by the State Board if applicable and when available. Funds will be allocated by the State Board to eligible SWCDs for use during the fiscal year for which the funds were appropriated, unless the State Board has executed a contract with an eligible SWCD that allows for liquidation of the obligated amount over a period of time that extends beyond the fiscal year.

(c) - (e) (No change.)

(f) In-kind match contributions. All or a portion of the non-state funded matching requirement may be satisfied through "in-kind" contributions. In-kind contributions must be reported to the State Board on an in-kind match reporting [~~a reimbursement request~~] form [~~at the time the form is submitted to the State Board~~]. In-kind match performed prior to the start of the current biennium is not eligible for use as non-state funded match. In-kind match reported in excess of the required amount for a single reimbursement request may be recorded by the State Board for use by eligible SWCDs on future reimbursement requests within the current biennium. In-kind match may not be carried forward into a new biennium. All aspects of reimbursement requests and [~~, including~~] the legitimacy of reported in-kind match, are subject to review and approval by the State Board. In-kind match will be reported at rates approved by the State Board.

(g) - (i) (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 December 14, 2009.

TRD-200905837
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: January 31, 2010
For further information, please call: (254) 773-2250 x252

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SUBCHAPTER B. STRUCTURAL REPAIR GRANT PROGRAM

31 TAC §§529.50 - 529.62

STATUTORY AUTHORITY

The new rules are proposed under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this proposal.

§529.50. Statutory Authority and Policy Statement.

Pursuant to §201.001(d), Agriculture Code, the Texas State Soil and Water Conservation Board is designated by the Texas Legislature as the state agency responsible for conserving soil and related resources of this state. Within this context, the State Board is charged with controlling and preventing soil erosion, controlling floods, preventing the impairment of dams and reservoirs, assisting in maintaining the navigability of rivers and harbors, and thereby protecting and promoting the health, safety, and general welfare of the people of this state. Consistent with this authority, it is the policy of the Texas State Soil and Water Conservation Board to administer a grant program through local soil and water conservation districts and other flood control dam sponsors that provides financial assistance for structural repair activities on

United States Department of Agriculture Natural Resources Conservation Service assisted flood control dams. In accordance with this purpose, §§529.51 - 529.62 of this subchapter (relating to Structural Repair Grant Program) are adopted.

§529.51. Definitions.

The following words and terms, when used in this subchapter, have the following meanings:

(1) Authorized representative--An individual representing all sponsors identified on an application for structural repair grant funds. The authorized representative shall be the single point of contact for all communications regarding an application.

(2) Eligible applicant--A partnership of all entities listed as a sponsor on a watershed agreement for a watershed project.

(3) Fiscal year--The 12-month period of time beginning September 1 of a year and ending on August 31 of the following year.

(4) Flood control dam--Floodwater retarding structures, also commonly referred to as flood control structures, watershed structures, flood prevention or "FP" sites, and certain grade stabilization structures included in the National Inventory of Dams built by the federal government under one of the four following federal authorizations:

(A) Public Law 78-534, Section 13 of the Flood Control Act of 1944;

(B) Public Law 156-67, the pilot watershed program authorized under the heading Flood Prevention of the Department of Agriculture Appropriation Act of 1954;

(C) Public Law 83-566, the Watershed Protection and Flood Prevention Act of 1954; and

(D) Subtitle H of Title XV of the Agriculture and Flood Act of 1981, commonly known as the Resource Conservation and Development Program.

(5) In-kind match--Non-monetary contributions of services, equipment, or other items of value included in a contract scope of work between the State Board and a sponsor for the purpose of satisfying all or a portion of a non-state funded matching requirement for structural repair activities. In-kind match is not eligible if the source is contributing the in-kind match because it was enabled to do so directly through state appropriations.

(6) National Inventory of Dams--The U.S. Army Corps of Engineers' list of dams first authorized by the National Dam Inspection Act (Public Law 92-367) of 1972.

(7) Natural Resources Conservation Service (NRCS)--An agency of the United States Department of Agriculture which was formerly known as the Soil Conservation Service.

(8) Operation and maintenance (O&M)--The activities associated with maintaining optimal physical conditions and functioning of a flood control dam specified in §529.2(9) of this chapter; O&M is not structural repair as defined in paragraph (13) of this section.

(9) Reimbursement request--A request for reimbursement of an activity included in a contract scope of work executed between the State Board and a sponsor.

(10) Soil and water conservation district (SWCD)--A governmental subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code.

(11) Sponsor--An entity or individual that is a signatory to a watershed project plan, watershed agreement, or O&M agreement.

(12) State Board--The Texas State Soil and Water Conservation Board organized pursuant to Chapter 201 of the Agriculture Code.

(13) Structural repair--The act of performing an activity or activities for the purpose of restoring a flood control dam to original design specifications or enhanced design specifications required as a result of design, construction, material, or foundation deficiencies not foreseen at the time of original design or construction. Structural repair is not an activity defined as operation and maintenance in §529.2(9) of this chapter. Structural repair activities include:

(A) Lime treatment, removal and replacement, and/or slope flattening of dam embankment to repair slope slides;

(B) Repair of sinkholes in dam embankment;

(C) Repair of cracks in dam embankment;

(D) The installation of armored plating on dam embankments to repair and mitigate wave erosion;

(E) Performing earthwork and establishing vegetation on dam embankments to repair and mitigate wave erosion;

(F) Drain system installation or repair;

(G) Repair of excessive settlement on dam embankment;

(H) Replacement or stabilization of vertical inlet on principal spillway;

(I) Installation of a liner to repair or mitigate pipe separation or cracking on principal spillway;

(J) Replacement of a principal spillway pipe due to separation or cracking;

(K) Installation of impact basin or armored plating on plunge pool due to erosion;

(L) Repair of major auxiliary spillway erosion from storm damage;

(M) Any activity defined as O&M in §529.2(9) of this chapter if the performance of the activity is determined to be necessary by the State Board in conjunction with a structural repair activity defined in this subchapter; O&M activities determined to be necessary by the State Board will be included in a contract scope of work executed between the State Board and a sponsor;

(N) Any other activity related to flood control dam structural repair at the discretion of the State Board and included in a contract scope of work executed between the State Board and a sponsor.

(14) Texas Commission on Environmental Quality (TCEQ)--The state agency created under Title 2, Subtitle A, Chapter 5 of the Texas Water Code (formerly the Texas Natural Resource Conservation Commission).

(15) Watershed agreement--A legal document that records the responsibilities of the sponsors and NRCS for implementing a watershed project plan relating to contributions of funding, the acquisition of land rights, construction, O&M, project administration, management of affected lands, as well as responsibilities regarding permitting and water and mineral rights.

(16) Watershed project--A geographic area delineated by the boundaries of a watershed within which a series of flood control dams have been constructed or are planned to be constructed by NRCS to prevent and/or minimize floodwater damage to lives and property.

(17) Watershed project plan (or Work Plan)--A plan developed by local sponsors with the assistance of NRCS for a watershed project that includes descriptions of the watershed, problems to be addressed, works of improvement to be installed, costs of installed works, project benefits, cost-benefit analyses, financing information, and general requirements for O&M.

§529.52. Administration of Funds.

(a) General Fiscal Provisions. SWCD sponsors entering into a contract with the State Board for structural repair activities must comply with all applicable provisions within the Manual of Fiscal Operations for Soil and Water Conservation Districts unless the contract scope of work specifies otherwise. The Manual of Fiscal Operations for Soil and Water Conservation Districts is approved and periodically amended by the State Board and is available on the State Board's website; hardcopies of this manual may be requested from the State Board.

(b) Sources of funding. The amount of funding made available for structural repair grants during a fiscal year will be determined by the State Board out of general revenue appropriated by the Texas Legislature. Other sources of funding may be used for structural repair grants by the State Board if applicable and when available. Funds will be obligated by contract between the State Board and sponsors for the period of time specified within a contract.

(c) Reimbursement only. Payment will be made on a reimbursement basis only.

(d) Activities eligible for reimbursement. Funds may be used to reimburse costs associated with the performance of structural repair activities as defined by this subchapter on flood control dams, as well as costs associated with the purchasing of easements, engineering design, performance inspections, and any other structural repair activities approved by the State Board at their discretion. Legal fees associated with purchasing easements and land rights determinations may be eligible for reimbursement if specified in a contract scope of work executed between the State Board and sponsors.

(e) Non-state funded matching requirement. Contracts for structural repair projects between the State Board and a sponsor will require that 5-percent of the total contract cost be provided by funds not originating from state appropriations. The State Board may enter into a contract with sponsors that provides 100-percent of the total project cost if the flood control dam on which the activities are to be performed is a part of a watershed project where the original watershed agreement did not include at least one sponsor empowered by the State of Texas to levy taxes.

(f) In-kind match contributions. All or a portion of the non-state funded matching requirement may be satisfied through "in-kind" contributions. In-kind contributions must be documented in contracts between the State Board and sponsors at rates approved by the State Board prior to obligation of funds.

(g) Administrative costs of sponsors. Contracts between the State Board and sponsors may include an amount for administration not to exceed 5-percent of the total contract amount.

(h) Utilizing structural repair grant funds for O&M. Contracts between the State Board and sponsors may include funds for performing O&M activities as defined by §529.2(9) of this chapter if those activities are included in the contract scope of work.

§529.53. Prioritization of Structural Repair Needs.

It is the intent of the State Board that flood control dam sponsors prioritize structural repair needs within their respective jurisdictions. The act of submitting an application for structural repair grant funds shall be interpreted by the State Board as consensus that the projects identified in the application are the highest priorities mutually selected by all sponsors.

§529.54. Request for Applications.

The State Board may publish a request for applications for structural repair grants. The amount of funding made available through the request for applications will be determined by the State Board. Upon being made aware of flood control dam repair needs not identified on an application received as a result of the request for applications, the State Board may independently solicit for contractors to complete a structural repair project.

§529.55. Submitting an Application.

(a) Applications must be submitted on forms provided by the State Board.

(b) Copies of applicable watershed agreements for the flood control dams identified in an application must be submitted with the application.

(c) All applications must have certification signatures by authorized individuals from all sponsors identified in the applicable watershed agreement acknowledging and approving the application prior to it being submitted to the State Board for consideration. Certification by signature means the sponsor agrees to cooperate on the project with the other sponsors, may consider entering into a contract with the State Board relating to the project's completion, and is aware that the State Board may not pay more than 95-percent of the total project cost. Where one or more of the sponsors listed on the watershed agreement is no longer formally in existence, the remaining sponsors should contact the State Board prior to submitting an application for additional guidance.

(d) Each application must identify one individual as the person that will represent all sponsors identified on the application. The authorized representative shall be the single point of contact for all communications regarding an application.

(e) Each application must include cost estimates for the entire project. Cost estimates must be categorized by construction, engineering design, and easement purchasing.

(f) Each application must specify the length of time in which the project is anticipated to be completed.

(g) Each application must include a characterization of the amount, type, and source of match funding the sponsors intend to acquire if the application is selected by the State Board for contracting.

(h) Submittal of an application does not constitute a contractual agreement or a promise of a contractual agreement between the State Board and any entity.

§529.56. Review and Selection of Applications.

(a) The State Board will perform an administrative and technical review of all applications to evaluate consistency with state law and program rules and guidance.

(b) Applications determined to be administratively and technically complete, as well as consistent with program rules, will be evaluated against criteria adopted by the State Board. Criteria used by the State Board for determining which applications may result in a contract for grant funds include, but are not limited to:

(1) Accuracy and completeness of the application;

(2) Risk of dam failure;

(3) Potential loss of life due to dam failure;

(4) Potential damage to critical infrastructure due to dam failure;

(5) The extent and type of structural repair needed; and

(6) The ability of sponsors to provide five-percent of the total cost of the project through funds not originating from state appropriations.

§529.57. Contracts Between the State Board and Sponsors.

(a) Structural repair grant funds may be obligated through contractual agreement to any entity listed as a sponsor on a watershed agreement, or to the NRCS. The State Board may execute contracts with multiple sponsors to complete the project as necessary.

(b) Contracts between the State Board and sponsors shall specify that the State Board is responsible for no more than 95-percent of the total contract amount. The remaining 5-percent must be documented as a monetary or in-kind contribution in the contract.

§529.58. Solicitation of Bids by Contracted Sponsors.

Solicitation of bids will be required for purchases more than $50,000 in accordance with provisions of §271.024 of the Local Government Code.

§529.59. Subcontracting Requirements.

(a) Contracted sponsors may let subcontracts for engineering design, contraction, and easement purchasing. Subcontracts must be in written form and be made available to the State Board upon request.

(b) If a subcontract is for the construction of public works and is required by §271.024 of the Local Government Code to be submitted to competitive bidding, the successful bidder must comply with §271.059 of the Local Government Code relating to payment and performance bonding.

§529.60. Engineering Design and Inspection.

(a) Funding for required engineering design and inspection on structural repair activities may be included in a contract between the State Board and a sponsor, or may be provided through a separate agreement between the State Board and another contracted entity.

(b) Where engineering designs associated with a structural repair grant will result in a change to the functioning of the dam, the engineer of record must be notified of the planned change in design prior to the commencement of work.

(c) If concurrence from the NRCS and/or TCEQ must be obtained for a structural repair activity included in a contract scope of work, such concurrence must be obtained and provided in writing to the State Board prior to the commencement of work.

§529.61. Reimbursements.

(a) Reimbursement requests for contracted structural repair activities are subject to approval by the State Board and must be submitted on forms provided by the State Board.

(b) All reimbursement requests for activities performed by a subcontractor must be accompanied by applicable invoices.

§529.62. Structural Repair Grants Used as Match for Federal Watershed Rehabilitation Projects.

Grant funds included in a contract between the State Board and a sponsor for a structural repair activity may be used as match funding for a federal watershed rehabilitation project if the repair need is included in the rehabilitation project scope of work.

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 December 14, 2009.

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Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
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For further information, please call: (254) 773-2250 x252

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.416

The Comptroller of Public Accounts proposes new §9.416, concerning continuation of residence homestead exemption while a replacement structure is constructed. Tax Code, §11.135(g) authorizes the comptroller to adopt rules to implement the section. The proposed new rule provides guidance to local chief appraisers on the steps to follow when a taxpayer who was granted a continuance fails to satisfy the statutory conditions for the continuation.

The proposed new rule implements certain provisions of House Bill 770, 81st Legislature, 2009, effective January 1, 2010. Section 2 of the bill describes the conditions under which a residence homestead exemption may be continued for a residence homestead rendered uninhabitable or unusable by a casualty or by wind or water damage. The bill also provides a time limit for completing a replacement structure and for disallowing the exemption if the property is sold before the replacement structure is completed.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the proposed new rule would benefit the public by improving the administration of local property valuation and taxation. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new section is proposed under Tax Code, §11.135(g) which allows the comptroller to adopt rules concerning the continuance of the exemption under Tax Code, §11.135.

The new section implements Tax Code, §11.135.

§9.416. Continuation of Residence Homestead Exemption While Replacement Structure is Constructed.

(a) If a qualified residential structure for which the owner receives an exemption under Tax Code, §11.13, is rendered uninhabitable or unusable under the conditions described in Tax Code, §11.135(a), the owner is entitled to a continuation of the exemptions for so long as the requirements of Tax Code, §11.135(a) are met. The chief appraiser shall continue the exemptions without the owner being required to file any form or request for the continuation.

(b) If the chief appraiser determines that the property owner has not complied with the provisions of Tax Code, §11.135(a), the chief appraiser shall follow the notice and billing requirements of Tax Code, §11.135(c) as though the property had been sold before the owner completed construction of a qualified replacement structure on the property.

(c) A property owner receiving a continuation of an exemption under Tax Code, §11.135, shall notify the appraisal office within 30 days after the date that eligibility for the continuation ends.

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 December 18, 2009.

TRD-200905942
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 475-0387

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SUBCHAPTER D. APPRAISAL REVIEW BOARD

34 TAC §9.804

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

The Comptroller of Public Accounts proposes to repeal §9.804, concerning arbitration of appraisal review board determinations under Tax Code, Chapter 41A. New rules concerning binding arbitration will be proposed under 34 TAC Part 1, Chapter 9, new Subchapter K, Arbitration.

The repeal is proposed to implement provisions of House Bill 4412, effective September 1, 2009 and Senate Bill 771, effective January 1, 2010 both passed by the 81st Legislature, 2009. House Bill 4412 allows owners of certain contiguous land to pay only one arbitration deposit. Senate Bill 771 changes the appraisal review board orders that may be submitted to binding arbitration, creates a new expedited arbitration procedure, expands the persons who may qualify as arbitrators, creates a requirement for continuing education for arbitrators and expands the persons who may represent parties to an arbitration proceeding. The repeal is also being proposed to improve the administrative efficiency of appeal through binding arbitration.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be repealed, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is repealed, the proposed repeal would benefit the public by improving the administration of local property valuation and taxation. The proposed repeal would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the repeal may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeal is proposed under Tax Code, §41A.13 which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code Chapter 41A.

The proposed repeal affects Tax Code, §§41A.01, 41A.03, 41A.031, 41A.04, 41A.06, 41A.061, 41A.07, 41A.08 and 41A.09.

§9.804. Arbitration of Appraisal Review Board Determinations.

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 December 17, 2009.

TRD-200905911
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 475-0387

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SUBCHAPTER K. ARBITRATION

34 TAC §§9.4251 - 9.4267

The Comptroller of Public Accounts proposes to add a new Subchapter K, Arbitration, to Title 34, Part 1, Chapter 9 with new §§9.4251 - 9.4267, concerning the conduct of appeal through binding arbitration under Tax Code, Chapter 41A.

The new subchapter is proposed to implement provisions of House Bill 4412 effective September 1, 2009 and Senate Bill 771, effective January 1, 2010 both passed by the 81st Legislature, 2009. House Bill 4412 allows owners of certain contiguous land to pay only one arbitration deposit. Senate Bill 771 changes the appraisal review board orders that may be submitted to binding arbitration, creates a new expedited arbitration procedure, expands the persons who may qualify as arbitrators, creates a requirement for continuing education for arbitrators and expands the persons who may represent parties to an arbitration proceeding. The new subchapter is also being proposed to improve the administrative efficiency of appeal through binding arbitration. In addition, the rules adopt by reference amended forms to request binding arbitration and for arbitration determination and award.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the new rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the new rules are in effect, the proposed new subchapter would benefit the public by improving the administration of local property valuation and taxation. The proposed new rules would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the new rules.

Comments on the new rules may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new rules are proposed under Tax Code, §41A.13 which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 41A.

The proposed new rules implement Tax Code §§41A.01, 41A.03, 41A.031, 41A.04, 41A.06, 41A.061, 41A.07, 41A.08 and 41A.09.

§9.4251. Definitions.

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

(1) Agent--An individual who is designated or permitted to represent a property owner as required by Tax Code, §§1.111, 41A.08 and 9.3044 of this title (relating to Appointment of Agents for Property Taxes).

(2) Appraisal district--The entity described by Tax Code, §6.01 and includes each individual to whom the chief appraiser has delegated authority to perform the actions related to arbitration required by Tax Code, Chapter 41A and this subchapter.

(3) Appraised value--Has the meaning provided by Tax Code, §1.04(8).

(4) Arbitration and binding arbitration--The process by which each party to a dispute concerning the market or appraised value of qualified property presents the party's evidence and argument to an impartial arbitrator, who renders a specific, enforceable award that may not be appealed, except as provided by Civil Practices and Remedies Code, §171.088, for purposes of vacating an award.

(5) Arbitrator--An individual who is listed on the Comptroller's Arbitrator Registry.

(6) Arbitrator registry and registry--A list, maintained by the comptroller, of individuals qualified to arbitrate disputes between a property owner and an appraisal district concerning the market or appraised value of qualified property.

(7) Business day--Any day other than a week-end or a holiday on which the appraisal district office that is a party to the arbitration is closed.

(8) Comptroller--The Comptroller of Public Accounts of the State of Texas.

(9) Day--When used without a modifier means a calendar day.

(10) Hearing--The time during which the arbitrator hears the evidence and argument of the parties to the arbitration.

(11) Market value--Has the meaning provided by Tax Code, §1.04(7).

(12) Owner--A person having legal title to taxable real property. In this subchapter, a reference to "owner" includes a properly designated agent.

(13) Owner's opinion of value--The market or appraised value that the owner believes is correct or accurate for the property that is the subject of the arbitration, as shown on the Request for Binding Arbitration form adopted by the comptroller.

(14) Qualified property--Property with an appraised or market value that, under Tax Code, §41A.01, qualifies the property's owner to request binding arbitration to determine the property's appraised or market value.

(15) Proceeding--The arbitration process, which begins with an arbitrator's acceptance of an arbitration and ends when arbitrator delivers the determination and award.

(16) Request or arbitration request--The property owner's request for binding arbitration, made on a form entitled Request for Binding Arbitration, adopted by the comptroller.

§9.4252. General Provisions.

(a) Each notice of issuance of the order and copy of the order determining the protest that is sent to an owner of property that qualifies under Tax Code, §41A.01 for binding arbitration shall include:

(1) Notice of the Owner's Right To Binding Arbitration; and

(2) Request for Binding Arbitration, a form adopted by reference in §9.4267 of this title (relating to Model Forms).

(b) The documents referred to in subsection (a) of this section, may not be included with the notice of issuance and order determining the protest if the property that is the subject of the protest does not qualify for binding arbitration under Tax Code, §41A.01.

(c) An owner of property that qualifies for binding arbitration under Tax Code, §41A.01 may appeal an appraisal review board order determining a protest filed pursuant to Tax Code, §41.41(a)(1), concerning the appraised or market value of real property, through binding arbitration. A person who leases qualified property may not request binding arbitration.

(d) A protest filed under a Tax Code provision other than Tax Code, §41.41(a)(1) is not a protest concerning the appraised value of real property. Examples of protests that do not concern the appraised or market value of real property include:

(1) a protest of unequal appraisal;

(2) a protest of failure to receive proper or timely notice;

(3) a protest of the denial of an exemption application;

(4) a protest concerning the denial of an application for special appraisal; and

(5) the appraisal review board's determination of a motion to correct the appraisal roll brought under Tax Code, §25.25.

(e) Tax Code, §1.111 and §9.3044 of this title (relating to Appointment of Agents for Property Taxes) apply to a binding arbitration proceeding as set forth in this subchapter and Tax Code, Chapter 41A, except that the individuals who may be designated as an agent for binding arbitration proceedings are limited to:

(1) an appraisal district employee;

(2) an attorney licensed by the State of Texas;

(3) a real estate broker or salesperson licensed under Occupations Code, Chapter 1101;

(4) a property tax consultant registered under Occupations Code, Chapter 1152;

(5) a real estate appraiser licensed or certified under Occupations Code, Chapter 1103; or

(6) a certified public accountant certified under Occupations Code, Chapter 901.

(f) Unless otherwise specified, any party may deliver any document required by this subchapter by electronic mail, facsimile transmission, or by overnight, express, first class, registered, or certified mail, or other reliable means of transmission.

(g) An arbitrator may not represent to the public that the comptroller endorses the arbitrator's professional qualifications to conduct arbitration proceedings over those of any other arbitrator listed on the registry. An arbitrator may not use the comptroller's name, title, or the comptroller's state seal in advertising, correspondence, on a Web site, or for any other purpose, without the comptroller's prior written permission.

(h) Unless otherwise indicated, Tax Code, §1.07, (concerning delivery of notice), and §1.08, (concerning timeliness of action by mail), apply to this subchapter.

(i) The comptroller may promulgate guidelines for the administration of the arbitration program.

§9.4253. Application for the Arbitrator Registry.

(a) An individual seeking to be listed in the comptroller's arbitrator registry must submit a completed, valid application to the comptroller.

(b) An application for the comptroller's arbitrator registry is valid if it:

(1) contains all of the information necessary to determine if the applicant qualifies and is eligible to arbitrate Tax Code, Chapter 41A disputes; and

(2) is completed on a form prescribed by the comptroller.

(c) The comptroller shall determine each applicant's qualification to arbitrate Chapter 41A disputes based on the facts presented. After considering the application, the comptroller shall:

(1) approve the application;

(2) disapprove the application and request additional information; or

(3) deny the application.

(d) The comptroller may request additional information orally or in writing. If the comptroller makes a request for information from an applicant, the application will be denied unless the applicant furnishes the requested information within 10 days after a verbal request is made or within 10 days after the date a written request is mailed or transmitted. On written request of the applicant, the comptroller may extend the deadline for no more than 30 days.

(e) An individual is ineligible to arbitrate Tax Code, Chapter 41A disputes if the individual is a:

(1) member of a board of directors of any appraisal district or an appraisal review board in the state;

(2) employee, contractor, or officer of any appraisal district in the state;

(3) employee of the comptroller; or

(4) member of a governing body, officer, or employee of any taxing unit in the state.

(f) The comptroller shall deny an application if:

(1) the applicant does not meet the requirements for qualification as an arbitrator set out by Tax Code, Chapter 41A and this subchapter;

(2) the applicant does not agree to conduct the entire arbitration proceeding in the manner required by the Tax Code and this subchapter; or

(3) the applicant is ineligible under the Tax Code or this subchapter.

(g) The comptroller may deny an application if:

(1) including the applicant in the arbitration registry is not in the interest of impartial arbitration proceedings;

(2) including the applicant in the registry could undermine public confidence in the Comptroller of Public Accounts;

(3) including the applicant in the registry could undermine public confidence in the fairness and effectiveness of the arbitration process;

(4) the arbitrator does not comply with a comptroller request to agree to conduct arbitrations outside the area chosen by the arbitrator; or

(5) the arbitrator is temporarily removed from the registry or has been permanently removed from the registry.

(h) As soon as practicable after approving or denying the application, the comptroller shall notify the applicant of the determination and provide a brief explanation of the reasons for a denial.

(i) The comptroller shall reconsider a denial if, before the 31st day after the applicant received the denial notice, the applicant delivers, to the Property Tax Assistance Division manager or director, a written statement or additional documentation, or both, showing why the application should be approved. The comptroller may approve the application if the comptroller determines, on reconsideration, that the applicant's additional information is sufficient to support approval. The comptroller shall notify the applicant of the reconsideration decision as soon as practicable.

(j) The comptroller's approval of an application entitles the arbitrator to be listed in the arbitrator registry and to continue in the registry as provided in Tax Code, §41A.061. To remain listed on the registry after the renewal date, an arbitrator shall submit to the comptroller proof of having completed necessary continuing education units required by Tax Code, §41A.061 and either:

(1) a registry renewal form (Form 50-709, prescribed by the comptroller), accompanied by a copy of the arbitrator's professional license or certificate issued under Occupations Code, Chapter 1101 or Chapter 1103, on or before the renewal date for the arbitrator's professional license or certificate; or

(2) a new, completed and valid application accompanied by the required documentation, before the 31st day after the renewal date for the arbitrator's professional license or certificate issued under Occupations Code, Chapter 1101 or Chapter 1103.

(k) An arbitrator's name will be automatically deleted from the registry if the arbitrator does not timely submit a registration renewal form or a new application as required by subsection (j) of this section. An arbitrator whose name is automatically deleted from the registry under this subsection may reapply at any time by filing a new, valid application. The automatic deletion of a name from the registry for failure to reapply does not constitute a removal from the registry for good cause, as provided by §9.4266 of this title (relating to Removal).

(l) The comptroller's approval of an application and subsequent placement of the arbitrator's name on the arbitrator registry does not create a right to conduct arbitrations under Tax Code, Chapter 41A nor does it guarantee that the arbitrator will receive an arbitration appointment.

§9.4254. Arbitrator Registry.

(a) As soon as practicable after the application is approved, the comptroller shall add the arbitrator's name to the registry. Additional information that the comptroller may place on the registry includes:

(1) the arbitrator's taxpayer identification number and the name of the licensing agency;

(2) the professional resume or vitae provided by the arbitrator with the arbitrator's application (Form No. AP-218-5 and 218-6);

(3) the geographic areas in which the arbitrator agrees to serve;

(4) information related to arbitrations conducted by the arbitrator, including the number of arbitrations conducted, complaints and commendations received by the comptroller, and temporary removals; and

(5) any other information about the arbitrator or the arbitrator's arbitrations that the comptroller determines could be of assistance to a party seeking to select an arbitrator.

(b) The arbitrator registry includes information provided by the arbitrator, who has confirmed by signature that it is true and correct. A person who discovers that registry information is inaccurate should inform the comptroller as soon as practicable.

(c) Each arbitrator is required to report to the comptroller in writing a material change in the information provided in the application. A material change shall be reported as soon as is practicable, but no later than 30 days after the change occurs. A material change includes a change in name, address, telephone number, electronic mail address, Web site address, loss of required licensure, incapacity, or other condition that could reasonably be anticipated to prevent the arbitrator from professionally performing arbitration duties.

(d) An arbitrator who receives notice of an appointment before receiving notice that the application has been approved may accept the assignment.

(e) The comptroller may at any time correct or change registry information after receiving verbal or written information indicating that registry information is incorrect or should be changed, if the information is from a source that the comptroller determines is reliable.

§9.4255. Request for Binding Arbitration.

(a) A valid request for binding arbitration and full deposit shall be filed with the appraisal district in the time and manner required by Tax Code, §41A.03 and this subchapter.

(b) The certified mail receipt for the appraisal review board order determining protest is conclusive proof of the date on which the property owner received the order determining protest.

(c) To be valid, a request for binding arbitration must:

(1) be on form AP-219 provided by the appraisal office and adopted by the comptroller;

(2) contain all of the information, documentation, and signatures required by the form;

(3) be accompanied by a deposit that complies with subsections (e) and (f) of this section; and

(4) be filed with the appraisal district by hand delivery or certified first-class mail.

(d) A request for binding arbitration that is signed by an agent for the owner is invalid and will be rejected by the comptroller unless the request is accompanied by a written statement, signed by the owner, that includes each of the following elements:

(1) a designation of an individual who is eligible to be an agent under §9.4252 of this title (relating to General Provisions), to request binding arbitration on the owner's behalf, and represent the owner in arbitration proceeding;

(2) the name of the agent's licensing board; and

(3) the license or certificate number issued to the agent by the agent's licensing board.

(e) Each request for binding arbitration must be accompanied by one deposit check in an amount required by Tax Code, §41A.03(a)(2), and in no other amount. The check must be made payable to the Comptroller of Public Accounts and the payment of the check must be guaranteed by a bank. Examples of acceptable checks or money orders include a cashier's check or teller's check, as the terms are defined by Business and Commerce Code, §3.104(g) and (h).

(f) The comptroller will not accept a request that is accompanied by a deposit check that does not meet the requirements of this section. If multiple requests are simultaneously filed, each request must be accompanied by a separate deposit check in the exact amount required by Tax Code, §41A.03(a)(2). A request for binding arbitration is invalid and will be rejected if it is accompanied by a check:

(1) for an amount that is higher or lower than the required amount; or

(2) a personal check, cash, or form of payment other than that described in this section.

(g) The appraisal district shall reject and return to the applicant a request for binding arbitration that is not accompanied by a deposit check that meets the requirements of subsection (e) of this section.

(h) The appraisal district shall complete each accepted request by:

(1) assigning the request a unique arbitration number, determined in the manner required by the comptroller; and

(2) completing the portion that is marked for appraisal district completion.

(i) Within 10 days after the date the appraisal district received an acceptable request, the appraisal district shall submit the following to the comptroller and deliver a copy to the property owner:

(1) the completed request;

(2) the deposit;

(3) a copy of the appraisal review board's order determining the protest that is the subject of the request; and

(4) the certification required by this section.

(j) The appraisal district shall certify the appraisal district's receipt of the request. The certification shall state that:

(1) the request was filed timely or untimely, as applicable;

(2) the request was made on the form prescribed by this section;

(3) the request was accompanied by a deposit check that complies with Tax Code, §41A.03(a)(2) and this section.

(k) If the owner filed the request:

(1) 48 or more hours before the filing deadline, the appraisal district shall immediately determine if it is required by subsection (f) of this section to reject the request. If the appraisal district is required to reject the request, the appraisal district shall inform the property owner, by telephone, electronic mail, or facsimile transmission, that the request is rejected and state the reason for the rejection, and return the request only if the owner does not cure the defect before the filing deadline; or

(2) fewer than 48 hours before the deadline to file a request, the appraisal district shall determine within 10 days after the request is received if it is required, by subsection (f) of this section to reject the request and return a rejected request with a brief written statement of the reason for rejection.

(l) The appraisal district may not send the comptroller the arbitration evidence or a copy of the appraisal review board record or appraisal review board evidence, unless requested by the comptroller.

§9.4256. Comptroller Action on Request for Binding Arbitration.

(a) The comptroller shall consider and determine each property owner's right to binding arbitration. After considering the request, the comptroller shall:

(1) accept the request;

(2) deny the request; or

(3) disapprove the request and request additional information.

(b) The comptroller is required to deny a request for binding arbitration if:

(1) the request is not valid;

(2) the request was not timely filed;

(3) the request is signed by an agent and is unaccompanied by the written statement required by §9.4255(d) of this title (relating to Request for Binding Arbitration);

(4) the request is not accompanied by a deposit check that meets all of the requirements of §9.4255(e) of this title;

(5) the required taxes were not paid in the amount or manner required by Tax Code, §41A.10;

(6) the requestor did not protest the property's appraised or market value of real property under Tax Code, §41.41(a)(1);

(7) the property did not qualify for binding arbitration under Tax Code, §41A.01; or

(8) an appeal of the appraisal review board's determination of the protest concerning the subject property is filed in district court.

(c) If the comptroller disapproves a request and requests additional information, the requestor must furnish the information within 10 days after the comptroller's verbal or written request is made. On written request for an extension of time, the comptroller may extend the deadline for furnishing the information for up to 30 days. If the information requested by the comptroller is not provided by the applicable deadline, the request will be denied.

(d) The comptroller will deliver written notice of the determination to the requestor and appraisal district, as required by Tax Code, §41A.07.

(e) Any time before the hearing has been conducted, an owner whose request for binding arbitration has been accepted may withdraw from an arbitration by delivering to the comptroller, appraisal district, and the arbitrator written notice of the withdrawal. The comptroller will treat the owner's deposit in the manner required by §9.4263(h) and (i) of this title (relating to Payment of Arbitrators' Fees and Refund of Property Owners' Deposit).

(f) An owner whose request for binding arbitration has been accepted may change the information provided on the Request for Binding Arbitration before the exchange of evidence as required by §9.4260 of this title (relating to Arbitration Proceedings) by making a written request to the comptroller. The written request must include the owner's certification that a copies of the request have been provided to the appraisal district and the arbitrator in a manner authorized by §9.4252(f) of this title (relating to General Provisions).

(g) When the appraisal district has not certified that the Request for Binding Arbitration was timely received and the date on which the owner received the appraisal review board's notice of decision is in dispute, each party will be provided with a reasonable opportunity to submit evidence of delivery and the surrounding circumstances. The comptroller will determine whether to grant or deny the request, giving great weight to documented evidence. If the only documented evidence of delivery is the delivery service's statement that delivery was attempted on a certain date or dates, the comptroller will presume that the owner received the notice no later than 48 hours after the last date on which delivery was attempted. If the only documented evidence of delivery is notice from the delivery service that the notice was received, the Comptroller will presume that the service delivered the notice to the owner within 48 hours of the date on which the notice was received by the delivery service.

(h) An owner may not extend the time to file the request for binding arbitration by avoiding delivery of the notice of determination. If the delivery service has attempted delivery and there is no evidence that an emergency prevented the owner accepting delivery, the comptroller will assume that the owner received or should have received the notice.

§9.4257. Appointment of Arbitrator.

(a) Within the time required by Tax Code, §41A.07, the appraisal district shall deliver to the comptroller notice of the party's selection of an arbitrator or failure to select an arbitrator. To enable prompt appointment of an arbitrator, the appraisal district shall deliver the notice required by this section by facsimile transmission, electronic mail, overnight mail or other means of transmission that ensures receipt within 48 hours.

(b) The parties may agree to select up to three arbitrators, to be appointed in the order in which they are listed by the parties, with the first arbitrator listed being appointed first. The owner is responsible for contacting the appraisal district to select the arbitrator or arbitrators by agreement and contact the district within 10 days after receiving the acceptance notice and registry information. If the comptroller receives written notice of the selection in the time and manner required by this section, the first arbitrator selected by the parties will be appointed to the arbitration. If the comptroller does not receive notice of the agreed selection by the 21st day from the date on the comptroller's notice, the comptroller will randomly select an arbitrator for the arbitration.

(c) If the appraisal district fails to notify the comptroller that the parties have selected an arbitrator or arbitrators or that the parties have failed to agree to an arbitrator within the time required by Tax Code, §41A.07, the comptroller shall randomly appoint an arbitrator.

(d) An arbitrator may not accept an appointment or continue to conduct an arbitration after appointment if the arbitrator:

(1) has an interest in the outcome of the arbitration; or

(2) is related by affinity within the second degree or by consanguinity within the third degree, as determined under Government Code, Chapter 573, to:

(A) the property owner;

(B) an officer, employee, or contractor of the appraisal district;

(C) a member of the appraisal district board of directors; or

(D) a member of the appraisal review board.

(e) After receiving the comptroller's notice of arbitration appointment, the arbitrator shall:

(1) notify the comptroller promptly, as required by Tax Code, §41A.07, if the arbitrator is unable or unwilling to conduct the arbitration; or

(2) notify the comptroller, by facsimile transmission, or electronic mail, of acceptance of the arbitration no more than 10 days after the date on the comptroller's notice of appointment.

(f) An arbitration is accepted only if the comptroller receives written notice of the arbitrator's intent to accept on or before the deadline set by this section.

(g) If an arbitrator does not provide the comptroller with timely written notice of intent to accept an arbitration, the comptroller will appoint another arbitrator. The comptroller's appointment of another arbitrator after failure to receive a timely notice of intent to accept may not be appealed.

(h) The comptroller will randomly select an arbitrator for an arbitration if:

(1) the appraisal district does not provide notice of agreement or failure to agree to an arbitrator or arbitrators within the time required by Tax Code, §41A.03(a) and subsection (a) of this section;

(2) the appraisal district and property owner do not agree on the selection of an arbitrator;

(3) an arbitrator refuses an appointment;

(4) an arbitrator fails to send notice of acceptance in a timely manner;

(5) an arbitrator withdraws from an ongoing arbitration; or

(6) the comptroller grants a party's motion to substitute an arbitrator.

(i) The comptroller will continue to repeat the process set out by this section to select an arbitrator, whether selected by agreement or by the comptroller's random selection, until an arbitrator accepts the arbitration. If the parties agree on the selection of more than one arbitrator, subsequent arbitrators will be appointed in the order in which their names are listed by the parties, as provided by subsection (b) of this section.

(j) The comptroller may consider an arbitrator's refusal to accept an arbitration appointment when evaluating subsequent appointments.

(k) No later than 10 days from the date of the comptroller's notice containing the parties' contact information, an arbitrator shall notify both parties, orally or in writing, of the acceptance.

(l) The arbitrator may request that each party enter into a written agreement concerning provision of arbitration services. The agreement may include any provision not in conflict with this subchapter or Tax Code, Chapter 41A related to the arbitration process, including time, date, place, manner of conducting and concluding the arbitration.

§9.4258. Substitution of Arbitrator.

(a) To ensure that property owners and appraisal district employees maintain the highest degree of confidence in the fairness of the arbitration process, the comptroller will grant a request for substitution of an arbitrator for good cause shown, if the request is made in good faith before the arbitration hearing begins.

(b) To preserve and maintain the arbitrator's neutrality toward the requesting party, the comptroller may grant a substitution request without notifying the arbitrator of the request or providing an opportunity to respond. The comptroller may, but is not required to, contact the arbitrator for documents or other information related to a substitution request.

(c) The comptroller shall grant a timely, written, and sworn substitution request if the party making the request documents that:

(1) the arbitrator has a demonstrated conflict of interest as defined by Local Government Code, Chapter 171;

(2) the arbitrator, at any time during the 18 months preceding the date of the substitution request, represented a party in a protest hearing or was a witness for a protest hearing that was held by the appraisal review board for the appraisal district that is a party to the arbitration;

(3) the arbitrator was a member of an appraisal review board panel that heard a protest regarding the property that is the subject of the arbitration or was a member of an appraisal review board that approved a panel recommendation regarding a protest concerning the subject property;

(4) during the 12 months preceding the date of the substitution request, the arbitrator admitted a party's evidence that, under this subchapter, was inadmissible and the arbitrator's determination was in favor of the party that offered the inadmissible evidence;

(5) the arbitrator failed to grant a continuance on the timely, written request of a party to the arbitration that documented a conflicting and previously scheduled arbitration, judicial, or administrative hearing;

(6) the arbitrator accepted the arbitration in violation of §9.4257(d) of this title (relating to Appointment of Arbitrator);

(7) the arbitrator has not contacted the parties to the arbitration by telephone, and more than 10 days have passed since date on which the comptroller assigned the arbitration; or

(8) the arbitrator has not set a time, date, and place of the arbitration hearing and fewer than 60 days remain in the 90 day period that follows the date on which the arbitrator received notice of the appointment.

(d) The comptroller may grant a substitution request for good cause shown, if the request is made before the hearing. Good cause for a substitution includes a sworn statement that documents the following reasons:

(1) the arbitrator's conduct creates the appearance of bias for or against a party;

(2) the arbitrator's violation of this subchapter or Tax Code Chapter 41A during the 180 days preceding the date of the substitution request; or

(3) a reason that, if the substitution is not granted, the comptroller determines could create doubt among property owners

or appraisal districts about the fairness or efficacy of the arbitration program.

(e) Good cause for substituting an arbitrator does not include the following reasons:

(1) the arbitrator is a property tax consultant registered under Occupations Code, Chapter 1152, unless the arbitrator's conduct would be good cause for substitution under subsection (c)(2) of this section;

(2) the arbitrator lives or does not live in the area in which the property subject to the arbitration is located;

(3) a randomly chosen arbitrator should be substituted because the parties agreed to an arbitrator, if the comptroller either did not receive notice of the agreement or the notice of agreement was not returned to the comptroller in a timely manner;

(4) the arbitrator does not have the amount of appraisal or other experience that the party maintains is required to accurately determine the appraised or market value of the owner's property; or

(5) the arbitrator did not contact a party before scheduling the arbitration hearing, or scheduled the hearing without requesting or accepting dates on which a party is available to attend the hearing.

§9.4259. Arbitration Procedures.

(a) The arbitrator shall develop clearly written, direct and understandable arbitration procedures. The arbitrator shall deliver a copy of the procedures to both parties before the earlier of:

(1) 14 days after receiving the Arbitration Determination and Awards form from the comptroller; or

(2) the setting of the time, date, and place of the hearing.

(b) The arbitrator's procedures may contain any reasonable provisions that comply with Tax Code, Chapter 41A and this subchapter, and that the arbitrator believes create a arbitration process that is fair to both parties. At minimum, an arbitrator's procedures shall include provisions concerning each of the following matters:

(1) how and when the arbitrator may be contacted;

(2) requests for a telephone hearing, hearing on written submissions, or other alternative means of holding the hearing or a statement that the arbitrator does not conduct hearings using alternative means;

(3) requests for postponement or continuance;

(4) how the owner provides notice of withdrawal from the arbitration;

(5) the conduct of the arbitration hearing;

(6) any other matter that this subchapter or Tax Code, Chapter 41A requires the arbitrator to include in the procedures, including the exchange of evidence as required by subsection (c) of this section;

(7) evidence that taxes for the subject property are delinquent; and

(8) referring the parties to the rules in this subchapter.

(c) The arbitrator's procedures for the exchange of evidence and conduct of the hearing are required to meet or exceed the minimum requirements of this section. The procedures shall:

(1) require copies of all evidence to be offered at the hearing;

(2) require the parties to exchange a list of witnesses and a brief summary of their expected testimony;

(3) require the parties to exchange evidence, exhibit lists and information concerning witnesses described in paragraph (2) of this subsection, by deadlines set by the arbitrator, taking into account the requirements of paragraph (4) of this subsection;

(4) require the initial exchange of evidence to occur no fewer than 7 business days before the arbitration hearing and the exchange of evidence that rebuts the initial evidence to occur no fewer than 3 business days before the hearing is scheduled to begin;

(5) provide for extending the deadlines in paragraph (4) of this subsection, if the parties are unable to comply with the deadlines due to a declared natural disaster;

(6) require the parties to deliver evidence and rebuttal evidence by a commonly available delivery method that provides the sender with documented proof of the delivery date, such as by certified mail return receipt requested, or express or overnight mail service;

(7) require a sender who delivers evidence by hand delivery to obtain from the person accepting delivery a signed statement acknowledging the date on which the evidence or rebuttal evidence was delivered; and

(8) require the parties to provide proof of the date of delivery if either party claims that the evidence or rebuttal evidence was not delivered in a timely manner.

(d) If the arbitrator's procedures set deadlines that require the exchange of evidence and rebuttal evidence before the deadlines for those actions that are set by subsection (c)(4) of this section, evidence and rebuttal evidence that is not exchanged or provided in compliance with the arbitrator's procedures is inadmissible. If the arbitrator's procedures do not set deadlines that require the exchange of evidence and rebuttal evidence before the deadlines for those actions that are set by subsection (c)(3) of this section, evidence and rebuttal evidence that is not exchanged in compliance with the minimum deadlines set out in subsection (c)(3) of this section is inadmissible. The arbitrator may amend the deadlines for the exchange of evidence providing that both parties are notified in writing in a manner authorized by §9.4252(f) of this title (relating to General Provisions) and the amendment does not conflict with subsection (c)(3) of this section.

§9.4260. Arbitration Proceedings.

(a) As soon as practicable after the initial contact in which the arbitrator accepts the arbitration and upon consultation with the parties, the arbitrator shall set the time, date and place for the hearing. In the event the parties cannot agree, the arbitrator shall set the time, date and place for the hearing. The arbitrator shall comply with Civil Practice and Remedies Code, §171.044 to notify the parties of the setting.

(b) Unless the arbitrator's procedures permit the parties to request an alternative hearing method, including a hearing on written submission, by telephone, or other means of transmission, the arbitration hearing is a traditional "in person" hearing. If the arbitrator's procedures provide for alternate hearing methods, a party may request an alternate method by giving notice to the arbitrator and the other party. The requesting party shall send the notice by a method provided in §9.4252(f) of this title (relating to General Provisions). The notice requirement is not met by filing the request for binding arbitration form. The arbitrator shall allow a reasonable amount of time for the other party to object. The arbitrator will grant the request for an alternative hearing method unless a party has demonstrated that an alternative method would create an unreasonable burden.

(c) An arbitrator may continue a hearing, but may not exceed the time set by Tax Code, §41A.031 if the matter is an expedited arbitration.

(d) The arbitrator shall continue or postpone a hearing in the manner required by Tax Code, §41A.08(a). If the arbitrator postpones or continues a hearing, that arbitrator shall schedule a new hearing date and time as provided by Civil Practices and Remedies Code, §171.045(2)(A) and (B). The arbitrator may grant a continuance or postponement for a variety of reasons, including but not limited to the representation of the owner by an agent who was not named on the request for binding arbitration. If a party requests continuance or postponement on the following grounds, reasonably documented, the arbitrator shall find that reasonable cause has been shown and shall grant the request:

(1) a conflict between the hearing as scheduled and another, previously scheduled arbitration, protest, judicial, or administrative hearing; or

(2) a documented medical condition or medical procedure that conflicts with the hearing as scheduled.

(e) The appraisal district does not document a scheduling conflict that meets the requirements of subsection (d)(1) of this section, by showing that the employees who are assigned to represent the appraisal district in arbitrations have been previously scheduled and have conflicting arbitration hearings. The appraisal district is not entitled to a postponement or continuance under subsection (d)(1) of this section, unless it provides the arbitrator with a sworn statement that it has no available employees competent to represent the appraisal district at the time that the arbitration hearing is scheduled to be held.

(f) The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information provided to arbitrators. The information may not be disclosed except as provided by law.

(g) An arbitrator may not engage in an ex parte contact with the parties to the arbitration. An ex parte contact is a contact or communication that occurs before the arbitration hearing and concerns the evidence, argument, facts, merits, or the property subject to arbitration. This subsection does not apply to the arbitrator's:

(1) receipt of evidence forwarded by a party; or

(2) communications or contacts that concern procedural matters, such as the initial contact required by this section, and other conversations or contacts necessary to coordinate the time, date, and place of the hearing, are not ex parte contacts.

(h) The arbitrator shall dismiss with prejudice a pending arbitration if the arbitrator determines at any time during the arbitration proceedings that:

(1) taxes on the property that is the subject of the arbitration are delinquent;

(2) the order determining a protest is for a property not within the limits set by Tax Code, §41A.01;

(3) the request for arbitration was not timely filed; or

(4) the owner appealed the appraisal review board's determination concerning the property that is the subject of the arbitration to district court under Tax Code, Chapter 42.

(i) The arbitrator shall complete each arbitration proceeding in a timely manner, but no later than the 121st day after the date on which the arbitrator accepted the arbitration. An arbitrator who completes a proceeding after the deadline set by this section may be required to show the comptroller good cause why the deadline could not be met before the comptroller will make a determination concerning the party required to pay the arbitrator's fee.

(j) An arbitrator may withdraw from an arbitration before the hearing by giving the parties and the comptroller notice of the withdrawal. An arbitrator who withdraws from an arbitration is not entitled to payment from either party.

§9.4261. Exchange of Evidence and Arbitration Hearing.

(a) At the hearing, the parties may represent themselves or may be represented by an agent if the requirements provided under this subchapter regarding agents have been met.

(b) After a party's original request for arbitration is filed, a party may appoint, remove or substitute an agent by filing a written request with the arbitrator at any time before the hearing. The appointment of a new agent requires the same documentation as an initial appointment and such documentation must be submitted to and received by the arbitrator prior to or at the start of the arbitration hearing. An appointment of an agent after a party's original request for arbitration is filed is permissible only if the agent is retained or employed by the party after the date of filing the original request for arbitration. Any change in an agent's status will not affect the status of any evidence exchanged. Nothing in this subsection shall be construed in such a manner as to relieve a party of meeting the requirements of filing a valid request for arbitration as outlined in this subchapter.

(c) The arbitrator shall conduct the arbitration hearing in the manner provided by the Civil Practices and Remedies Code, §§171.046 - 171.052. An arbitrator who adjourns a hearing shall do so in the manner required by Civil Practice and Remedies Code, §171.045.

(d) An arbitration hearing that is conducted in person shall be held in the county in which the appraisal district office is located, unless the parties agree to a different location.

(e) The arbitrator shall permit either or both parties to record the hearing by audio and may permit either or both parties to record the hearing by video.

(f) Except as provided by this section, the arbitrator may take official notice of any fact that is judicially cognizable and may determine the admissibility of evidence. In no event will the arbitrator allow the admission of evidence that was not exchanged in compliance with §9.4259(c) of this title (relating to Arbitration Procedures).

§9.4262. Arbitration Determinations and Awards.

(a) An arbitrator shall determine the appraised or market value of the property that is the subject of the arbitration. The arbitrator's determination shall meet the requirements of Tax Code, §41A.09(b). In no event may the arbitrator determine that the appraised or market value of property is less than the value that the property owner believes is the accurate market or appraised value, as shown on the Request for Binding Arbitration or greater than the market or appraised value determined by the Appraisal Review Board and from which the owner appeals.

(b) An arbitrator is required to follow Comptroller rules and the relevant requirements of Tax Code, Chapter 23, Subchapters B, C, D, E, or H to determine the appraised value of property qualified for productivity or other special appraisal under Tax Code, Chapter 23, Subchapters B, C, D, E, or H.

(c) If the limitation on appraised value required by Tax Code, §23.23 has resulted in a residence homestead with an appraised value that is lower than its market value, the arbitrator may not change the appraised value unless:

(1) the arbitrator determines that appraisal district incorrectly determined the property's appraised value and the arbitrator's determination would correctly apply to Tax Code, §23.23;

(2) the determination of the appraised value of the property reflected in the appraisal review board order includes an amount attributable to new improvements and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(3) the arbitrator determines that the market value of the property is less than the appraised value indicated on the appraisal review board order and the change reduces the appraised value to the market value determined by the arbitrator.

(d) The arbitrator shall make a final determination and award by completing and signing the form prescribed by this subchapter before the 11th day after the arbitration hearing. The arbitrator shall deliver:

(1) to the owner and appraisal district, by facsimile transmission, regular-first class mail or another other means of transmission acceptable to the arbitrator and the party, a copy of the determination and award form; and

(2) to the comptroller by facsimile transmission, electronic mail or another means of immediate transmission approved by the comptroller.

§9.4263. Payment of Arbitrators' Fees and Refund of Property Owners' Deposit.

(a) Government Code, Chapter 2251 applies to the comptroller's payment of arbitrator fees, if any, beginning on the date that the comptroller receives a copy of the arbitrator's determination.

(b) Except as permitted by subsection (h) of this section, as soon as practicable after receiving the arbitrator's determination and award, the comptroller shall determine if the property value awarded by the arbitrator is nearer to the owner's opinion of the appraised or market value of the property as stated on the owner's request for arbitration or nearer to the value determined by the appraisal review board.

(c) If the comptroller determines that the award is nearer to the property owner's opinion of value, the appraisal district shall pay the arbitrator's fee. The appraisal district is required by Tax Code, §41A.09 to pay the arbitrator's fee.

(d) An award that determines an appraised or market value at an amount that is exactly one-half of the difference in value will be considered by the comptroller to be nearer to the appraisal district's opinion of value.

(e) If Tax Code, §41A.09 requires refunding the deposit to the owner, the comptroller will refund the deposit amount, less the percentage of the amount that is retained for administrative costs, to the person designated in the owner's arbitration request to receive any refund.

(f) If the award is not nearer to the owner's opinion of value, the comptroller shall pay the arbitrator's fee from the deposit in the owner's account. If the arbitrator's fee is less than 90 percent of the property owner's deposit, the comptroller shall refund to the person designated in the owner's arbitration request to receive refunds the amount, if any, remaining after the comptroller retains a percentage of the deposit for administrative cost.

(g) An arbitrator receives no payment when a pending arbitration is dismissed. If an arbitrator dismisses a pending arbitration, the comptroller shall refund the deposit, less the percentage retained by the comptroller for administrative costs, to the person designated in the owner's arbitration request to receive refunds. The comptroller is not liable for payments that may be owed for arbitration services rendered before dismissal. Any claim for payment for arbitration services rendered before the dismissal must be addressed to the owner or agent.

(h) If the owner or agent withdraws a request for arbitration in writing:

(1) 20 or more days before the arbitration proceeding is first scheduled, the comptroller shall refund to the owner or agent the deposit, less the percentage retained by the comptroller for administrative costs; or

(2) fewer than 20 days before the date on which the arbitration proceeding is first scheduled, the comptroller shall make payments as provided by subsection (f) of this section.

(i) If the comptroller denies a request for arbitration, the comptroller shall refund the deposit, less the percentage retained by the comptroller for administrative costs, to the person designated in the owner's arbitration request to receive any refunds.

(j) A refund to an owner or a payment to an arbitrator is subject to the provisions of Government Code, §403.055. The comptroller may not issue a warrant for payment to a person who is indebted to the state or owes delinquent state taxes until the person provides documentation showing that the indebtedness or delinquency has been paid in full.

§9.4264. Standards of Conduct.

(a) Arbitrators are required at all times to conduct themselves professionally and ethically, according to their professional ethical guidelines and the guidelines set out in this section. An arbitrator is required to follow these standards at all times, regardless whether the arbitrator is assigned to an active arbitration.

(b) The arbitrator shall:

(1) act in a professional manner, regardless of the provocation or the behavior of a party or witness;

(2) follow the arbitrator's professional ethical rules and codes of conduct;

(3) follow the ethical rules outlined in this section and the arbitrator's arbitration training;

(4) know, understand, and follow the Tax Code, Chapter 41A, the relevant provisions or Civil Practices and Remedies Code, Chapter 171, Subchapter C, and this subchapter, and conduct the arbitration proceedings and hearing in compliance with these laws and rules;

(5) demonstrate fairness to both parties and avoid even the appearance of bias or conflict of interest;

(6) be aware at all times during the arbitration hearing and decision making process that the purpose of the arbitration is to determine the correct market or appraised value of the subject property, based on the evidence presented by the parties; and

(7) be guided by the principle that the determination must be based on the admissible evidence presented in the hearing and only the evidence presented in the hearing.

(c) The arbitrator may not:

(1) advertise arbitration services guaranteeing any specific result or implying, alluding to, referring to, or guaranteeing results in favor of one party;

(2) or advertise in a manner that could lead a reasonable person to perceive that the arbitrator could be biased concerning one of the parties;

(3) misrepresent to any person that the arbitrator has the authority of the comptroller in performing the arbitration;

(4) act in any manner or engage in any practice that is dishonest, fraudulent, deceptive, or in violation of law or common morality;

(5) use the information received in connection with his or her duties as an arbitrator for personal purposes or for personal gain, unless such information can be known by any ordinary means to any ordinary citizen;

(6) accept anything of value from a party, other than a fee for services as provided by law or agreement;

(7) testify during the hearing on behalf of a property owner or an appraisal district; or

(8) show a preference to either party during the proceedings or the hearing.

§9.4265. Complaints Concerning Arbitrator Conduct.

(a) A complaint about the conduct of an arbitrator must be submitted to the comptroller in writing. The comptroller will investigate a complaint if it:

(1) identifies the arbitrator and the complaining party; and

(2) provides enough coherent information about the incident, behavior, act, or omission on which the complaint is based to enable the comptroller to discern the relevant facts alleged and to further pursue the matter.

(b) The comptroller will notify the complainant that the complaint has been received and:

(1) if the complaint provided enough information to conduct an investigation, that an investigation will be conducted; or

(2) if the complaint did not provide enough information to conduct an investigation, that additional information is required to pursue the matter and, if additional information is not provided within the 30 days of the date of the letter, the file will be closed.

(c) If the information is sufficient to conduct an investigation, the comptroller will initiate an investigation and notify the arbitrator of the complaint and investigation, and may request that the arbitrator provide a response, information, or documentation concerning the complaint.

(d) The comptroller may temporarily suspend an arbitrator during an investigation by providing the arbitrator with written notice and a brief statement of the reasons for the suspension, if the allegations made in the complaint or the comptroller's own information indicate that:

(1) suspension is in the best interest of the arbitrator, the public, or the parties to an arbitration accepted by the arbitrator who is the subject of the investigation; or

(2) if the arbitrator is not suspended, the public could lose confidence in the fairness or efficacy of the arbitration process or in the comptroller's ability to administer the arbitration program.

(e) After conducting an investigation, the comptroller will determine the appropriate response, if any, to the complaint, based on the facts, the law, this subchapter, and the surrounding circumstances.

(f) If the comptroller's investigation validates the complaint, but the comptroller determines that there is not good cause for further action, the comptroller will notify the complainant of the results and the reasons for the determination, place the complaint and the complaint response in the arbitrator's arbitration registry file, and send a copy of both to the arbitrator. The arbitrator's written response, if any, will be placed in the arbitrator's file.

(g) If the comptroller's investigation invalidates the complaint, the comptroller will notify the complainant that it found no basis for the complaint and why, place both the complaint and complaint response in the arbitrator's arbitration registry file, and send copies to the arbitrator. The arbitrator's written response will be placed in the arbitrator's file.

§9.4266. Removal.

(a) Based on its own information or pursuant to the investigation of a complaint, the comptroller for good cause may:

(1) temporarily remove an arbitrator from the registry, with or without conditions; or

(2) permanently remove an arbitrator from the registry.

(b) Good cause for removal from the arbitrator registry includes:

(1) the arbitrator's qualifications do not meet the minimum requirements of Tax Code, Chapter 41A or this subchapter;

(2) the arbitrator has violated one or more of the arbitration rules or procedures established by comptroller in this subchapter, including §9.4264 of this title (relating to Standards of Conduct), Tax Code, Chapter 41A, and other rules or laws applicable to arbitration;

(3) the arbitrator's conduct related to the arbitration process is improper, unethical, illegal, or unacceptable;

(4) multiple valid complaints by property owners or appraisal district;

(5) multiple refusals to arbitrate;

(6) the arbitrator does not comply with a comptroller request to agree to conduct arbitrations outside the area chosen by the arbitrator; or

(7) the arbitrator's conduct reflects unfavorably on the arbitration process, the arbitrator registry, or the Comptroller of Public Accounts, including:

(A) incompetence in managing the arbitration;

(B) unprofessional behavior toward a party or in connection with the arbitration proceedings;

(C) undermining the Arbitrator Registry or the arbitration process; and

(D) property tax advocacy conflicting with the arbitration process.

(c) If the comptroller finds good cause for removal, the comptroller shall deliver to the arbitrator, by personal service, registered or certified mail, notice of its intent to remove the arbitrator stating:

(1) the alleged facts or conduct that the comptroller determined constitute good cause for removal;

(2) that the comptroller intends to remove the arbitrator from the arbitrator registry; and

(3) that the removal will take effect on the 31st day after the arbitrator received the notice of intent to remove unless, before that date, the arbitrator delivers to the Property Tax Assistance Division manager, in writing, reasons why the alleged facts or conduct do not warrant removal and documentation, if any, supporting the reasons given.

(d) An arbitrator shall be temporarily removed from the registry during the period between the comptroller's finding of good cause for removal and the day the arbitrator is removed from the registry under subsection (c) of this section.

(e) If the arbitrator responds in a timely manner to the notice required by subsection (c), Property Tax Assistance Division manager shall, within 45 days after receiving the response, determine if the arbitrator's removal should modified or rescinded. The manager shall provide the arbitrator with written notice of the determination. The manager's determination is the comptroller's final decision, and becomes effective on delivery.

(f) If the arbitrator does not respond in a timely manner to the notice required by subsection (c) of this section, the removal becomes final and takes effect on the 31st day after the arbitrator received the notice of intent to remove.

§9.4267. Model Forms.

The model arbitration forms in paragraphs (1) and (2) of this section, are adopted, as amended, by the comptroller by reference. Copies of these forms are available for inspection at the offices of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling toll-free 1-800-252-9121. In Austin, call (512) 305-9999. The model arbitration forms are:

(1) Request for Binding Arbitration Form AP-219; and

(2) Arbitration Determination and Award Form 50-704.

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 December 17, 2009.

TRD-200905922
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 475-0387

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PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 73. BENEFITS

34 TAC §§73.2, 73.11, 73.21

The Employees Retirement System of Texas (ERS) proposes new §73.2, concerning Determination of Date of Hire for Retirement Benefit Eligibility; and proposes amendments to §73.11 and §73.21, concerning Supplemental Retirement Program and Reduction Factors for Age and Retirement Option.

As a result of recent legislation in the 81st Legislative Session, House Bill 2559, new §73.2 and amendments to §73.11 are necessary regarding members who have contributed to both the Law Enforcement and Custodial Officer Supplemental Retirement (LECOS) fund and the ERS defined benefit plan. These sections of the ERS rules are added and amended to update the rules for the various changes related to that legislation.

Section 73.2, concerning Determination of Date of Hire for Retirement Benefit Eligibility, is being proposed to reflect the standards that the retirement system will use to determine if an employee was hired by the state of Texas on or before August 31, 2009, for determination of eligibility for retirement benefits.

Section 73.11, concerning Supplemental Retirement Program, is being amended to reflect the new requirement for employee contributions to the LECOS fund. The amended rule is required in order to provide for members to purchase this particular service credit and receive retirement benefits as a result of such purchase.

Section 73.21(a) is being amended to clarify the best address for ERS.

Section 73.21(d) is being amended to clarify the applicable reduction factors to be used for deaths first reported to ERS on or after September 1, 2009.

Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, 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 rules.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be simplified administration for the ERS defined benefit plans, to promote the accuracy of calculations and computations related to retirement benefits under relevant laws, and to make the rules conform to recent legislation. There are no known anticipated costs to persons who are required to comply with the rules as proposed, other than having to purchase the service in a similar manner as any other service purchase and, to her knowledge, small businesses should not be affected.

Comments on the proposed new rule and rule amendments may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, February 1, 2010, at 10:00 a.m.

The new section and amendments are proposed under the Texas Government Code, §815.102 and §815.105 which provide authorization for the ERS Board of Trustees to adopt rules for the retirement system and for the program of supplemental benefits for law enforcement and custodial officers and to adopt mortality, service and other tables necessary for the retirement system.

No other statutes are affected by the proposal.

§73.2. Determination of Date of Hire for Retirement Benefit Eligibility.

(a) To be considered hired by the state of Texas on or before August 31, 2009, an employee holding a position included in the employee class of membership:

(1) must be a member of the retirement system on or before August 31, 2009, and thereafter; or

(2) must have been continuously employed by the state of Texas since on or before August 31, 2009, and deposited with the Employees Retirement System of Texas at least one contribution immediately upon completion of the membership waiting period provided by Texas Government Code, §812.003(d) before being terminated for any reason from state employment.

(b) If the employee terminates state employment without having made a contribution to ERS to establish membership as provided by this section, and subsequently attains employment in the employee class of membership, that employee will not be considered to have been hired on or before August 31, 2009, for determination of eligibility for retirement benefits.

§73.11. Supplemental Retirement Program.

(a) For the purpose of this section:

(1) "supplemental program" is the program of retirement benefits for commissioned peace officers and custodial officers established by the Texas Government Code, §814.107;

(2) "regular program" is the retirement program available to members of the employee class generally.

(b) An age reduction factor is applied to a supplemental retirement program benefit calculation if the member retires under age 50 as follows:

(1) If the member was hired by the state of Texas prior to September 1, 2009, then upon retirement from the supplemental retirement program effective on or after September 30, 2009, the member will be subject to the age reduction factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For retirements effective prior to September 30, 2009, the previously adopted factors apply. Copies of the factors may be obtained from the executive director of the Employees Retirement System of Texas at P.O. Box 13207; Austin, Texas 78711-3207; or

(2) If a person was hired by the state of Texas on or after September 1, 2009, and he/she was not already a member of the retirement system on the date hired, then any reduction related to age will be made in accordance with §814.1075 of the Texas Government Code.

~~[(b) Age reduction factors for retirement from the supplemental program prior to age 50 are adopted by reference and are made a part of this rule for all purposes. Copies of the factors may be obtained from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets; P.O. Box 13207; Austin, Texas 78711-3207. The reduction factors for retirement from the supplemental program prior to age 50 apply to retirements effective on or after September 30, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For retirements effective prior to September 30, 2009, the previously adopted factors apply.]~~

(c) Option factors for annuities, based on a retirement involving the supplemental program, are those applicable to the age of the retiree and nominee at the time payments under each program are to begin.

(d) No payment shall be required to establish service credit in the supplemental program unless payment would be required to establish that credit in the regular program.

(e) Military service credit shall be creditable in the supplemental program only if, within 90 days of termination of covered employment, the member went into the military without intervening employment and the member resumed covered employment within 90 days of termination of military service.

(f) An occupational disability retirement annuity is subject to increase pursuant to the supplemental program as a result of the individual's submission of evidence satisfactory to the retirement system that the person's condition makes the person incapable of gainful occupation and is considered a total disability under the federal social security law.

(g) An annuity increase under subsection (f) of this section is not payable before the first month following the month in which the satisfactory evidence under subsection (f) of this section is received by the retirement system.

(h) An adjustment under the provisions of subsection (f) of this section shall include any reduction option factor applicable to a survivor benefit.

§73.21. Reduction Factor for Age and Retirement Option.

(a) Actuarial assumptions, mortality tables, and reduction factors used for calculation of benefits are those adopted by the board and apply to forms and effective dates of annuities specified by the board. Such assumptions, tables, and factors are incorporated in this rule by reference and are a part of this rule for all purposes. Copies of the tables are available from the executive director of the Employees Retirement System of Texas at [~~18th and Brazos Streets,~~] P.O. Box 13207, Austin, Texas 78711-3207.

(b) The 1999 reduction factors for optional forms of retirement annuities apply to retirements effective on or after September 30, 1999 and prior to September 30, 2009, and are those factors adopted by the board December 8, 1999, based on assumptions adopted by the board December 9, 1998. The factors apply to annuities first payable January 1, 2000 through August 31, 2009. The 2009 reduction factors for optional forms of retirement annuities apply to retirements effective on or after September 30, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2009 reduction factors apply to retirements first effective September 30, 2009, and thereafter. For retirements prior to September 30, 2009, the previously adopted factors apply.

(c) The actuaries have developed reduction factors for early retirement or death in accordance with the mortality tables adopted by the board. Such tables are incorporated in this rule by reference and are a part of this rule for all purposes. The reduction factors for early retirement or death apply to retirements effective on or after September 30, 2009, and apply to deaths first reported to ERS on or after September 1, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For retirements prior to September 30, 2009 and deaths first reported to ERS prior to September 1, 2009, the previously adopted factors apply.

(d) The 2000 reduction factors for the partial lump sum option apply to retirements effective on or after January 1, 2000 through August 31, 2009, and are those factors adopted by the board December 8, 1999, based on assumptions adopted by the board December 9, 1998. The 2009 reduction factors for the partial lump sum option apply to retirements effective on or after September 30, 2009 and deaths first reported to ERS on or after [~~prior to~~] September 1, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For retirements occurring prior to September 30, 2009 and deaths first reported to ERS prior to September 1, 2009, the previously adopted factors apply.

(e) The 2005 reduction factors for a standard nonoccupational disability retirement annuity apply to a disability retirement application received by the System on or after September 1, 2005, and are those factors adopted by the board on August 24, 2005, based on assumptions adopted by the board on December 10, 2003. The 2009 reduction factors for a standard nonoccupational disability retirement annuity apply to a disability retirement based on the effective date of a retirement that is first effective on or after September 30, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For disability retirements based

on an effective date of retirement that is first effective prior to September 30, 2009, the previously adopted factors apply.

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 December 18, 2009.

TRD-200905950
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 867-7416

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 5. FINANCE

SUBCHAPTER E. PASS-THROUGH FARES AND TOLLS

43 TAC §§5.58, 5.59, 5.61

The Texas Department of Transportation (department) proposes amendments to §5.58, Calculation of Pass-Through Fares and Tolls, and §5.59, Project Development by Public or Private Entity, and new §5.61, Solicitation of Private Proposals, all concerning Pass-Through Fares and Tolls.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §222.104(b) authorizes the department to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity.

The amendments and new section will allow the department to solicit private pass through proposals in circumstances other than a program call issued under 43 TAC §5.54, and will allow the department to make payments to a private developer from the revenue of a toll project as reimbursement of financing costs and to provide a return on any private sector investment. The amendments and new section will facilitate the timely financing and development of critical highway improvement projects that could not otherwise be developed on a timely basis because the department has insufficient highway funds.

Amendments to §5.58 authorize the Texas Transportation Commission (commission), for a toll project that is the subject of a pass-through agreement procured under new §5.61, to approve payment of a level of pass-through tolls that exceeds the department's estimate to perform the work proposed by the private entity, and to approve the payment of pass-through tolls from project revenues to reimburse the private entity's financing costs and to pay a return on any private investment.

Under the existing program, the department can only reimburse a private entity what it would cost the department to construct the project if a pass-through toll agreement was not used. There are critical highway improvement projects the department cannot currently construct because there is insufficient funding or other financing methods available to do so. There exists the potential to use a pass-through toll agreement to obtain private financing of these priority projects. In order to obtain private financing, the department will need to reimburse the private entity's financing costs and to pay a reasonable return on investment, which is prohibited under the existing program. In order to leverage scarce state highway funds and to comply with applicable legal requirements, those payments would be paid from project revenue.

Amendments to §5.58 also authorize the pass-through toll to vary based on the availability of the highway for use by the traveling public and the private entity's compliance with any other performance requirements included in the pass-through agreement. These amendments will allow the amount the department agrees to pay to the private entity under a pass-through agreement to be reduced if the private entity fails to comply with performance measures included in the agreement. Amendments to §5.58 recognize that there may not be a minimum payment amount specified in the pass-through agreement.

Amendments to §5.59 recognize that there are restrictions in state and federal law as to when a contractor may conduct the environmental review and public involvement for a project.

Amendments to §5.59 authorize the commission, for a project that is the subject of a pass-through agreement procured under new §5.61, to approve the use of criteria or other requirements applicable to a particular item of work that differ from the requirements of §5.59. There are certain requirements in this section that typically are not used in agreements for privately financed projects. For example, the department has typically included performance specifications in such an agreement, rather than using prescriptive specifications. The use of performance specifications or other requirements that differ from those prescribed by §5.59 may only be approved if the commission determines that the alternative requirements provide a similar level of protection to the state and the traveling public.

New §5.61 authorizes the department to solicit private proposals for a pass-through agreement with a private entity for a highway project. New §5.61 prescribes requirements applicable to such a procurement, including requirements for commission approval of the issuance of a request for qualifications (RFQ) and request for proposals (RFP), required provisions in an RFQ or RFP, the process for evaluating and ranking qualifications submittals and proposals, shortlisting proposers, and selecting the proposal determined to provide the best value, and requirements for commission approval of the department's recommendation and award of a pass-through agreement.

New §5.61 authorizes the department to make milestone payments and annual, monthly, or other periodic payments to compensate the private entity under a pass-through agreement procured under this section. The agreement is required to establish the maximum pass-through amount to be paid to the private entity under the agreement. New §5.61 provides the agreed payment amount may be reduced if the private entity fails to comply with performance measures included in the agreement.

New §5.61 provides requirements for the department's negotiation of a pass-through agreement with the selected proposer, provides rights reserved by the department in administering the subchapter, provides that the department is not authorized to reimburse costs incurred by proposers in developing proposals or

negotiating agreements, provides procedures for a proposer's submission of questions or requests for clarification regarding a procurement, and prescribes procedures for submission of a protest regarding a procurement.

Finally, new §5.61 provides that the requirements of 43 TAC §5.53 and §§5.55 - 5.57 do not apply to a proposal submitted under §5.61. Those requirements are superseded by the requirements of §5.61.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be fiscal implications for state or local governments as a result of enforcing or administering the amendments. Those fiscal implications cannot be quantified with any certainty, as it depends on the number of pass-through agreements entered into under §5.61, and the amount of pass-through payments to be made under those agreements.

Mark Marek, Director, Design Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Marek has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be to facilitate the timely financing and development of critical highway improvement projects that could not otherwise be developed on a timely basis because of insufficient highway funds. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on January 26, 2010, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Government and Public Affairs Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 305-9137 at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §5.58 and §5.59, and on new §5.61 may be submitted to Mark Marek, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on February 1, 2010.

STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.104, which provides the commission with the authority to adopt rules necessary to implement that section.

CROSS REFERENCE TO STATUTE

Transportation Code, §222.104.

§5.58. Calculation of Pass-Through Fares and Tolls.

(a) Pass-through fares.

(1) Amount to be reimbursed.

(A) General. The commission shall establish the level of pass-through fares or shall establish parameters within which the department may negotiate the level of pass-through fares. In establishing the level of pass-through fares or parameters within which the department may negotiate the level of pass-through fares, the commission shall consider whether:

(i) the project's estimated benefits to mobility warrant a pass-through fare at a level that is more or less than the department's estimate of project costs;

(ii) the project will result in a significant economic gain or loss to the entity responsible for its development;

(iii) the public or private entity proposes to share in the cost of the project; and

(iv) the state or the public or private entity will benefit, and to what extent, if the project is built sooner than would be the case in the absence of a pass-through agreement.

(B) Limits on pass-through fare levels.

(i) The commission will not approve payment by the department of a level of pass-through fares that exceeds the department's estimate, except as permitted by this subparagraph. The commission may approve the department's payment of a level of pass-through fares that exceeds the department's current estimate, but only by the difference between the department's current estimate and the department's estimate for the time when the project would likely have been completed in the absence of a pass-through agreement.

(ii) In determining the level of pass-through fares, the commission will not consider any financing cost incurred by the public or private entity.

(2) Payment schedule and method.

(A) Payment schedule. The schedule of pass-through fare payments will be calculated based on the department's traffic projections for the railway and a number and frequency of payments to be negotiated between the department and the public or private entity.

The payment schedule may include a maximum and a minimum periodic amount to be paid annually or in total.

(B) Variable payments. The pass-through fare may vary on any basis that reasonably reflects the value of improvements, the nature of the railway traffic, or benefits to the highway system, including:

(i) number, type, and class of passengers;

(ii) type of freight;

(iii) tonnage of freight;

(iv) number or type of cars;

(v) mileage traveled; or

(vi) characteristics of track.

(3) Allocation of risk.

(A) Cost overruns and underruns. Unless otherwise authorized by the commission and incorporated in a pass-through agreement by the department, the department's liability under a pass-through agreement shall be neither increased nor decreased by cost overruns or underruns. Pass-through fare payments by the department shall not be increased if there is a cost overrun or decreased if there is a cost underrun unless an adjustment is specifically authorized by the commission and incorporated in a pass-through agreement by the department.

(B) Traffic volume. If traffic volume exceeds or falls below expectations, the pass-through fare will not be adjusted. Payments shall not exceed the maximum annual amount specified in the pass-through agreement and shall not be below the minimum annual amount specified in the pass-through agreement. The pass-through agreement shall provide that if required, payments shall continue until the total of all payments equals the total pass-through fare amount specified by the commission in approving the pass-through fare.

(b) Pass-through tolls.

(1) Level of pass-through tolls.

(A) General. The commission shall establish the level of pass-through tolls or shall establish parameters within which the department may negotiate the level of pass-through tolls. In establishing the level of pass-through tolls or parameters within which the department may negotiate the level of pass-through tolls, the commission shall consider whether:

(i) the project's estimated benefits to mobility warrant a pass-through toll at a level that is more or less than the department's estimate of project costs;

(ii) the project will result in a significant economic gain or loss to the entity responsible for its development;

(iii) the public or private entity proposes to share in the cost of the project; and

(iv) the state or the public or private entity will benefit, and to what extent, if the project is built sooner than would be the case in the absence of a pass-through agreement.

(B) Limits on pass-through toll levels.

(i) Except as provided by this clause or except for a toll project designed, developed, financed, constructed, maintained, or operated under an agreement procured under §5.61 of this subchapter (relating to Solicitation of Private Proposals), the [~~The~~] commission will not approve payment by the department of a level of pass-through tolls that exceeds the department's estimate, except as permitted by this subparagraph. The commission may approve the department's payment of a level of pass-through tolls that exceeds the department's current estimate, but only by the difference between the department's current estimate and the department's estimate for the time when the project would likely have been completed in the absence of a pass-through agreement.

(ii) In determining the level of pass-through tolls, the commission will not consider any financing cost incurred by the public or private entity. This clause does not apply to a toll project financed under an agreement procured under §5.61 of this subchapter. The commission may approve the payment of pass-through tolls from the revenues of such a toll project in order to reimburse a private entity's financing costs and to pay a return on any private investment.

(2) Payment schedule and method.

(A) Payment schedule. The schedule of pass-through toll payments will be calculated based on the department's traffic projections for the highway and a number and frequency of payments to be negotiated between the department and the public or private entity. The payment schedule may include a maximum and a minimum annual amount to be paid periodically or in total.

(B) Variable payments. The pass-through toll may vary on any basis that reasonably reflects the value of improvements, the nature of the highway, or benefits to other aspects of the highway system, including:

(i) the number of vehicles using the highway;

(ii) the number of vehicle-miles traveled on the highway;

(iii) the condition of the highway; [~~and~~]

(iv) the availability of the highway for use by the traveling public;

(v) compliance with any other performance requirements included in the pass-through agreement; and

(vi) [~~(iv)~~] whether the highway is tolled.

(3) Allocation of risk.

(A) Cost overruns and underruns. Unless otherwise authorized by the commission and incorporated in a pass-through agreement by the department, the department's liability under a pass-through agreement shall be neither increased nor decreased by cost overruns or underruns.

(i) Projects developed by the public or private entity. If the project is being developed by the public or private entity, the pass-through toll payments by the department shall not be increased if there is a cost overrun or decreased if there is a cost underrun unless an adjustment is specifically authorized by the commission and incorporated in a pass-through agreement by the department.

(ii) Projects developed by the department. If the project is being developed by the department, the pass-through agreement shall provide that the pass-through toll or the maximum amount payable, or both, shall be adjusted to reflect the department's actual costs unless the commission specifically directs that the department shall bear the risk of cost overruns or underruns.

(B) Traffic volume. If traffic volume exceeds or falls below expectations, the pass-through toll will not be adjusted. Payments shall not exceed the maximum annual amount specified in the pass-through agreement and shall not be below the minimum annual amount, if any, specified in the pass-through agreement. The pass-through agreement shall provide that if required, payments shall continue until the total of all payments equals the total pass-through toll amount specified by the commission in approving the pass-through toll.

§5.59. Project Development by Public or Private Entity.

(a) Social and environmental impact.

(1) General. To the extent allowed by law, a [~~A~~] public or private entity that is responsible for the construction of a project shall conduct the environmental review and public involvement for the project in the manner prescribed by Chapter 2, Subchapter A of this title (relating to Environmental Review and Public Involvement for Transportation Projects). The department may choose to conduct the environmental review and public involvement.

(2) Department approval. The department must approve each environmental review under this section before construction of the project begins.

(b) Right of way and utilities.

(1) Responsibility. This subsection applies when the public or private entity is responsible for the acquisition of right of way or the adjustment of utilities.

(2) Right of way procedures.

(A) Manual requirements. The acquisition of right of way performed by or on behalf of the public or private entity shall comply with the latest version of each of the department's manuals.

(B) Alternative procedures. A public or private entity may request written approval to use a different accepted procedure for a particular item or phase of work. The use of an alternative procedure is subject to the approval of the Federal Highway Administration. The executive director may approve the use of an alternative procedure if the alternative procedure is determined to be sufficient to discharge the department's state and federal responsibilities in acquiring real property.

(3) Utility adjustments. The adjustment, removal, or relocation of utility facilities performed by or on behalf of the public or private entity shall comply with applicable federal and state laws and regulations.

(c) Design and construction.

(1) Responsibility. This subsection applies when the public or private entity is responsible for the design, construction, and, operation, as applicable, of each project it undertakes. This responsibility includes ensuring that all EPIC are addressed in project design and carried out during project construction and operation.

(2) Design criteria.

(A) State criteria. All designs developed by or on behalf of the public or private entity shall comply with the latest version of the department's manuals.

(i) Highway projects. Each highway project shall, at a minimum, comply with the:

(I) Roadway Design Manual;

(II) Pavement Design Manual;

(III) Hydraulic Design Manual;

(IV) Texas Manual on Uniform Traffic Control Devices;

(V) Bridge Design Manual;

(VI) Texas Accessibility Standards;

(VII) 16 TAC Chapter 68 relating to Elimination of Architectural Barriers; and

(VIII) Americans with Disabilities Act Accessibility Guidelines.

(ii) Railway projects. Each railway project shall comply, at a minimum, with the current version of the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) Alternative criteria. A public or private entity may request approval to use different accepted criteria for a particular item of work. Alternative criteria may include the latest version of the AASHTO Policy on Geometric Design of Highways and Streets, the AASHTO Pavement Design Guide, and the AASHTO Bridge Design Specifications. The use of alternative criteria is subject to the approval of the Federal Highway Administration or the Federal Railroad Administration for those projects involving federal funds. The executive director may approve the use of alternative criteria if the alternative criteria are determined to be sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

(C) Exceptions to design criteria. A public or private entity may request approval to deviate from the state or alternative criteria for a particular design element on a case-by-case basis. The request for approval shall state the criteria for which an exception is being requested and must include a comprehensive description of the circumstances and engineering analysis supporting the request. The executive director may approve an exception after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution.

(3) Access to a highway project.

(A) Access management. Access to a highway shall be in compliance with the department's access management policy.

(B) Interstate access. For proposed highway projects that will change the access control line to an interstate highway, the public or private entity shall submit to the department all data necessary for the department to request Federal Highway Administration approval.

(4) Preliminary design submission and approval. When design is approximately 30% complete or as otherwise provided in a pass-through agreement, the public or private entity shall send the following preliminary design information to the department for review and approval in accordance with the procedures and timeline established in the project development agreement described in subsection (d) of this section:

(A) for a highway project, a completed Design Summary Report form as contained in the department's Project Development Process Manual;

(B) a design schematic depicting plan, profile, and superelevation information for each roadway or a design schematic depicting plan, profile, and superelevation based on top of railway for each railway line;

(C) typical sections showing existing and proposed horizontal dimensions, cross slopes, location of profile grade line, pavement layer thickness and composition, earthen slopes, and right of way lines for each roadway or subballast and ballast layer thickness and composition for each railway line;

(D) bridge, retaining wall, and sound wall layouts;

(E) hydraulic studies and drainage area maps showing the drainage of waterways entering the project and local project drainage;

(F) an explanation of the anticipated handling of existing traffic during construction;

(G) when structures meeting the definition of a bridge as defined by the National Bridge Inspection Standards are proposed, an indication of structural capacity in terms of design loading;

(H) an explanation of how the U.S. Army Corps of Engineers permit requirements, including associated certification requirements of the Texas Commission on Environmental Quality, will be satisfied if the project involves discharges into waters of the United States; and

(I) for a highway project, the location and text of proposed mainlane guide signs shown on a schematic that includes lane lines or arrows indicating the number of lanes.

(5) Highway construction specifications.

(A) All plans, specifications, and estimates developed by or on behalf of the public or private entity for a highway project shall conform to the latest version of the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department-required special specifications and special provisions.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(6) Railway construction specifications.

(A) All plans, specifications, and estimates developed by or for the public or private entity for a railway project shall conform to all construction and material specifications established in the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the public and the railway system.

(7) Submission and approval of final design plans and contract administration procedures. When final plans are complete, the public or private entity shall send the following information to the department for review and approval in accordance with the procedures and timelines established in the contract described in §5.57(b) of this subchapter (relating to Final Approval):

(A) seven copies of the final set of plans, specifications, and engineer's estimate (PS&E) that have been signed and sealed by the responsible engineer;

(B) revisions to the preliminary design submission previously approved by the department in a format that is summarized or highlighted for the department;

(C) a proposal for awarding the construction contract in compliance with applicable state and federal requirements;

(D) contract administration procedures for the construction contract with criteria that comply with the applicable national or state administration criteria and manuals; and

(E) the location and description of all EPIC addressed in construction.

(8) Construction inspection and oversight.

(A) Unless the department agrees in writing to assume responsibility for some or all of the following items, the public or private entity is responsible for:

(i) overseeing all construction operations, including the oversight and follow through with all EPIC;

(ii) assessing contract revisions for potential environmental impacts; and

(iii) obtaining any necessary EPIC required for contract revisions.

(B) The department may inspect the construction of the project at times and in a manner it deems necessary to ensure compliance with this section.

(9) Contract revisions. All revisions to any construction contract entered into under a pass-through agreement under this subchapter shall comply with the latest version of the applicable national or state administration criteria and manuals, and must be submitted to the department for its records. Any revision that affects prior environmental approvals or significantly revises project scope or the geometric design must be submitted to the department for approval prior to beginning the revised construction work. Procedures governing the department's approval, including time limits for department review, shall be included in the agreement described in §5.57(b) of this subchapter.

(10) As-built plans. Within six months after final completion of the construction project, the public or private entity shall file with the department a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas certifying that the project was constructed in accordance with the plans and specifications.

(11) Document and information exchange. The public or private entity agrees to deliver to the department all materials used in the development of the project including aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, contract provision requirements, and all information necessary for the department to update legacy data systems.

(12) State and federal law. The public or private entity shall comply with all federal and state laws and regulations applicable to the project and the state highway system, and shall provide or obtain all applicable permits, plans, and other documentation required by a federal or state entity.

(d) Contracts. All contracts for the development, construction, or operation of a project shall be awarded in compliance with applicable law.

(e) Federal law. If any federal funds are used in the development or construction of a project under this subchapter, or if the department intends to fund pass-through toll payments with federal funds, the development and construction of the project shall be accomplished in compliance with all applicable federal requirements.

(f) Bond financing.

(1) Department review. If any public or private entity responsible for financing a portion of a project to be developed under a pass-through agreement intends to sell bonds and use pass-through toll or fare payments from the department as evidence of financial capability to repay the bonds, the entity shall provide the department an opportunity to review and comment on bond offering documents prior to sale of the bonds.

(2) Pass-through agreement. The pass-through agreement must provide that:

(A) the department will have at least five business days after the date on which it receives all of the bond offering documents to review those documents; and

(B) the public or private entity must obtain department pre-approval of any provision in the bond offering documents that describes the pass-through agreement, the department's obligations under the agreement, the interrelationship of the department, commission, and state highway fund, and the department's obligation to provide bond investors with updated information on the status of the state highway fund.

(3) Business day. For purposes of this subsection, "business day" excludes Saturday, Sunday, a federal holiday, the Friday after Thanksgiving, and December 24 and 26.

(g) For a project designed, developed, financed, constructed, maintained, or operated under an agreement procured under §5.61 of this subchapter (relating to Solicitation of Private Proposals), the commission may approve the use of criteria or other requirements applicable to a particular item of work that differ from the requirements of this section. In approving those alternative criteria or requirements, the commission must determine that the alternative criteria or requirements provide a similar level of protection to the state and the traveling public.

§5.61. Solicitation of Private Proposals.

(a) Scope. This section applies to the procurement of a pass-through agreement with a private entity for a highway project.

(b) Payments. The department may make milestone payments and annual, monthly, or other periodic payments to compensate the private entity with whom it enters into a pass-through agreement procured under this section. The pass-through agreement shall establish a maximum pass-through amount to be paid to the private entity, subject to legislative appropriation. The maximum pass-through amount may be subject to downward adjustment based on the availability of the highway for use by the traveling public and compliance with other performance measures set forth in the pass-through agreement.

(c) Request for qualifications - notice. If authorized by the commission to issue a request for qualifications for a project, the department will set forth in the request for qualifications the basic criteria for professional experience, technical competence, and capability to complete a proposed project, and other information that the department considers relevant or necessary and will publish it in the *Texas Register* and in one or more newspapers of general circulation in this state. The department may also furnish the request for qualifications to businesses in the private sector that the department believes might be interested and qualified to participate in the project that is the subject of the request for qualifications.

(d) Request for qualifications - content. The request for qualifications will include the criteria that will be used to evaluate the submittals made in response to the request and the relative weight given to the criteria. At its sole option, the department may furnish conceptual designs, fundamental details, technical studies and reports, or detailed plans of the proposed project in the request for qualifications. The request for qualifications may request one or more conceptual approaches to bring the project to fruition.

(e) Request for qualifications - evaluation. The department, after evaluating the submittals received in response to a request for qualifications, will identify the entities that are considered most qualified to submit detailed proposals for a proposed project and approve a "short-list" that is composed of those entities. In evaluating those submittals, the department will consider the qualities that the department considers relevant to the project, which may include the private entity's financial condition, management stability, technical capability, experience, staffing, and organizational structure. The department shall advise each entity providing a qualification submittal whether it is on the short-list of qualified entities.

(f) Requests for proposals. If authorized by the commission, the department will issue a request for proposals from all private entities qualified for the short-list that requires the submission of detailed documentation regarding the project. The request for proposals may require the submission of additional information relating to:

(1) the proposer's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) detailed engineering or architectural designs;

(4) the proposer's ability to meet schedules;

(5) a detailed financial plan, including costing methodology, cost proposals, and project financing approach;

(6) the amount and period of payments requested and proposed pass-through payment schedule; or

(7) any other information the department considers relevant or necessary.

(g) Detailed proposal evaluation criteria. The proposals will be evaluated by the department based on those evaluation criteria the department considers appropriate for the project. The criteria may include the reasonableness of any financial plan submitted by a proposer; the reasonableness of the project schedule; the amount of pass-through tolls to be paid; the period of payment; any maximum and minimum payment amounts; reasonableness of assumptions, including those related to ownership, legal liability, law enforcement, and operation and maintenance of the project; forecasts; financial exposure and benefit to the department; compatibility with other planned or existing transportation facilities; likelihood of obtaining necessary approvals and other support; cost and pricing; toll rates and projected usage; scheduling; environmental impact; manpower availability; use of technology; governmental liaison; and project coordination, with attention to efficiency; quality of finished product; and any other criteria, including conformity with department policies, guidelines, and standards, as may be considered appropriate by the department to maximize the overall performance of the project and the resulting benefits to the state. Specific evaluation criteria and requests for pertinent information will be set forth in the request for proposals.

(h) Apparent best value proposal. Based on the evaluation and the evaluation criteria described under subsection (g) of this section and set forth in the request for proposals, the department will rank all proposals that are complete, responsive to the request for proposals, and in conformance with the requirements of this subchapter, and may select the private entity whose proposal offers the apparent best value to the department.

(i) Selection of entity. The department will submit a recommendation to the commission regarding approval of the proposal determined to provide the apparent best value to the department. The commission may approve or disapprove the recommendation, and if approved, will award the pass-through agreement to the apparent best value proposer. The award may be subject to the successful completion of negotiations, any necessary federal action, execution by the executive director of the agreement, and satisfaction of any other conditions that are identified in the request for proposals or by the commission. The proposers will be notified in writing of the department's rankings. The department shall make the rankings available to the public.

(j) Negotiations with selected entity. If authorized by the commission, the department will attempt to negotiate a pass-through agreement with the apparent best value proposer to design, develop, construct, finance, maintain, or operate the project. If an agreement satisfactory to the department cannot be negotiated with that proposer, or if, in the course of negotiations, it appears that the proposal will not provide the department with the best value, the department will formally end negotiations with that proposer and, in its sole discretion, either:

(1) reject all proposals;

(2) modify the request for proposals and issue that request in accordance with subsection (f) of this section; or

(3) proceed to the next most highly ranked proposal and attempt to negotiate a pass-through agreement with the entity that submitted that proposal in accordance with this section.

(k) Reservation of rights. The department reserves all rights available to it by law in administering this section, including, without limitation, the right in its sole discretion to:

(1) withdraw a request for qualifications or a request for proposals at any time, and issue a new request in accordance with the appropriate provisions of this section;

(2) reject any and all qualifications submittals or proposals at any time;

(3) terminate the evaluation of any and all qualifications submittals or proposals at any time;

(4) suspend, discontinue, or terminate negotiations with any proposer at any time before the actual authorized execution of such agreement by all parties;

(5) negotiate with a proposer without being bound by any provision in its proposal;

(6) negotiate with a proposer to include aspects of unsuccessful proposals for that project in the agreement;

(7) request or obtain additional information about any proposal from any source;

(8) modify, issue addenda to, or cancel any request for qualifications or request for proposals; or

(9) waive deficiencies in a qualifications submittal or proposal, accept and review a non-conforming qualifications submittal or proposal, or permit clarifications or supplements to a qualifications submittal or proposal.

(l) Costs incurred by proposers. Under no circumstances will the state, the department, or any of their agents, representatives, consultants, directors, officers, or employees be liable for, or otherwise obligated to, reimburse the costs incurred by proposers, whether or not selected for negotiations, in developing proposals or in negotiating agreements.

(m) Department information. Any and all information the department makes available to proposers is provided as a convenience to the proposer and without representation or warranty of any kind except as expressly specified in the request for qualifications or request for proposals. Proposers may not rely on any oral responses to inquiries.

(n) Procedure for communications. If a proposer has a question or request for clarification regarding this subchapter or any request for qualifications or request for proposals issued by the department, the proposer must submit the question or request for clarification in writing to the person responsible for receiving those submissions, as designated in the request for qualifications or request for proposals, and the department will provide the responses in writing. The proposer shall comply with all requirements in the request for qualifications or request for proposals regulating communications.

(o) Protest procedures. A protest regarding a procurement conducted under this section may only be made to the extent authorized under §27.6 of this title (relating to Protest Procedures).

(p) Applicability of other provisions. The requirements of §5.53 and §§5.55 - 5.57 of this subchapter (relating to Proposal, Commission Approval to Negotiate, Proposals from Private Entities, and Final Approval, respectively) do not apply to a proposal submitted under this section.

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

Filed with the Office of the Secretary of State on December 18, 2009.

TRD-200905935
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 463-8683

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CHAPTER 26. REGIONAL MOBILITY AUTHORITIES
SUBCHAPTER F. MISCELLANEOUS OPERATION PROVISIONS

43 TAC §26.56

The Texas Department of Transportation (department) proposes new §26.56, concerning a required internal ethics and compliance program.

EXPLANATION OF PROPOSED NEW SECTION

To maintain and build on the department's commitment to integrity and ethical behavior, the Texas Transportation Commission (commission) ordered the department to develop an internal compliance program designed to promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law and departmental policies. The proposed new section expands the use of that concept to require regional mobility authorities (RMA) to have and enforce compliance with an internal ethics and compliance program. The purpose of the proposed changes is to curtail fraudulent and illegal activity by persons who receive financial assistance from or through the department.

New §26.56, Internal Ethics and Compliance Program, requires an RMA to adopt, and enforce compliance with, an internal ethics and compliance program that satisfies the requirements of 43 TAC §1.8, Internal Ethics and Compliance Program.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the new section as proposed is in effect, there may be some minimal fiscal implications, but those fiscal implications cannot be quantified with any certainty since the department does not know which RMAs have qualifying pro-

grams in place now, which have programs that need to be upgraded, and which have no current program.

Mark Tomlinson, Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT AND COST

Mr. Tomlinson has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be for RMAs to establish and enforce a framework for discouraging fraudulent and illegal activity by persons with whom the RMAs have interactions. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §26.56 may be submitted to Mark Tomlinson, Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on February 1, 2010.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §370.038, which provides the commission with the authority to establish rules for minimum audit and reporting requirements and standards of RMAs and minimum ethical standards for RMA directors and employees.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 370, Subchapter B.

§26.56. Required Internal Ethics and Compliance Program.

(a) An RMA shall adopt an internal compliance and ethics program that satisfies the requirements of §1.8 of this title (relating to Internal Ethics and Compliance Program).

(b) An RMA must finally adopt a program described by subsection (a) of this section before the later of:

(1) April 1, 2011; or

(2) the first anniversary of the date on which the RMA is created.

(c) An RMA shall enforce compliance with its internal compliance and ethics program.

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

Filed with the Office of the Secretary of State on December 18, 2009.

TRD-200905936
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 463-8683

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CHAPTER 31. PUBLIC TRANSPORTATION
SUBCHAPTER D. PROGRAM ADMINISTRATION

43 TAC §31.39

The Texas Department of Transportation (department) proposes new §31.39, concerning a required internal ethics and compliance program.

EXPLANATION OF PROPOSED NEW SECTION

To maintain and build on the department's commitment to integrity and ethical behavior, the Texas Transportation Commission (commission) ordered the department to develop an internal compliance program (ICP) designed to promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law and departmental policies. The proposed new section expands the use of that concept to require an entity that receives state or federal public transportation funds through the department to have and enforce compliance with an internal ethics and compliance program. The purpose of the proposed changes is to curtail fraudulent and illegal activity by persons who receive financial assistance from or through the department.

New §31.39, Required Internal Ethics and Compliance Program, adds a general eligibility requirement at the beginning of 43 TAC Chapter 31, Subchapter D, Program Administration. The requirement is that to be eligible to receive any state or federal public transportation funds from the department, an entity must have adopted, and must enforce compliance with, an internal ethics and compliance program that satisfies the requirements of 43 TAC §1.8, Internal Ethics and Compliance Program. The new requirement applies only to funds awarded after January 1, 2011.

The Public Transportation Advisory Committee (PTAC) met on October 23, 2009 to review the draft rules and by motion recommended to the commission that the proposed rules be published in the *Texas Register*.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the new section as proposed is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the new section. Mr. Bass has determined that there will be fiscal implications for local governmental entities that apply for financial assistance as a result of enforcing or administering the new section. The fiscal implications cannot be quantified with any certainty as they will depend on whether the entity has a program in place, the approach taken to satisfy the rule requirements, the type of program in place or to be developed, and the size of the entity.

Eric Gleason, Director, Public Transportation Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT AND COST

Mr. Gleason has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the new section will be to establish a framework for discouraging fraudulent and illegal

activity by persons who receive public transportation funds from the department. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §31.39 may be submitted to Eric Gleason, Director, Public Transportation Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on February 1, 2010.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 455, 456, 458, and 461.

§31.39. Required Internal Ethics and Compliance Program.

To be eligible to receive state or federal public transportation funds awarded by the commission after January 1, 2011, an entity must have adopted an internal ethics and compliance program that satisfies the requirements of §1.8 of this title (relating to Internal Ethics and Compliance Program) and must enforce compliance with that program.

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

Filed with the Office of the Secretary of State on December 18, 2009.

TRD-200905937
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 31, 2010
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

7 TAC §§84.301, 84.302, 84.308

The Office of Consumer Credit Commissioner withdraws the proposed amendments to §84.301 and §84.302 and new §84.308 which appeared in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6026).

Filed with the Office of the Secretary of State on December 21, 2009.

TRD-200906000
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: December 21, 2009
For further information, please call: (512) 936-7621

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 130. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER AND TECHNICAL EDUCATION

SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §130.375

Proposed new §130.375, published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3850), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on December 15, 2009.

TRD-200905852

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TITLE 22. EXAMINING BOARDS

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.30

Proposed amended §851.30, published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3913), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on December 15, 2009.

TRD-200905853

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 74. CREDIT SERVICES ORGANIZATIONS

The Office of the Secretary of State adopts the reorganization of Chapter 74, concerning credit services organizations, by repealing §§74.1 and 74.21 - 74.23 and adopting new §§74.1 - 74.3. The repeals and new §74.2 and §74.3 are adopted without changes to the proposal published in the October 2, 2009, issue of the *Texas Register* (34 TexReg 6722) and will not be republished. Section 74.1 is adopted with changes to subsection (c)(4) and a correction to the agency's web address and will be republished. The non-substantive revisions clarify the rules, update the mailing address for the Office of the Secretary of State, provide the secretary of state's website, and remove references to specific required forms by name.

Additionally, new §74.3(b) provides for cancellation of a surety bond or account two years after the organization ceases operations at the location for which the surety bond was established, clarifies the meaning of "maintained" as used in subsection (a), and reflects that the secretary of state will authorize return of funds from a previously established surety account upon proper filing of information pertaining to a newly established surety account.

The Office of the Secretary of State (the "Office") received similar comments from Texas Appleseed, the American Association of Retired Persons, Raise Texas, Texas Rio Grande Legal Aid, Inc., and an individual private attorney (the "comments"). The comments urged the Office to adopt rules addressing an alleged "loophole" currently open to payday, auto title, and other small lenders. According to the comments, by registering as credit services organizations ("CSOs"), many Texas lenders successfully bypass state consumer credit laws, to the detriment of consumers. The comments urge the Office to address the alleged loophole in the Credit Services Organization Act (the "Act"), Chapter 393, Finance Code, by implementing the following four recommendations:

1. Require a CSO to identify in its registration statement which of the three authorized CSO functions it will serve. If the organization seeks to obtain an extension of consumer credit for a consumer, further require the organization to state what type of credit or loans it intends to obtain for consumers and details regarding the lenders that the CSO uses to obtain extensions of credit.

2. Define both "full and complete disclosure" and "resolved complaint" as used in proposed §74.1(c)(4).

3. Require a CSO to provide with its registration statement a copy of the contracts, information statements, separate notice of cancellation, fee and interest rate information for services, number of clients served, average number of services provided per client, and all other documents the CSO has consumers of their products sign.

4. Review CSO registration statements annually and provide members of the public with a statistical overview of the information provided through the registration statements.

The comments urge these four recommendations to "provide tools to monitor the Act's effectiveness as a law designed to protect consumers from abusive market practices." Having fully considered the four recommendations outlined above, the Office declines to implement recommendations one, three, and four. Although the Office also declines to fully implement recommendation two, adopted §74.1 was revised from the proposed version with recommendation two in mind. The revision to §74.1 is discussed below in the paragraphs following the discussion of recommendations one, three, and four.

Recommendations one and three urge the Office to require additional information to be submitted with the registration statement beyond the information outlined by the Texas Legislature in §393.101(a) of the Act. Section 393.101(c) of the Act, however, expressly limits what the Office can require a CSO to submit as follows: "The secretary of state may not require an organization to provide information other than information contained in the registration statement." Thus, §393.101(c) prohibits the Office from requiring information beyond the information set forth in §393.101(a). Because the Office is prohibited from requiring additional information to be submitted by a CSO, the Office cannot implement recommendations one and three.

The comments urge recommendation four to obtain analysis of the information collected under recommendations one and three. Because the Office is prohibited from implementing recommendations one and three, recommendation four is moot. This is so notwithstanding other reasons for declining to implement recommendation four.

The Office received several comments requesting that the Office use its administrative rules to expand statutory terms. Recommendation two requests definitions of "full and complete disclosure" and "resolved," as used in §74.1(c)(4). Further, the Office received a comment from the Surety & Fidelity Association of America (the "Association") requesting an expansion of the definition of "maintain" in §74.3. Having fully considered the comments, the Office declines to implement the requests.

As the Association recognized, the use of "maintain" in §74.3 tracks the language of the Act. The definition of "maintained" in §74.3(b)(1) summarizes the statutory requirements for maintaining a bond or account; the subsection does not impose additional

requirements that are not found in the statute. For example, the filing requirements for surety bonds and accounts referenced in §74.3(b)(1) and recited in §74.3(a) are found in §393.401 and §393.402 of the Act, respectively. The Association's comment, however, urges the Office to extend and interpret the Act's definition of "maintain" to determine liabilities. Determining liabilities under the Act is a function of the Legislature and the courts, a function with which the Office declines to interfere.

Similarly, the use of "resolved" and "full disclosure" in adopted §74.1(c)(4) also tracks the language of the Act. The Office's use of "full and complete disclosure" in proposed §74.1(c) and former §74.22(a) was a departure from the precise language of Act, which requires the less redundant "full disclosure." The Office removed the excess language from §74.1(c)(4) to alleviate any confusion caused by the deviation from the Act's language.

The comments did not make a strong enough showing of confusion to prompt the Office to provide definitions for terms that the legislature considered clear on their face. Further, the Act does not vest the Office with broad rulemaking authority, and therefore the Office limits its CSO rules to procedural rules. Alleged loopholes or gaps in the Act should be resolved by the Legislature, rather than in the Office's administrative rules.

In addition to the comments discussed above, the Office also received comments in support of the proposed rules from the Consumer Service Alliance of Texas.

1 TAC §§74.1, 74.21 - 74.23

The repeal of §§74.1 and 74.21 - 74.23 is adopted under the authority of §393.104 and §393.407(b), Texas Finance Code, which provide for the secretary of state to set fees and require information to be submitted as necessary to enforce §393.407, Texas Finance Code, respectively.

Chapter 393, Texas Finance Code, is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 17, 2009.

TRD-200905930
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 6, 2010
Proposal publication date: October 2, 2009
For further information, please call: (512) 463-5562

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1 TAC §§74.1 - 74.3

New §§74.1 - 74.3 are adopted under the authority of §393.104 and §393.407(b), Texas Finance Code, which provide for the secretary of state to set fees and require information to be submitted as necessary to enforce §393.407, Texas Finance Code, respectively.

Chapter 393, Texas Finance Code, is affected by these rules.

§74.1. Registration of Credit Services Organizations.

(a) A registration statement will be accepted for filing only upon submission of a completed registration form and payment of the applicable fee.

(b) The registration statement form is available on the secretary of state web site at www.sos.state.tx.us/statdoc/statforms.shtml or may be obtained by writing the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. See Form 2801.

(c) A registration statement must provide:

(1) the name and address of the credit services organization;

(2) the name and address of any person who directly or indirectly owns or controls 10% or more of the outstanding shares of stock in the credit services organization;

(3) a copy of the surety bond or surety account notice for each of the credit services organization's locations, or a statement explaining why §393.302, Texas Finance Code is not applicable;

(4) a full disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization, or a sworn statement that states that there has been no litigation or unresolved complaint with a governmental authority of this state relating to the operation of the credit services organization.

(d) The effective date of a registration statement is the date on which the secretary of state receives the completed registration form and payment of the applicable fee.

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 December 17, 2009.

TRD-200905931
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: January 6, 2010
Proposal publication date: October 2, 2009
For further information, please call: (512) 463-5562

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PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 171. REPORTING REQUIREMENTS

1 TAC §§171.2, 171.7, 171.8

The Texas Judicial Council (the Council) adopts amendments to §171.2 and adopts new §171.7 and §171.8, regarding requirements for reporting the activity of the justice and municipal courts of Texas, without changes to the proposed text as published in the September 18, 2009, issue of the *Texas Register* (34 TexReg 6395).

The forms and instructions may be found on the Council's website under the activities of the Committee on Judicial Data Management at http://www.courts.state.tx.us/tjc/cte-active.asp and at the Office of Court Administration's website under Required Reporting at http://www.courts.state.tx.us/oca/re-

quired.asp. To allow justice and municipal courts time to implement any required changes to their systems, the courts will not be required to report the data required by the new rules until September 1, 2011.

Justification for Rule Action

A major review and amendment of the monthly case activity reports for the justice and municipal courts has not occurred since 1985. Over the last 24 years, significant changes in case activity have occurred, and the new reporting requirements reflect those changes. For example, more cities are now handling parking violations as civil/administrative matters. Also, while we have seen tremendous growth in juvenile filings, the justice courts do not report as much juvenile activity information as the municipal courts. Further, the current statistics do not adequately account for additional court activity such as magistrate activities and information on court costs, fees, and fines collected or otherwise satisfied.

The Council is the only entity that collects comprehensive statistics on the case activity of the Texas courts. Statistics collected from the monthly reports submitted by the courts are compiled and published in the *Annual Statistical Report for the Texas Judiciary.* Those statistics are used extensively by the legislature, county commissioner courts, city councils, and other decision-making bodies in making decisions affecting the judiciary. The statistics also inform the citizens of Texas and others of the accomplishments of Texas courts.

How the Rule Will Function

Due to this adopted action, the data reported by the justice and municipal courts will more accurately reflect the work of those courts, and accordingly will be more useful.

Summary of Comments

The Council received no comments regarding the amendment of §171.2 and the adoption of §171.7 and §171.8, but did receive comments about the proposed forms and instructions. The comments were from one municipal court judge and one justice of the peace.

The municipal court judge requested that the proposed changes be scrapped due to the additional work that will result from the new reporting requirements. The Council responds that it is aware the new reporting requirements will result in additional work for the municipal and justice courts, primarily during the initial implementation of the new changes. However, the proposed changes to the monthly case activity reports for the justice and municipal courts will allow the Council to collect data that more accurately reflects the work of those courts, which will greatly increase the usefulness of the data.

The justice of the peace commented that she envisioned many benefits as a result of the changes to the monthly report, but expressed concern regarding the proposed "inactive" and "reactivated" case statuses for criminal cases. The justice courts in her county do not use the term "inactive," as defined in the monthly report instructions, to classify a pending case. Therefore, the justice courts in her county do not support the use of this category in the OCA monthly report. The Council responds that no courts in the State are currently using this term. The recommendation to track "inactive" and "active" pending cases comes from the Court Statistics Project, which is an ongoing collaborative effort of the National Center for State Courts and the Conference of State Court Administrators to encourage states to report case activity in a comparable and meaningful way. The Court Statistics Project defines an inactive case as one that has been removed from court control for reasons beyond the court's control (e.g., a criminal defendant has absconded and a warrant has been issued for the defendant's arrest) and no further court proceedings or activities can be resumed ("reactivated") until an event (defendant is arrested) restores it to the court's active pending caseload. Moreover, through the years the Office of Court Administration has received numerous comments from judges who are in favor of distinguishing active cases from inactive cases. They do not want to be "penalized" for not disposing of cases over which they have no control. As explained by the Court Statistics Project, making the distinction between inactive and active pending cases enables a court to "...accurately manage its caseload and to accurately compute performance measures such as..." clearance rates and age of disposed cases. By distinguishing between inactive and active pending cases, this will allow the case activity statistics reported in Texas to be compared with those reported by other states and enable a court to accurately manage its caseload and to accurately compute performance measures.

The justice of the peace also expressed concern about the ability of the new case management system, which the justice courts in her county will soon be transitioning to, to capture the proposed new information. The Council responds that it is acutely aware of the issues and potential challenges that will be faced not only in collecting the new data for the Justice Court Monthly Report but also in transitioning to a new case management system. Clerks and courts at all levels across the State have experienced or are experiencing similar situations. With this in mind, the Council has always attempted to give as much notice as possible to give clerks and courts sufficient time to prepare and implement any necessary changes.

At the Council meeting on December 11, 2009, the office manager for the justice of the peace who originally commented the justice courts in her county do not support the proposed "inactive" classification for pending criminal cases and a justice of the peace who is a member of the Council expressed concern that performance measures would not accurately measure the performance of a new judge who inherits a backlog of cases. The Council responds that no performance standards are being or have been established for the justice and municipal courts. The changes to the reports are being made to provide better information about the actual workload of these courts and to provide more useful information for case management. Tracking the number of cases pending is a critical component for these purposes. In addition, an important part of determining actual court workload is quantifying the portion of the caseload that the court has no control over. The proposed changes will not only show the number of cases awaiting judgment in each court, but will also show how many of those cases are outside the court's control for whatever reason. This information will help courts identify cases that can be moved to disposition, develop strategies for dealing with inactive cases, and provide better information to decision makers about the resources that are needed to process the cases.

Statutory Authority

The amendment and new sections are adopted under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions; and §71.035 of the Texas Government Code, which authorizes the Council to require a state justice, judge, clerk, or other court official, as an official duty, to comply with reasonable requirements

for supplying statistics pertaining to the amount and character of the civil and criminal business transacted by the court or other information on the conduct, operation, or business of the court or the office of the clerk of the court.

No other statutes, articles, or codes are affected by these sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2009.

TRD-200905947
Mena Ramon
General Counsel
Texas Judicial Council
Effective date: January 7, 2010
Proposal publication date: September 18, 2009
For further information, please call: (512) 463-6321

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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §84.204

The Finance Commission of Texas (commission) adopts new §84.204, concerning Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle, with changes from the proposal published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6025).

The commission received three written comments on the proposal, two from the Texas Automobile Dealers Association (TADA), and one from Ancira Enterprises, Inc. The purpose of the comments overall is to clarify or enhance the effectiveness of the rule and form. Two comments relate to the proposal's requirement that the disclosure of equity be provided on a separate, single page. The commenters request alternatives so that the required disclosure information may be provided either as part of the retail installment sales contract or included in the purchase or buyer's order. The second comment from TADA requests that a statement be included in the rule that the disclosure of equity standard form is only required in connection with retail installment sales transactions and not cash transactions. The three official comments, as well as informal comments resulting in changes since the proposal, are addressed following the purpose of subsections receiving comments.

Due to increasing consumer complaints and legislation considered during the 2007 session, the House Committee on Financial Institutions conducted an interim study regarding motor vehicle installment sales, including two key issues: the financing of negative equity and the retirement of existing debt on a trade-in motor vehicle. Itemization of negative equity under current law has led to confusion among consumers. Concerning the payoff of trade-ins, without an explicit legal requirement for the retail seller to timely pay off trade-in vehicles, late payments and defaults have damaged consumers' credit reports through no fault of their own.

With the enactment of House Bill 2438 (HB 2438), the 81st Texas Legislature amended Chapter 348 of the Texas Finance Code in order to address these concerns. Among other things, HB 2438 adds §348.0091 to the Texas Finance Code, which provides that the commission adopt a standard disclosure form by rule. The purpose of the new rule and its accompanying form is to implement HB 2438 regarding disclosure of equity in a retail buyer's trade-in motor vehicle. The rule provides a standard form for the disclosure of equity that must be provided to the retail buyer before accepting a trade-in motor vehicle for a motor vehicle being sold under a retail installment sales contract.

Section 84.204(a) outlines the purpose of the new rule and specifies that delivery of the new form must occur before accepting a trade-in motor vehicle.

Due to informal comments received since the proposal, the word "ordinary" has been inserted before "motor vehicle sold under a retail installment sales contract" in the first sentence. Furthermore, an affirmative statement has been added to the end of subsection (a) regarding the applicability of the section. These additions clarify that the disclosure of equity standard form is not applicable to transactions involving commercial vehicles.

One commenter "requests that proposed 7 TAC § 84.204 include a statement that the form for the disclosure of equity in a retail buyer's trade-in motor vehicle is only required to be provided in a retail installment transaction and it is not required in a cash transaction . . ." according to the statute. As referenced with the informal comment, the first sentence of subsection (a) does specifically discuss the purpose and delivery of the standard form regarding "an ordinary motor vehicle *sold under a retail installment sales contract . . . ."* (emphasis added). However, in order to provide further clarity, the following statement has been added as the next sentence in §84.204(a): "The disclosure of equity standard form is not required for transactions where a single cash payment is made for the sale of the motor vehicle."

Section 84.204(b) states that the disclosure of equity standard form must contain the required elements as provided in Texas Finance Code, §348.0091(c).

Subsection (c) states that the disclosure of equity standard form must fit on one standard-size sheet of paper.

Two commenters request alternatives so that the required disclosure information may be provided either as part of the retail installment sales contract or included in the purchase or buyer's order. The first commenter "requests that the agency also consider allowing for the new information to be incorporated on the motor vehicle retail installment contract for financed transactions. The required disclosure of equity in the trade-in under HB 2438 does not require the information to be on a separate form, only that the information be on a form or standard form." The commenter then proceeds to outline three suggested examples for including the required information within the retail installment sales contract. The commenter believes that the offered alternatives will provide flexibility to retail sellers and save the time and effort of both parties having to complete an additional document.

The second commenter states: "I would like you to consider allowing this to be accomplished on the Purchase Order rather than create a new additional form." The commenter concludes by stating that "creating one more new form [will] eventually [] cost the customer more in the 'reasonable' doc fee charge."

Based on participation in legislative hearings regarding HB 2438, it is the agency's understanding that the legislative intent of the bill was that the disclosure of equity be provided on a separate form or sheet of paper. House Bill 2438 was modeled after a Vermont statute that has been in place since July 1, 2006. An early draft one-page form, based upon Vermont's single-page disclosure, had been circulated in conjunction with those hearings. Additionally, the legislative Bill Analysis clearly shows the intent that the retail buyer receive the disclosure before signing the retail installment sales contract. Texas Finance Code, §348.0091(a), as enacted by HB 2438 states that a retail seller may not accept a trade-in vehicle "unless the retail seller *provides to the retail buyer, before the buyer signs the contract,* a completed disclosure of trade-in equity form prescribed by this section." (emphasis added). Similarly, the Vermont statute states: "The unexecuted disclosure form will be *provided to the buyer prior to consummation of the transaction* and will be signed by the buyer at the time the buyer signs the motor vehicle retail installment contract." 9 V.S.A. §2355(f)(1)(J) (emphasis added). Both statutes require that the disclosure be provided "before" or "prior to" the completion of the transaction and both separately refer to the retail installment sales contract apart from the disclosure. The agency's analysis of this statutory language supports a separate one-page disclosure form, not inclusion within another transaction document, whether the purchase order or retail installment sales contract.

The single-page disclosure allows the retail buyer to receive the disclosure before receiving the retail installment sales contract and implements the legislature's intent. Furthermore, a separate page disclosure best serves to inform the consumer of the negative equity in the trade-in vehicle and to alleviate the confusion that originally led to HB 2438. Placing this information within the retail installment sales contract or the purchase/buyer's order would diminish the effectiveness of the disclosure and therefore, conflict with the legislative goal. The Bill Analysis for HB 2438 reveals the strong consumer protection aspect of the bill: "Ensuring that the financing of a motor vehicle is transparent and adequately disclosed to a consumer is fundamentally good public policy." Therefore, the commission maintains the single-page requirement and declines to accept the alternatives offered by the commenters.

Subsections (d), (e), and (f) relate to technical requirements for the disclosure of equity standard form. In order, these subsections cover the following requirements: the disclosure must be in an easily readable font, must be set in an easily readable typeface, and must be printed in a minimum typeface size of 10 point.

Due to informal comments received since the proposal, the minimum typeface size has been reduced to 10 point, as opposed to 11 point, as contained in the proposal. The 10 point typeface size better aligns with the conspicuous typeface size required by federal regulations, as the disclosure of equity standard form may be viewed by a court as part of the retail installment sales contract. Use of the 10 point typeface size is intended to provide the same prominence as other conspicuous language contained in Chapter 348 retail installment sales contracts.

Section 84.204(g) clarifies that in a contract involving co-buyers, the signature of one co-buyer is sufficient to verify delivery of the disclosure form.

Section 84.204(h) contains the figure for the required disclosure of equity standard form.

The disclosure paragraph under "Equity Amount" contained in Figure §84.204(h) has been changed since the proposal to incorporate informal comments received. The revised wording better aligns the disclosure on the standard form with the language provided in Texas Finance Code, §348.0091(c)(1)(H). The statutory disclosure includes important information that the negative equity may be reduced by the downpayment and manufacturer's rebate, and the revisions to Figure §84.204(h) include this netting information to be more consistent with the statute. Additionally, the changes also result in consistency with federal law, so that equity figures provided under the Truth in Lending Act on the retail installment sales contract will be uniform with the equity information listed on the disclosure of equity standard form. Therefore, the disclosure paragraph under "Equity Amount" for this adoption reads as follows: "If the EQUITY amount is NEGATIVE, the value the dealer is offering for your trade-in is less than what you currently owe on your trade-in. The amount of negative equity may be further reduced by the amount of any cash downpayment and manufacturer's rebate and may be included in the Amount Financed under your retail installment contract as an itemized charge."

Section 84.204(i) outlines the limited permissible changes that may be made to the standard form.

Regarding permissible changes, based on informal comments received since the proposal, subparagraph (C) has been added to subsection (i)(1) to allow the phrase "the seller" to be substituted for "the dealer." Accompanying formatting changes have also been made.

Concerning the compliance date for use of the disclosure of equity standard form, the agency recognizes that licensees will require a certain amount of time to arrange for the printing and distribution of the required form to their licensed locations. In order to accommodate licensees in their preparation to implement the disclosure of equity standard form, the agency will permit licensees to conduct retail installment sales transactions without the standard form until March 1, 2010. During this time, however, retail sellers must properly disclose equity and trade-in information according to the statutory changes enacted by HB 2438 even in the absence of the requirement to use the standard form.

The new rule is adopted under Texas Finance Code, §348.0091 (Acts 2009, 81st Leg.), which authorizes the commission to adopt a standard form for the disclosure of the equity in a retail buyer's trade-in motor vehicle. The new rule is also adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the new rule are contained in Texas Finance Code, Chapter 348.

§84.204. Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle.

(a) Purpose and delivery. The purpose of this section is to provide a standard form for the disclosure of equity that a retail seller must

provide to the retail buyer before accepting a trade-in motor vehicle for an ordinary motor vehicle sold under a retail installment sales contract. The disclosure of equity standard form is not required for transactions where a single cash payment is made for the sale of the motor vehicle. This section prescribes the form and content of the standard form under Texas Finance Code, §348.0091. This section does not apply to retail installment sales transactions for commercial vehicles.

(b) Required elements. A disclosure of equity standard form to be provided to the retail buyer before accepting a trade-in motor vehicle for a motor vehicle sold under a retail installment sales contract must contain the required elements as provided in Texas Finance Code, §348.0091(c).

(c) Single page required. The disclosure of equity standard form must fit on one standard-size sheet of paper (8 1/2 by 11 inches).

(d) Font. The disclosure of equity standard form must be printed in an easily readable font and type size. If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(e) Typeface. The text of the disclosure of equity standard form must be set in an easily readable typeface. Typefaces considered to be readable include: Times New Roman, Scala, Caslon, Century Schoolbook, Helvetica, and Garamond.

(f) Typeface size. Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times New Roman typeface for visual comparative purposes. Generally, the typeface for the text of the disclosure of equity standard form must be at least as large as 10 point in the Times New Roman typeface. A point is generally viewed as 1/72nd of an inch.

(g) Co-buyers. If the motor vehicle being sold under a retail installment sales contract is being purchased by co-buyers, the signature of one co-buyer will verify delivery of a disclosure under this section.

(h) Required standard form. The required disclosure of equity standard form under Texas Finance Code, §348.0091 to be provided to the retail buyer before accepting a trade-in motor vehicle for a motor vehicle sold under a retail installment sales contract is presented in the following figure.
Figure: 7 TAC §84.204(h)

(i) Permissible changes. A retail seller must use the required disclosure of equity standard form, but may consider making only limited technical changes in the disclosure paragraph required by Texas Finance Code, §348.0091(c)(1)(H), as provided by the following exclusive list:

(1) substituting the following for the words "the dealer":

(A) the retail seller's name;

(B) the pronoun "we"; or

(C) "the seller."

(2) substituting the following words for the pronoun "you":

(A) "the buyer";

(B) "the retail buyer"; or

(C) "the retail buyer(s)";

(3) substituting the article "the" for the pronoun "your";

(4) appropriate changes to verbs in order to maintain proper grammar.

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 December 18, 2009.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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SUBCHAPTER G. EXAMINATIONS

7 TAC §84.708, §84.709

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §84.708, concerning Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts), and §84.709, concerning Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts), relating to the regulation of motor vehicle retail installment sales. The amendments are adopted with changes to the proposal published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6034).

The commission received one written comment on the proposal from GMAC, Inc. The comment acknowledges informal discussions of the proposed rules and the resulting revisions addressing many issues. The comment centers around one issue that has remained outstanding since the agency addressed pre-comments (received prior to publication) and informal comments received since the proposal. Informal comments and the official comment are addressed following the purpose paragraphs for the provisions receiving comments.

The purpose of these amendments to §84.708 and §84.709 is to implement recent legislation enacted by the 81st Texas Legislature affecting the regulation of motor vehicle retail installment sales, including the following bills: Senate Bill (SB) 1965 (commercial vehicles), House Bill (HB) 2438 (disclosure of equity and trade-in information), SB 778 (identity recovery service contracts), and SB 1966 (debt cancellation agreements). The following paragraphs provide a general introduction regarding each legislative bill. The purpose paragraphs for each particular amended provision will then provide references to the bill requiring changes to that provision, along with additional details as necessary.

During the 2009 legislative session, the Texas Legislature passed SB 1965 relating to the regulation of retail installment sales contracts for commercial vehicles. Certain provisions within Chapter 348 of the Texas Finance Code are not applicable to transactions involving commercial vehicles. Furthermore, these consumer-oriented provisions prevent commercial buyers from contracting for services related to commercial uses that would not be relevant to a consumer purchase. The intent of SB 1965 is to exempt retail installment sales contracts for commercial vehicles from certain provisions of the Texas Finance Code.

Due to increasing consumer complaints and legislation considered during the 2007 session, the House Committee on Finan-

cial Institutions conducted an interim study regarding motor vehicle installment sales, including two key issues: the financing of negative equity and the retirement of existing debt on a trade-in motor vehicle. Itemization of negative equity under current law has led to confusion among consumers. Concerning the payoff of trade-ins, without an explicit legal requirement for the retail seller to timely pay off trade-in vehicles, late payments and defaults have damaged consumers' credit reports through no fault of their own. With the enactment of HB 2438, the 81st Texas Legislature amended Chapter 348 of the Texas Finance Code in order to address these issues.

Concerns regarding the higher incidence of identity theft have resulted in the sale of services to assist consumers in identity theft prevention, minimizing risk or exposure, and identity recovery. These services had been unregulated and with the general prohibition against any unauthorized fee under Chapter 348, the financing of these services in connection with a retail installment sales contract was in violation of the Texas Finance Code. Consequently, during the 2009 session the legislature enacted SB 778 to address the regulation of these services. The bulk of SB 778 outlines the jurisdiction of the Texas Department of Licensing and Regulation to regulate identity theft prevention and recovery services. However, the bill also authorizes the financing of these services under Texas Finance Code, Chapter 348.

Debt cancellation agreements were authorized to be offered as part of consumer loans in 2003, but at that time the legislature did not address the sale of these products with regard to motor vehicle retail installment sales. With the enactment of SB 1966, the 81st Texas Legislature amended the Texas Finance Code to allow the sale of debt cancellation agreements in connection with Chapter 348 retail installment sales contracts, with certain limitations and restrictions. Specifically, the Texas Legislature added §348.124 to the Texas Finance Code and amended §348.001 (adding a definition of "debt cancellation agreement"), §348.005 (authorizing a fee for debt cancellation agreements as an itemized charge), and §348.208 (conforming changes).

Implementation of SB 1965 is found throughout §84.708 and §84.709. Corresponding changes have been made to each respective subsection (a) of both rules to exempt transactions involving commercial vehicles from the recordkeeping requirements.

Due to informal comments received, parallel language has been added to §84.708(a) and §84.709(a) to provide an affirmative statement regarding applicability consistent with an addition previously adopted in §84.707 (companion rule for retail sellers who assign their contracts). Thus, for this adoption, the following sentence has been added to each respective subsection (a) of §84.708 and §84.709: "The recordkeeping requirements of this section do not apply to motor vehicle retail installment sales transactions involving commercial vehicles."

Regarding the disclosure of equity and trade-in information required by HB 2438, a provision has been added to §84.708 for maintenance of the Texas Disclosure of Equity in Trade-In Motor Vehicle, which was proposed in new §84.204 and also published in the September 4, 2009, issue of the *Texas Register.* (Section 84.204 is being adopted separately in this issue of the *Texas Register.)* Although documents evidencing the payoff of trade-in vehicles are required in the existing rules for retail sellers, a statutory reference has been added to §84.708(e)(2)(F)(iv) concerning trade-in information. Further implementation of HB 2438 is found with references to the Texas Finance Code as well as §84.204 included in new §84.708(e)(2)(G) regarding the disclosure of equity standard form.

In reference to the compliance date for maintenance of the disclosure of equity standard form, Section 13(b) of HB 2438 states the following: "Notwithstanding Section 348.0091, Finance Code, as added by this Act, a retail seller is not required to comply with that section until the Finance Commission of Texas prescribes the form required by that section." The amendments outlined in the preceding paragraph are intended to implement the intent of the legislature. The requirement will only apply to a disclosure that has been adopted by the Finance Commission. If the rule establishing the standard disclosure has not been adopted, licensees are not required to use or keep the disclosure until it is adopted. Hence, the compliance date for retaining a copy of the disclosure of equity standard form will coincide with the compliance date of 7 TAC §84.204 (i.e., the rule creating the form). While the rule is pending retail sellers must properly disclose equity and trade-in information according to the statutory changes enacted by HB 2438 even in the absence of a standard form adopted by rule.

Since the proposal, it was brought to the agency's attention by an informal commenter that assignees do not have responsibility for the disclosure of equity standard form. Upon further review of HB 2438, in particular Texas Finance Code, §348.0091(d), the statute provides that the content and delivery of the disclosure is the sole responsibility of the retail seller and that an assignee may not be held responsible for a retail seller's failure to comply. Therefore, for this adoption, the requirement to maintain the disclosure of equity standard form (proposed §84.709(e)(2)(C)) has been removed from §84.709. In addition, the surrounding subparagraphs have been relettered accordingly.

With SB 778's authorization of identity recovery service contracts, a reference has been added to the parenthetical list of ancillary products contained in §84.708 relating to retail sellers. This addition implementing SB 778 is found in §84.708(e)(2)(L).

Provisions relating to the debt cancellation agreements authorized by SB 1966 have been added to both §84.708 and §84.709. Identical provisions have been added in §84.708(e)(7) and §84.709(e)(7) containing requirements concerning the maintenance of debt cancellation agreements for total loss or theft loss records. A licensee who cancels partial or entire balances under debt cancellation agreements must maintain a register or be able to generate a report that reflects agreements that were either satisfied or denied.

Regarding §84.708, if a licensee issues a debt cancellation agreement, a copy must be maintained as part of the retail installment sales transaction file as stated in §84.708(e)(2)(K). The implementation of SB 1966 is continued throughout §84.708, with provisions adopted regarding the following issues related to debt cancellation agreements: records involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle (§84.708(e)(2)(N)); under required account record information for each retail installment sales contract, any debt cancellation fees refunded if the licensee issued a debt cancellation agreement (§84.708(e)(3)(A)); and under the recommended account record information for each retail installment sales contract, the amount of debt cancellation fees charged (§84.708(e)(3)(B)).

In particular, the required information under §84.708 for cancellation of entire or partial balances for total loss or theft of an ordinary vehicle is divided into two sets of information that must

be kept under two distinct situations: (1) where insurance coverage is part of the retail buyer's responsibility to the holder, or (2) where the holder bears complete responsibility for canceling the balance. With this bifurcated approach, the agency intends to accommodate different market segments offering debt cancellation agreements while maintaining appropriate consumer protections. For more information regarding the agency's implementation of SB 1966, please refer to the proposal regarding §84.301, §84.302, and new §84.308 published in the September 4, 2009, issue of the *Texas Register.* (See also the re-publication of these sections appearing separately in this issue of the *Texas Register.)*

The provision contained in proposed §84.709(e)(2)(G) requires a holder of a retail installment sales contract in which there is a debt cancellation agreement to maintain a copy of the debt cancellation agreement and several related documents. The commenter disagrees with this requirement and believes that holders or assignees should only be required to maintain such information to the extent received by the licensee. The commenter states: "The holder usually accepts the settlement to which the customer and his or her insurance company agree, and does not interfere with their negotiations or get involved in the paperwork between them. Likewise, if the customer makes a claim on the provider of a debt cancellation agreement, the holder of the contract usually does not receive the paperwork between the customer and the holder of the debt cancellation agreement." The commenter continues by stating that "holders should not risk violation of a rule for failing to have copies of other persons' documents which [it] doesn't receive and which it has no ability to compel the other parties to provide."

The agency has conducted a thorough and careful review of the statutory requirements in conjunction with the commenter's practical concerns. Texas Finance Code, §348.001(1-a), as enacted by SB 1966 defines a debt cancellation agreement as *"a retail installment contract term or a contractual arrangement modifying a retail installment contract term* under which a retail seller *or holder agrees* to cancel all or part of an obligation of the retail buyer to repay an extension of credit from the retail seller or holder on the occurrence of the total loss or theft of the motor vehicle that is the subject of the retail installment contract . . . ." (emphasis added). The statute, therefore, incorporates the debt cancellation agreement into the retail installment sales contract (i.e., the debt cancellation agreement becomes a term of the contract). The moment a retail buyer enters into a debt cancellation agreement, the retail installment sales contract is modified and the holder is statutorily obligated. The duties under a debt cancellation agreement are also duties under the retail installment sales contract; thus, if the retail seller or holder contracts with an administrator or provider to carry out these duties, the current holder is obligated to assist the regulator in obtaining any documents related to compliance with duties under the Texas Finance Code.

Although the commission believes that the holder has an obligation to ensure adequate performance under a debt cancellation agreement, the commission nonetheless amended §84.709(e)(2)(F) (relettered from proposed subparagraph (G)) to allow the holder to demonstrate compliance with the statute during an examination by requesting and obtaining access to pertinent records that are not in its possession. The commission believes the revisions are a reasonable balancing of interests by requiring the holder to keep the debt cancellation documents it does receive and to cooperate in requesting and obtaining access to the documents that it does not receive.

Therefore, for this adoption, the commission has removed all of the specific documents as proposed in §84.709(e)(2)(G)(i) and (ii), and included two revised clauses after the introductory phrase in adopted subparagraph (F), as follows: "the licensee must: (i) maintain any documents that come into its possession relating to the creation, processing, or resolution of a debt cancellation agreement; and (ii) upon request of the agency, cooperate in requesting and obtaining access to" such documents "that are not in its possession." Requests by holders for documents under clause (ii) would be made pursuant to the agency's regulation and in furtherance of the agency's examination authority. Consequently, §84.709(e)(2)(F) as revised addresses the commenter's concerns by placing the agency's authority behind a holder's request for documents, allowing the agency to obtain the documents necessary to complete the examination of a holder of contracts including debt cancellation agreements, and providing a holder the opportunity to fulfill the statutory requirements.

Upon review of the commenter's suggestion concerning §84.709(e)(2)(F) (proposed §84.709(e)(2)(G)), it was discovered that language concerning licensees only being required to maintain such information to the extent received had inadvertently been included in the proposal. As a result, this phrase has been removed from §84.708(e)(2)(N) for this adoption. The entire provision containing this phrase has also been deleted from §84.709(e)(2)(F) as described by the modification outlined earlier.

Also regarding §84.708(e)(2)(N) and §84.709(e)(2)(F) (proposed §84.709(e)(2)(G)), the proposed language referred to records involving the "payment of amount owed" under a debt cancellation agreement. Informal commenters raised concerns about whether a licensee "pays amounts" under a debt cancellation agreement. A licensee either posts amounts received from debt cancellation providers, or when the licensee is the provider itself, cancels the debt in the event of a total loss or theft. Therefore, in order to provide more appropriate language to clarify the actions of licensees with regard to debt cancellation agreements, the payment language has been replaced with "cancellation of a full or partial balance" in §84.708(e)(2)(N) and §84.709(e)(2)(F).

The commenter furthers this concept, stating: "Under Tex. Finance Code §348.124, debt cancellation agreements are not insurance under which amounts are paid to the customer, but agreements to cancel part of the customer's debt under the retail installment [contract] if the specified loss occurs." The commenter discovered additional provisions in need of revision to more accurately describe the operation of debt cancellation agreements. The commission agrees in principle with the commenter and has incorporated similar wording, but not the exact phrasing suggested by the commenter. Thus, to implement consistent phrasing throughout both rules, corresponding changes have been made to additional provisions in §84.708(e)(2)(N) and §84.709(e)(2)(F), as well as §84.708(e)(7) and §84.709(e)(7).

In addition to addressing disclosure of equity and trade-in information, HB 2438 also enacted changes to Texas Finance Code, §348.517 concerning document retention requirements. The statutory changes align Chapter 348 with the common law statute of limitations for contracts of four years. Parallel revisions have been made in §84.708(e)(9) and §84.709(e)(9).

Additionally, throughout §84.708 and §84.709, technical corrections have been made relating to appropriate renumbering or

relettering, including internal references made to subsections within the same rule.

Regarding statutory authority from recent legislation for particular provisions, the amendments concerning ordinary vehicles are adopted under Texas Finance Code, §348.0015, as enacted by SB 1965 (Acts 2009, 81st Leg.), which authorizes the commission to determine by rule a motor vehicle that is of a type typically used for personal, family, or household use. The amendments relating to disclosure of equity and trade-in information are adopted under Texas Finance Code, §348.0091 (Acts 2009, 81st Leg.), which authorizes the commission to adopt a standard form for the disclosure of the equity in a retail buyer's trade-in motor vehicle.

In reference to all of the amendments, they are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 348.

§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).

(a) Applicability. The recordkeeping requirements of this section apply to retail sellers that service or collect installments on retail installment sales contracts involving ordinary vehicles. The recordkeeping requirements of this section do not apply to motor vehicle retail installment sales transactions involving commercial vehicles.

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination.

(c) Recordkeeping systems. The records required by this section may be maintained by using either a legible paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Record search requirements.

(1) Open retail installment sales transactions. A licensee must be able to access or produce a list of all open retail installment sales transactions. If the list of open transactions is accessed through an electronic system, the licensee must be able to generate a separate report of open transactions. Alternatively, a licensee may provide a list containing open and closed retail installment sales transactions as long as the open transactions are designated as "open."

(2) Alphabetical search. A licensee must be able to access records in alphabetical order by retail buyer name for open and closed transactions during the record retention period required by subsection (e)(9) of this section. A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative.

(e) Records required.

(1) Retail installment sales transaction report.

(A) General requirements. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract made or acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (9) of this subsection.

(B) Recordkeeping systems. The retail installment sales transaction report can be maintained either as a paper record or may be generated from an electronic system or systems so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is made or acquired.

(C) Dealer's Motor Vehicle Inventory Tax Statement option.

(i) A licensee may utilize a copy of the Dealer's Motor Vehicle Inventory Tax Statement (VIT Statement) submitted to the Office of the Comptroller of Public Accounts to satisfy the requirements of this paragraph if the following two conditions are met when the VIT Statement is provided to the commissioner's representative:

(I) on a copy of the submitted VIT Statement, the licensee identifies (e.g., highlights, marks with abbreviations) which transactions were cash transactions and which were retail installment sales transactions; and

(II) the licensee supplements the VIT Statement with the identification of all transactions in which VIT was not charged or collected.

(ii) A licensee who assigns account numbers and utilizes the Dealer's Motor Vehicle Inventory Tax Statement option must provide the account numbers for all retail installment sales transactions contained in the VIT Statement.

(D) Required information. A retail installment sales transaction report must contain the following information:

(i) the date of contract or date of sale (day, month, and year);

(ii) the retail buyer's name(s);

(iii) a method of identifying the vehicle, such as the last six (6) digits of the vehicle identification number or the stock number; and

(iv) the account number.

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in;

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

(iv) the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front and back of either the original or certified copy of the title;

(v) the Texas Department of Transportation's Title Application Receipt (Form VTR-500-RTS), Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS), or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(vi) copies of other agreements or disclosures signed by the retail buyer applicable to the retail installment sales transaction; and

(vii) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (Q) of this paragraph.

(B) for a vehicle titled in Texas, a copy of the completed Texas Department of Transportation/Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

(C) for a vehicle titled outside of Texas, a copy of the application for certificate of title for the buyer or the properly assigned evidence of ownership to the buyer including the Comptroller of Public Accounts' Texas Motor Vehicle Sales Tax Exemption Certificate (Form 14-312).

(D) for a retail installment sales transaction in which a power of attorney is necessary to transfer title to the buyer, a copy of the Texas Department of Transportation's Power of Attorney to Transfer a Motor Vehicle (Form VTR-271) or any other similar document used as a power of attorney.

(E) for a retail installment sales transaction in which the retail buyer elects to have the vehicle registered in another county as permitted by Texas Transportation Code, §501.0234, a completed copy of the Texas Department of Transportation's County of Title Issuance form (Form VTR-136) signed by the retail buyer.

(F) for a retail installment sales transaction involving a downpayment, a copy of any record or document relating to the downpayment including:

(i) receipts for cash downpayments;

(ii) promissory notes or other documents evidencing the retail buyer's agreement to pay the cash downpayment over time;

(iii) documents or forms signed by the retail buyer relating to a manufacturer's or distributor's rebate as permitted by the Texas Finance Code, §348.404(a); and

(iv) documents or forms evidencing the payoff of any trade-in vehicle shown on the retail installment sales contract as required by Texas Finance Code, §348.408(c).

(G) for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Disclosure of Equity in Trade-In Motor Vehicle required by Texas Finance Code, §348.0091 and §84.204 of this title (relating to Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle).

(H) for a retail installment sales contract that has an itemized charge for the inspection of the vehicle, a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(I) for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document, form, or agreement relating to the disbursement of funds for money advanced.

(J) for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(K) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a copy of the debt cancellation agreement provided to the retail buyer.

(L) for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, identity recovery service contracts, etc.) including all certificates of coverage.

(M) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) if the licensee does not negotiate or transact insurance claims on behalf of the retail buyer, records are not required to be maintained under this subparagraph.

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

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

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

(III) Credit involuntary unemployment insurance claims. The supplemental insurance records for credit involuntary unemployment insurance claims must include any written document

relating to the termination, layoff, or dismissal of the retail buyer; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the involuntary unemployment insurance claim.

(IV) Collateral protection insurance claims. The supplemental insurance records for collateral protection insurance claims must include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered motor vehicle; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the collateral protection insurance claim.

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Driver's Accident Report" (Form ST-2) filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(N) for a retail installment sales transaction involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle:

(i) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles that include insurance coverage as part of the retail buyer's responsibility to the holder:

(I) supplemental claim records supporting the settlement or denials of claims reported in the debt cancellation agreement loss records provided by paragraph (7) of this subsection including the debt cancellation request form;

(II) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(III) documents that provide verification of the retail buyer's primary insurance deductible;

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

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

(VI) evidence of the credit for the debt cancellation applied to the account or a copy of the check reflecting the balance canceled by the licensee; or

(ii) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles in which the holder bears complete responsibility for the balance canceled after the total loss or theft:

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

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

(III) any records relating to the denial of the cancellation of the balance under the debt cancellation agreement for total loss or theft of any ordinary vehicle.

(O) for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §226.18, *et seq.;*

(ii) a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(P) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §17.3(h) (relating to Motor Vehicle Certificates of Title).

(Q) for a retail installment sales transaction involving a repossession, the records required by subsection (f) of this section.

(R) for a retail installment sales contract that has an itemized charge for the inspection of a used motor vehicle, access to a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate paper, or an electronic record, must be maintained covering each retail installment sales contract. The paper or electronic account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) account number as recorded in the retail installment sales transaction report;

(ii) date of contract;

(iii) name and address of retail buyer;

(iv) payment history information:

(v) for a retail installment sales contract where the licensee receives or issues a refund of insurance charges, debt cancellation agreements, or authorized ancillary products, a licensee is responsible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

(I) time price differential refunded, if any;

(II) the amount of any insurance charges refunded;

(III) the amount of any debt cancellation agreement fees refunded;

(IV) the amount of any authorized ancillary products charges refunded;

(vi) collection contact history, including a written record of:

(B) Recommended information. In addition to the required information under subparagraph (A) of this paragraph, it is recommended that the account record for each retail installment sales contract contain the following information:

(i) retail installment sales contract payment schedule and terms itemized to show:

(I) number of installments;

(II) due date of installments;

(III) amount of each installment; and

(IV) maturity date;

(ii) telephone number of retail buyer;

(iii) names and addresses of co-retail buyer or other obligors, if any;

(iv) amount financed;

(v) total time price differential charge;

(vi) total of payments;

(vii) amount of premium charges for insurance products;

(viii) amount of fees charged for debt cancellation agreements.

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

(4) Assignment information.

(A) Required information. Assignment information must cover any Texas Finance Code, Chapter 348 retail installment sales contract made by or acquired by the licensee that is assigned from its licensed or registered location. The assignment information must show the name of the retail buyer, the account number or other unique number given to the retail buyer, the date of assignment, and the name and address to which the accounts are assigned.

(B) Electronic recordkeeping systems. If a licensee is able to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph electronically without any additional programming costs, the licensee must produce the report upon request. If the licensee's software programs are unable to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(C) Manual recordkeeping systems. If a licensee is not able to produce an assignment report as provided in subparagraph (B) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(D) Securitization or financing exception. If the servicing rights are retained by the licensee, then the licensee is not required to include in the assignment report retail installment sales transactions that were assigned to a legal entity as part of a securitization agreement. A licensee is also not required to include in the assignment report retail installment sales transactions that have been pledged as collateral for a bona fide financing arrangement to the licensee.

(5) General business and accounting records. General business and accounting records concerning retail installment sales transactions must be maintained. The licensee is not required to produce information protected under the attorney-client privilege or work product privilege. The business and accounting records must include receipts, documents, or other records for each disbursement made by the licensee at the retail buyer's direction or request, on his behalf, or for his benefit, that is charged to the retail buyer, including:

(A) Comptroller of Public Accounts' Dealer Motor Vehicle Inventory Tax Statement (Form 50-246);

(B) Comptroller of Public Accounts' Texas Motor Vehicle Seller-Financed Sales Tax Report (Form 14-117); and

(C) repossession, sequestration, disposition, or legal fees relating to repossession, sequestration, or disposition.

(6) Insurance loss records. Each licensee who negotiates or transacts the filing of insurance claims must maintain a register or be able to generate a report, paper or electronic, reflecting information to the extent received by the licensee on credit life, credit accident and health, credit property, credit involuntary unemployment, and single-interest insurance claims whether paid or denied by the insurance carrier. If the reason for the denial of a credit life insurance or credit accident and health insurance claim is based upon the medical records of the retail buyer, supplemental records supporting the denial of the claim must be made available upon request.

(A) Credit life insurance claims. The register or report pertaining to credit life insurance claims must show the name of the retail buyer, the account number, and the date of death.

(B) Credit accident and health insurance claims. The register or report pertaining to credit accident and health insurance claims must show the name of the retail buyer, the account number, and the date of the initial filing of a claim for any continuous period of disability.

(C) Credit involuntary unemployment insurance claims. The register or report pertaining to credit involuntary unemployment insurance claims must show the name of the retail buyer, the account number, and the date of the initial filing of the claim.

(D) Credit gap insurance claims. The register or report pertaining to credit gap insurance claims must show the name of the retail buyer, the account number, and the date of the claim.

(E) Collateral protection insurance claims. The register or report pertaining to collateral protection insurance claims must show the name of the retail buyer, the account number, and the amount of the insurance written on the motor vehicle.

(7) Debt cancellation agreement for total loss or theft loss records. Each licensee who cancels entire balances or who cancels only partial balances under debt cancellation agreements must maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, and the date of satisfaction or denial.

(8) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §202.12(b), as amended. The current retention periods are 25 months for consumer credit and 12 months for business credit.

(9) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) Repossession records.

(1) Repossession report. A licensee must be able to access or produce a list of all retail installment sales transactions involving repossession by the licensee. If the list of repossessions is accessed through an electronic system, the licensee must be able to generate a separate report of repossessions. If the repossession report is maintained under a manual recordkeeping system, the licensee must maintain a current list of accounts in repossession. A manual repossession report must be updated within a reasonable time from the date of repossession. The repossession report must include the retail buyer's name, account number, and date of repossession. If accounts have been subsequently assigned, the assignment must be noted in the repossession report as well as on the record of assigned accounts as prescribed in subsection (e)(4) of this section.

(2) Required information. For a retail installment sales transaction involving the repossession of the vehicle, the following records must be maintained, unless otherwise specified:

(A) a condition report indicating the condition of the collateral, if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession;

(B) any invoices or receipts for any reasonable and authorized out-of-pocket expenses that are assessed to the buyer and incurred in connection with the repossession or sequestration of the vehicle including cost of storing, reconditioning, and reselling the vehicle;

(C) for a vehicle disposed of in a public or private sale as permitted by the Texas Business & Commerce Code, §9.610, the following documents:

(i) one of the three following notices:

(I) for a transaction not involving consumer goods, a copy of any Notification of Disposition of Collateral letter sent to the retail buyer and other obligors as required by Texas Business & Commerce Code, §9.613;

(II) for a transaction involving consumer goods, a copy of any Notice of Our Plan to Sell Property as sent to the retail buyer and other obligors as required by Texas Business & Commerce Code, §9.614; or

(III) a copy of the waiver of the notice of intended disposition prescribed by subclause (I) or (II) of this clause, as applicable, signed by the retail buyer and other obligors after default;

(ii) copies of evidence of the type or manner of private sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as circumstances surrounding a dealer only auction, internet sale or other type of private disposition;

(iii) copies of evidence of the type or manner of public sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as documentation of the date, place, manner of sale of the vehicle, and amounts received for disposition of the vehicle;

(iv) the bill of sale showing the name and address of the purchaser of the repossessed collateral and the purchase price of the vehicle;

(v) for a disposition or sale of collateral creating a surplus balance, a copy of the check representing the payment of the surplus balance paid to the retail buyer or other person entitled to the surplus;

(vi) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency as required by Texas Business & Commerce Code, §9.616, if applicable;

(vii) a copy of the waiver of the deficiency letter if the retail seller elects to waive the deficiency balance in lieu of sending the explanation of calculation of surplus or deficiency form, if applicable;

(D) for a vehicle disposed of using the strict foreclosure method as permitted by the Texas Business & Commerce Code, §9.620 and §9.621, the following documents:

(i) one of the three following notices;

(I) for a transaction not involving consumer goods and where less than 60% of the cash price of the vehicle has been paid, a copy of the notice of proposal to accept collateral in full or partial satisfaction of the obligation;

(II) for a transaction involving consumer goods, a copy of the notice of proposal to accept collateral in full satisfaction of the obligation; or

(III) for a transaction where more than 60% of the cash price of the vehicle has been paid, a copy of the debtor or obligor's waiver of compulsory disposition of collateral signed by the retail buyers and other obligors after default;

(ii) for a transaction where the retail buyer rejects the offer under clause (i)(I) or (II) of this subparagraph, a copy of the retail buyer's signed objection to retention of the collateral;

(iii) copies of the records reflecting the partial or total satisfaction of the obligation; and

(E) for a vehicle disposed by another authorized method pursuant to the Texas Business & Commerce Code, Chapter 9, a copy of any and all records or documents relating to the disposition of the collateral.

§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).

(a) Applicability. The recordkeeping requirements of this section apply to holders who are not retail sellers that service or collect installments on retail installment sales contracts involving ordinary vehicles. The recordkeeping requirements of this section do not apply to motor vehicle retail installment sales transactions involving commercial vehicles.

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination.

(c) Recordkeeping systems. The records required by this section may be maintained by using either a legible paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Record search requirements.

(1) Open retail installment sales transactions. A licensee must be able to access or produce a list of all open retail installment sales transactions. If the list of open transactions is accessed through an electronic system, the licensee must be able to generate a separate report of open transactions. Alternatively, a licensee may provide a list containing open and closed retail installment sales transactions as long as the open transactions are designated as "open."

(2) Alphabetical search. A licensee must be able to access records in alphabetical order by retail buyer name for open and closed transactions during the record retention period required by subsection (e)(9) of this section. A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative.

(e) Records required.

(1) Retail installment sales transaction report. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (9) of this subsection. The retail installment sales transaction report can be maintained either as a paper record or may be generated from an electronic system or systems so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is acquired. A retail installment sales transaction report must contain the following information:

(A) the date of contract (day, month, and year);

(B) the retail buyer's name(s);

(C) a method of identifying the vehicle, such as the last six (6) digits of the vehicle identification number or the stock number; and

(D) the account number.

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) the credit application and any other written or recorded information used in evaluating the application;

(iii) the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front of either the original or certified copy of the title; and

(iv) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (I) of this paragraph.

(B) for a vehicle titled in Texas, a copy of the completed Texas Department of Transportation/Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

(C) for a retail installment sales transaction in which insurance policies are issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(D) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a copy of the debt cancellation agreement provided to the retail buyer.

(E) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) if the licensee does not negotiate or transact insurance claims on behalf of the retail buyer, records are not required to be maintained under this subparagraph.

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

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

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

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

(IV) Collateral protection insurance claims. The supplemental insurance records for collateral protection insurance claims must include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered motor vehicle; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the collateral protection insurance claim.

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Driver's Accident Report" (Form ST-2) filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(F) for a retail installment sales transaction involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle, the licensee must:

(i) maintain any documents that come into its possession relating to the creation, processing, or resolution of a debt cancellation agreement; and

(ii) upon request of the agency, cooperate in requesting and obtaining access to the type of documents described in clause (i) of this subparagraph that are not in its possession.

(G) for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §226.18, *et seq.;*

(ii) a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(H) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §17.3(h) (relating to Motor Vehicle Certificates of Title).

(I) for a retail installment sales transaction involving repossession, the records required by subsection (f) of this section.

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate paper, or an electronic record, must be maintained covering each retail installment sales contract. The paper or electronic account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) account number as recorded in the retail installment sales transaction report;

(ii) date of contract;

(iii) name and address of retail buyer;

(iv) payment history information:

(v) for a retail installment sales contract where the licensee receives a refund of insurance charges, debt cancellation agreements or authorized ancillary products, a licensee is responsible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

(I) time price differential refunded, if any;

(II) the amount of any insurance charges refunded;

(III) the amount of debt cancellation agreement fees refunded;

(IV) the amount of any authorized ancillary products charges refunded;

(vi) collection contact history, including a written record of:

(I) all collection contacts made by a licensee with the retail buyer or any other person in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(II) all collection contacts made by the retail buyer with the licensee in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(III) for the collection contacts in subclauses (I) and (II) of this clause, the written record must include the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(IV) copies of individual collection notices or letters or references to standard collection letters sent to the retail buyer.

(B) Recommended information. In addition to the required information under subparagraph (A) of this paragraph, it is recommended that the account record for each retail installment sales contract contain the following information:

(i) retail installment sales contract payment schedule and terms itemized to show:

(I) number of installments;

(II) due date of installments;

(III) amount of each installment; and

(IV) maturity date;

(ii) telephone number of retail buyer;

(iii) names and addresses of co-retail buyer or other obligors, if any;

(iv) amount financed;

(v) total time price differential charge;

(vi) total of payments;

(vii) amount of premium charges for insurance products;

(viii) amount of fees charged for debt cancellation agreements.

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

(4) Assignment report.

(A) Required information. A licensee must maintain or produce an assignment report, whether paper or electronic, including any Texas Finance Code, Chapter 348 retail installment sales contract made by or acquired by the licensee that is assigned from its licensed or registered location. The assignment report must show the name of the retail buyer, the account number or other unique number given to the retail buyer, the date of assignment, and the name and address to which the accounts are assigned.

(B) Securitization or financing exception. If the servicing rights are retained by the licensee, then the licensee is not required to include in the assignment report retail installment sales transactions that were assigned to a legal entity as part of a securitization agreement. A licensee is also not required to include in the assignment report retail installment sales transactions that have been pledged as collateral for a bona fide financing arrangement to the licensee.

(5) General business and accounting records. General business and accounting records concerning retail installment sales transactions must be maintained. The business and accounting records must include receipts, documents, or other records for each disbursement made by the licensee at the retail buyer's direction or request, on his behalf, or for his benefit, that is charged to the retail buyer, including repossession, sequestration, disposition, or legal fees relating to repossession, sequestration, or disposition. The licensee is not required to produce information protected under the attorney-client privilege or work product privilege.

(6) Insurance loss records. Each licensee who negotiates or transacts the filing of insurance claims must maintain a register or be able to generate a report, paper or electronic, reflecting information to the extent received by the licensee on credit life, credit accident and health, credit property, credit involuntary unemployment, and single-interest insurance claims whether paid or denied by the insurance carrier. If the reason for the denial of a credit life insurance or credit accident and health insurance claim is based upon the medical records of the retail buyer, supplemental records supporting the denial of the claim must be made available upon request.

(A) Credit life insurance claims. The register or report pertaining to credit life insurance claims must show the name of the retail buyer, the account number, and the date of death.

(B) Credit accident and health insurance claims. The register or report pertaining to credit accident and health insurance claims must show the name of the retail buyer, the account number, and the date of the initial filing of a claim for any continuous period of disability.

(C) Credit involuntary unemployment insurance claims. The register or report pertaining to credit involuntary unemployment insurance claims must show the name of the retail buyer, the account number, and the date of the initial filing of the claim.

(D) Credit gap insurance claims. The register or report pertaining to credit gap insurance claims must show the name of the retail buyer, the account number, and the date of the claim.

(E) Collateral protection insurance claims. The register or report pertaining to collateral protection insurance claims must show the name of the retail buyer, the account number, and the amount of the insurance written on the motor vehicle.

(7) Debt cancellation agreement for total loss or theft loss records. Each licensee who cancels entire balances or who cancels only partial balances under debt cancellation agreements must maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, and the date of satisfaction or denial.

(8) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention re-

quirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §202.12(b), as amended. The current retention periods are 25 months for consumer credit and 12 months for business credit.

(9) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) Repossession records.

(1) Repossession report. A licensee must be able to access or produce a list of all retail installment sales transactions involving repossession by the licensee. If the list of repossessions is accessed through an electronic system, the licensee must be able to generate a separate report of repossessions. If the repossession report is maintained under a manual recordkeeping system, the licensee must maintain a current list of accounts in repossession. A manual repossession report must be updated within a reasonable time from the date of repossession. The repossession report must include the retail buyer's name, account number, and date of repossession. If accounts have been subsequently assigned, the assignment must be noted in the repossession report as well as on the record of assigned accounts as prescribed in subsection (e)(4) of this section.

(2) Required information. For a retail installment sales transaction involving the repossession of the vehicle, the following records must be maintained, unless otherwise specified:

(A) a condition report indicating the condition of the collateral, if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession;

(B) any invoices or receipts for any reasonable and authorized out-of-pocket expenses that are assessed to the buyer and incurred in connection with the repossession or sequestration of the vehicle including cost of storing, reconditioning, and reselling the vehicle;

(C) for a vehicle disposed of in a public or private sale as permitted by the Texas Business & Commerce Code, §9.610, the following documents:

(i) one of the three following notices:

(I) for a transaction not involving consumer goods, a copy of any Notification of Disposition of Collateral letter sent to the retail buyer and other obligors as required by Texas Business & Commerce Code, §9.613;

(II) for a transaction involving consumer goods, a copy of any Notice of Our Plan to Sell Property as sent to the retail buyer and other obligors as required by Texas Business & Commerce Code, §9.614; or

(III) a copy of the waiver of the notice of intended disposition prescribed by subclause (I) or (II) of this clause, as applicable, signed by the retail buyer and other obligors after default;

(ii) copies of evidence of the type or manner of private sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as circumstances surrounding a dealer only auction, internet sale or other type of private disposition;

(iii) copies of evidence of the type or manner of public sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as documentation of the date, place, manner of sale of the vehicle, and amounts received for disposition of the vehicle;

(iv) the bill of sale showing the name and address of the purchaser of the repossessed collateral and the purchase price of the vehicle;

(v) for a disposition or sale of collateral creating a surplus balance, a copy of the check representing the payment of the surplus balance paid to the retail buyer or other person entitled to the surplus;

(vi) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency as required by Texas Business & Commerce Code, §9.616, if applicable;

(vii) a copy of the waiver of the deficiency letter if the retail seller elects to waive the deficiency balance in lieu of sending the explanation of calculation of surplus or deficiency form, if applicable;

(D) for a vehicle disposed of using the strict foreclosure method as permitted by the Texas Business & Commerce Code, §9.620 and §9.621, the following documents:

(i) one of the three following notices;

(I) for a transaction not involving consumer goods and where less than 60% of the cash price of the vehicle has been paid, a copy of the notice of proposal to accept collateral in full or partial satisfaction of the obligation;

(II) for a transaction involving consumer goods, a copy of the notice of proposal to accept collateral in full satisfaction of the obligation; or

(III) for a transaction where more than 60% of the cash price of the vehicle has been paid, a copy of the debtor or obligor's waiver of compulsory disposition of collateral signed by the retail buyers and other obligors after default;

(ii) for a transaction where the retail buyer rejects the offer under clause (i)(I) or (II) of this subparagraph, a copy of the retail buyer's signed objection to retention of the collateral;

(iii) copies of the records reflecting the partial or total satisfaction of the obligation; and

(E) for a vehicle disposed by another authorized method pursuant to the Texas Business & Commerce Code, Chapter 9, a copy of any and all records or documents relating to the disposition of the collateral.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts an amendment to §25.25, relating to Issuance and Format of Bills, and §25.479, relating to Issuance and Format of Bills, with changes to the proposed text as published in the August 14, 2009, issue of the *Texas Register* (34 TexReg 5457). The amendments will implement certain provisions of Texas House Bill 1822, 81st Leg. (2009) (HB 1822), Public Utilities Regulatory Act (PURA) §§17.003(c), 17.004(a), and 17.102, pertaining to a list of defined terms common to the electric industry and Texas House Bill 1799, 81st Leg. (2009) (HB 1799), PURA §39.116 pertaining to notice regarding customer choice information. The rule will require electric service providers to use specific defined terms in billing their customers and require that information concerning the customer-information website operated by the commission be included on customer bills. The rule will also require electric service providers to include on each residential and small commercial billing statement the date that a fixed rate product will expire. The amendments are adopted under Project Number 37070.

The commission received comments on the proposed amendments from Ambit Energy, LP; joint reply comments from ARM (on behalf of Constellation New Energy, Inc); CPL Retail Energy; Direct Energy, LP; First Choice Power; Green Mountain Energy Company, LLC; Gexa Energy, LP; Integrys Energy Services of Texas, LP; Sempra Energy Solutions, LLC; and Stream Energy and WTU Retail Energy "REPs" and TEAM, (on behalf of Accent Energy, Amigo Energy, Cirro Energy, Green Mountain Energy Company, Just Energy, Hudson Energy Services, StarTex Power, Stream Energy, Tara Energy, and TriEagle Energy), (REPs), Committee of Cities Served by Oncor (Cities); Fox Smolen & Associates (FSA); the Office of Public Utility Counsel (OPC); and joint comments from Texas Ratepayer Organization to Save Energy/Texas Legal Service Center (TLSC) and AARP. No public hearing on the proposed amendments was requested by any person.

General Comments

FSA agreed with the preamble to the proposed amendments that it is very difficult to quantify specific costs and benefits of the amendments. FSA commented that the commission should be concerned about economic impact on small businesses, which depend upon a well functioning market to secure electricity at a reasonable cost to run their businesses.

OPC expressed a concern for customers that do not utilize the Internet and suggested that REPs' customer service representatives be trained and knowledgeable about billing terminology to assist those customers without Internet access. OPC also suggested that the commission and OPC list the common terms on their customer information websites and inform respective intake personnel of the location of the definitions to assist customers. OPC encouraged the commission to require each REP to annually send a billing insert that informs customers of these new terms and definitions and any additional terms to assist those customers without Internet access. REPs stated that the process of sending a bill insert to millions of customers in order to reach the handful of customers that would utilize it is an expensive and inefficient approach to education. REPs stated that a customer without Internet access could simply request a list to be sent by mail.

Commission Response

The commission concludes that the list of common terms and their definitions should be available to the customer on websites and, upon request, free of charge, through the means that the REP communicates with the customer, and the rule that is being adopted reflects this conclusion. The commission agrees with REPs that the cost of REPs providing an annual bill insert would exceed the benefit of providing the information. And, as OPC pointed out, the commission and OPC also have the opportunity to list the common terms on their respective customer information websites and provide the definitions to intake personnel, so they can assist customers, particularly customers that do not have access to the Internet.

OPC recommended that the HB 1822 common terms be applicable to all customers' billing statements. OPC pointed out that HB 1822, which adopted new PURA §39.112, applies to all customers because subsection (c) requires a REP to include "on each billing statement" the end date of a fixed-rate product, thus making the requirement applicable to all customers, regardless of class. OPC cited statutory construction law that supports its argument. REPs disagreed with OPC's position that the common billing terms should be applicable to all customers. REPs stated that OPC reached a false conclusion by failing to fully review the legislative history. REPs stated that the amendment described in OPC's comments simply caused the Senate Committee to revert to the applicability of the House Engrossed version and did not broaden the applicability of the bill.

Commission Response

The commission disagrees with OPC's interpretation that HB 1822 applies to all customers. The commission concludes that the legislative history suggests that the Legislature intended the requirements of PURA §39.112(c) to apply only to bills provided to residential customers. Nevertheless, the commission has the discretion to apply it to other customers pursuant to its other authority under PURA. The comments in support of extending the provision to small commercial customers provide solid policy reasons for doing so. The proposed rule would apply the provision to residential and small commercial customers, and the commission concludes that this is the appropriate result. FSA has pointed out that small commercial customers are frequently exposed to early-termination penalties because they do not have information about the termination dates of their contracts. Accordingly, the commission is adopting the rule to require the date

the contract expires to be placed on the bills of small commercial customers, as well as residential customers.

OPC proposed that this rulemaking more accurately define and expand the definition of small commercial customer for the purposes of Chapter 25. OPC disagreed with the current 50 kilowatt (kW) threshold for the small commercial customer class, as set out in Chapter 25, Subchapter R, which it views as arbitrary and permitting small businesses to sign contracts that require waivers of protections in Subchapter R. OPC voiced a concern that some of what they consider small businesses may exceed the 50 kW threshold in the customer protection rules but be below the 1,000 kW threshold set out in PURA.

REPs strongly objected to OPC's recommendation that the definition of small commercial customers in §25.471(d)(10) (relating to general provisions of customer protection rules) be changed to include all non-residential customers with a peak demand less than 500 kW and potentially be expanded to 1,000 kW. REPs stated that a mandate of complete application of the customer protection rules for all customers up to 500 kW (or 1,000 kW) harms customers and REPs in numerous ways. REPs stated that statutory authority for most customer protection rules comes from PURA §39.101, which establishes numerous rights for customers and does not distinguish between classes of customers. Furthermore, REPs mentioned that nothing in PURA prohibits the commission from allowing customers of any specific peak demand, or even residential customers, to waive the customer protection rules. REPs pointed to Docket Number 27084, where the issue of lowering or raising the threshold for negotiation was first addressed. The commission stated in that proceeding, "it is appropriate to allow customers with a peak demand of 50kW and above the flexibility to agree to a higher or lower level of customer protections." Further, the commission determined that certain rules were essential and would be applicable in every instance. Instead of requiring application of all rules to large customers, the commission determined that the rules relating to slamming, customer complaint handling, and unauthorized charges would be applicable to all customers regardless of peak demand. REPs also cited Project Number 35768, in which the commission found no undue harm with the current 50 kW threshold that has been in effect for nearly a decade. REPs stated that broader application of the customer protection rules would simply increase costs with no customer benefit. REPs pointed out that, if OPC's recommendation were to be granted, the Electricity Facts Label (EFL) would be required for customers up to 500 kW (or 1,000 kW). The EFL requires that the total average price be expressed in cents per kilowatt hour (kWh) based on 1500, 2500, and 3500 kWh usage with an assumed 30% load factor. A 50 kW customer at a 30% load factor would use 10,950 kWh, more than three times the maximum usage listed on the EFL. To produce an EFL in this instance would be costly and provide meaningless information to the customer. REPs also pointed out the following provisions that they believe are equally without meaning to large customers: in §25.475(c)(2)(A), a 250 word limit to contract paragraphs; and in §25.475(c)(2)(B), the requirement that all contract documents be available on the commission's website (if the REP chooses to post offers on the commission's power to choose website), which doesn't recognize that most large customers have custom contracts with individual prices. Finally, if the commission granted OPC's request to alter §25.471(d)(10) without the commission publishing an amendment to that rule, the issue of not providing clear notice would be raised by parties that were unaware that the waiver was an issue in this proceeding. REPs reminded the commission that neither §25.5 nor §25.471 are open in the instant rulemaking and continued to disagree with OPC's recommendation to redefine "small commercial customer."

Commission Response

The commission disagrees with OPC that this rulemaking should expand the definition of "small commercial customer" for the purposes of Chapter 25, at least with respect to Subchapter R, the customer protection rules for the competitive area. The commission agrees with REPs that applying all of the customer protection rules to all customers up to 500 kW (or 1,000 kW) could limit customers' ability to negotiate terms that are specific to their circumstances, could reduce the choices of REPs that customers currently enjoy, and would be costly to REPs. The commission also agrees with REPs that the commission has the discretion to establish different rules for different types of customers and to allow customers to waive the customer protection rules. In addition, while it might be appropriate at some point to re-assess the latitude that customers have to deviate from the customer protection rules or to change the threshold for opting out of them, this issues was not raised until after the rule was published and the commission prefers to have a broader discussion of a change of this magnitude prior to including it in a proposal that is published for formal comments or adopting such a change in a rule.

§25.25(c) Bill Content

OPC pointed out that the bill content requirements pertain to "each customer's bill" provided by an "electric utility" without any differentiation between residential, small commercial, or any other customer class. Therefore, the defined term for "customer" in this section should relate to all customers. In addition, the term electric utility applies to all electric utilities providing electric service in Texas, excluding municipal utilities.

OPC supported the definitions of "charge," "fee," and "tax" in the proposed rule and encouraged the commission to include the three terms in §25.25(c) and in the definitions in §25.5. REPs disagreed and stated that the terms do not necessarily comport with the use of those terms in other commission rules or in utility tariffs, and their inclusion in the adopted rules would be at best confusing.

Commission Response

The definitions of the terms "charge," "fee," and "tax" were included in the preamble to the proposed rule for explanatory reasons and the commission is not adopting them as a part of these rules.

OPC's recommended additional language to be inserted in §25.25(c) to reflect HB 1822's intent of providing the end date of fixed-rate products to all electric customers

Commission Response

The commission disagrees with OPC's position that the end date of fixed products should be included on the bills of electric utilities. In the regulated environment, most customers do not take service for a particular term, so this information would not apply to most customers.

FSA took exception to the assertion of the REPs that HB 1822 could be interpreted as requiring the contract expiration date on customers' bills only for residential customers, arguing that Section 5 of HB 1822 is very clear in requiring a retail electric provider to include on each billing statement the end date of the fixed rate product. FSA agreed with OPC's comments regarding the construction of HB 1822. FSA pointed to §39.112(d), which provides that this section should not be construed to prohibit the commis-

sion from adopting rules that provide a greater degree of customer protection.

FSA agreed with OPC's suggestion that the threshold in the definition of a small commercial customer be increased from 50 kW to 500 kW and added that customers within this range of demand are not very different than customers with demand less than 50 kW. FSA stated that over 50 REP contracts that were evaluated on a customer's behalf contained the waiver allowed by §25.471(a)(3) and that the waiver is seldom negotiable. FSA urged the commission to take action to increase the number of customers afforded non-waivable protections.

Commission Response

Section 25.25 applies to electric utilities, which does not include retail electric providers. Accordingly, this provision applies to the bills issued by utilities that have not been unbundled and still sell electricity to retail customers. The existing rule and the proposed rule apply to all customer classes. In a regulated environment, a customer typically does not have the ability to negotiate terms of retail service and the format of the bill. In these circumstances, it is appropriate for the commission to establish billing requirements for all classes of customers. The comments concerning the definition of a small commercial customer and application of customer protection rules for all customers up to 500 kW (or 1,000 kW) is not relevant to the customer protection rules for integrated utilities, because most of the rules are not limited to residential customers. To the extent that other customer protection rules applicable to integrated utilities are limited in their application to residential customers, the commission is not changing these rules. Without the issuance of a proposal to amend other rules, the commission has not provided an opportunity for informed comments that would support amending them.

§25.25(c)(9)(A) - (K), (c)(10)

OPC agreed with the proposed terms and definitions in §25.25(c)(9)(A) - (K) and with subsection (c)(10). OPC suggested the following four terms be added: (1) transmission and distribution charge; (2) generation service cost; (3) transition charge; and (4) system benefit fund charge. OPC also recommended adding the following six terms and definitions to be consistent with §25.479(c)(2) - (3): (1) demand charge; (2) taxes and fees; (3) competition transition charge; (4) late-payment penalty; (5) meter re-read charge; and (6) transition charge. OPC requested that the commission consider the inclusion of the aforementioned terms in the definitions in §25.5 to ensure consistency of definitions throughout the rules in Chapter 25. REPs stated that it is unclear when a residential or small commercial customer of an integrated utility would be subject to charges unique to the competitive marketplace and would encounter terms like "competitive transition charge," "late payment penalty," "system benefit fund charge," and "transition charge," or when an integrated utility would offer a term "product" to such a customer.

Commission Response

The additional terms proposed by OPC are not relevant to the regulated environment, and the commission is therefore not including the additional provisions that OPC recommended.

OPC proposed to amend §25.5 and define small commercial customer as a non-residential customer that has a peak demand of less than 500 kW. OPC also proposed to amend §25.471(d) to provide a similar definition of small commercial customer.

Commission Response

The additional terms proposed by OPC are not relevant to the regulated environment, and the commission is therefore not including the additional provisions that OPC recommended.

Comments to §25.479

Subsection (a)

The REPs proposed to implement the changes required by the amendments to this section as soon as possible, but argued that the commission should not require implementation sooner than 90 days after the rules are adopted, which would allow REPs adequate time to implement the changes. REPs recommended that the adopted rule allow for a compliance date of March 1, 2010. REPs stated that an implementation period will be needed between the effective date and the compliance date in order to make the necessary changes to the REPs' billing systems. REPs pointed out that systems change implementation will not begin until the rule is adopted and the requirements are known. In addition, REPs mentioned that these system changes will have to be made concurrently with the change requirements from the disclosure rulemaking.

OPC disagreed with the comments made by the REPs and noted that HB 1822 was first filed on February 25, 2009; it was clear that by mid-May 2009 that the bill was going to pass the Legislature; in June 2009, the Governor signed it into law; the commission opened this project on June 2, 2009; and finally the legislation had a September 1, 2009 compliance date and has a December 1, 2009 rule effective date. OPC stated that the REPs have been on notice for quite some time, and further delay would lend to continued confusion and frustration of Texas electric customers. OPC recommended that the commission keep the proposed rule language to ensure that REPs implement the changes as soon as possible.

Commission Response

The commission believes the legislative mandate this rule is based on lends urgency to making the rule effective soon, but it also recognizes that REPs face challenges in implementing it quickly. The commission believes the requirements of the amendment should be implemented as soon as possible, and REPs should be compliant by April 1, 2010.

Subsection (c)

FSA and Public Citizen requested that the commission close the loop-hole created by §25.471(a)(3) that may allow the expiration date requirements to apply only to residential and small commercial customers (defined as customers with under 50 kW in demand). FSA urged the commission to make this subsection applicable to all customers and prohibit waiver by a customer.

Commission Response

As discussed above, the commission concludes that this section should be applicable to residential customers and small commercial customers and not all customers. These customers typically do not have the bargaining power to require notice of the expiration date. Large commercial and industrial customers are expected to have the ability to negotiate notice provisions to protect their interests.

Subsection (c)(1)

Cities also stated that it is important that customers understand unexplained charges on their bills and that the definitions "facilitate consumer understanding of relevant billing elements." TLSC and AARP agreed with Cities that the definitions should clearly

explain the purpose of the charge and that a charge should not be defined as a catch-all category. In addition, they recommended that REPs be allowed to use only the terms defined in the PUC rules to describe charges on electricity bills, consistent with the statute and to reduce customer confusion. Further, they recommended prohibiting the use of billing terms for any recurring or non-recurring charges that are not specifically authorized in the commission's rule.

REPs urged the commission to afford REPs some latitude in the application of the terms and recommended that the adopted rule on common billing terms allow a REP to use terms that are "not materially different" from the terms defined in the rule. The REPs' recommended: substitution of "charge" or "fee" or "factor" for the word "surcharge" within a defined term; addition of the word "total" to a defined term; addition or deletion of a suffix to a word within a defined term; and use of an abbreviation, provided that the abbreviation and the unabbreviated term are identified on the customer's bill.

Commission Response

The commission agrees with commenters that customers should be able to understand the charges on their bills and that the definitions are intended to facilitate consumer understanding of relevant billing elements. In addition, the commission agrees that the definitions should clearly explain the purpose of a charge. The spirit of HB 1822 is to establish uniformity in the terms that REPs use on their customer bills. At the same time, the commission has historically permitted a degree of latitude in the way that charges are presented on bills, and there is some value in maintaining past practices. Customers who are accustomed to seeing charges presented one way on a REP's bill may be confused and need to have questions answered if the REP is required to change the bill's look.

Therefore, the commission is adopting a rule that requires REPs to use terms that are defined in §25.479. A REP may use a different term than a defined term by adding or deleting a suffix, by adding the word "total" to a defined term, where appropriate. The rule allows REP to use differences in capitalization and hyphenation if necessary and to use appropriate abbreviations as provided in the rule. Terms and abbreviations may be completely capitalized, partially capitalized, or not capitalized at all. The rule does not prescribe how costs are presented on a bill or prohibit the use of billing terms for charges that are not specifically authorized in the commission's rule. The commission believes that precluding the use of terms that are not defined in the rule might limit REPs' ability to develop innovative services or features that customers would value.

Subsection (c)(1)(H) and (I)

REPs generally agreed that §25.479(c)(1)(H) in the current rule should be split into subparagraphs (H) and (I) as was done in the proposed amendments, but proposed minor changes in organization. REPs recommended that the description of average unit price be amended to use the same terminology found in §25.475(b)(8). In addition, REPs recommended that if the customer is on a level or average payment plan, the rule require that the level or average payment be clearly shown, in addition to the current charges and clarifications to the description of the calculation of the average price for electric service during the current billing period.

Commission Response

The commission agrees with REPs' recommendation to modify the language in subparagraph (H). The commission also agrees with REPs and modifies the language in subparagraph (I) with some modest changes for clarification to the REPs' recommendation.

Subsection (c)(1)(L)

REPs recommended adding a definition for "amount due" to clarify that the phrase should be used to label the amount the customer must pay by the due date of the bill to avoid collection action and disconnection of service and not the entire amount outstanding.

Commission Response

The commission agrees with REPs' recommendation and has changed the subsection accordingly.

Subsection (c)(1)(N)

REPs suggested that the requirements related to beginning and ending meter reads be consolidated in subsection (c)(1)(N) and removed from subsections (c)(1)(S) and (c)(7)(A) and (D). OPC agreed with the REPs that the requirement relating to the display of beginning and ending meter reads on customer billing statements do not need to be located in three different subsections. OPC asserted that these requirements should be delineated in both §25.25 and §25.479, and be made applicable to all Texas electric customers to ensure compliance with the intent of HB 1822.

In addition, REPs recommended that subparagraph (N) refer to the meter reading at the beginning of the period, the meter reading at the end of the period, the dates of these readings, and other clarifications.

Commission Response

The commission agrees with REPs that it is appropriate to modify the language in subparagraph (N) and delete proposed subsections (c)(7)(A) and (D). Because the terms referred to in these subsections are information that is required by subsection (c)(1)(N) to be included in a bill, there is no need to refer to them in subsection (c)(7). The commission agrees that these terms in subsection (c)(1)(S) are also redundant and removes them from this section.

§25.479(c)(1))(H), (I), (L), (S), (T)

OPC supported the addition of subsections (c)(1)(H), (I), (L), (S), and (T).

Commission Response

The commission is retaining these subparagraphs, with the exception of subparagraph (S), with modifications. The modifications and deletion of subparagraph (S) are discussed above.

Subsection (c)(2)(A) - (E)

Cities stated that the definition of the term monthly charge does not provide a clue as to the purpose of this charge. Therefore, all or nearly all charges in this section are monthly charges, so the term does not provide further explanation or purpose. Cities stated that a monthly charge should have a specific purpose that is stated in the rule. Cities offered the term "monthly customer administration charge" as a replacement to monthly charge and to have the definition make clear which entity is responsible for this additional charge.

OPC supported subsection (c)(2)(A) - (E).

Commission Response

The commission agrees with Cities that monthly charge as well as the other terms in this subsection require further explanation. Therefore, the commission redefined the terms in this subsection and revised subsection (c)(2) and renumbered it as subsection (c)(3)(A) - (C).

Subsections (c)(2), (c)(3) and (c)(7)

OPC suggested that, to ensure consistency with §25.25 and the definitions in §25.5, the following terms be added to §25.479(c)(2) and (3): generation service cost and system benefit fund charge.

REPs recommended that subsections (c)(2), (c)(3), and (c)(7) be deleted and be replaced with a new subsection (d) that contains a paragraph addressing acceptable alternatives to the terms specified in the rule; a paragraph addressing REP charges, fees, and taxes; a separate paragraph addressing transmission and distribution utility (TDU) surcharges; and a final provision requiring a REP to display on its website the definitions of the terms it employs on its bill.

REPs in their reply comments proposed that a REP be permitted to include one or more TDU surcharges on a customer's bill in any combination labeled as "Transmission Distribution Service Provider Surcharge(s)." REPs stated that this option would allow REPs to minimize the number of line items on the bill, which was an issue the commission had previously sought to address regarding telecommunications bills.

OPC disagreed with REPs' suggestion of allowing REPs to use terms not materially different from the terms defined in the rule. OPC stated that materially different is subjective and goes against the intent of HB1822. Cities also disagreed with REPs' recommendation and stated that it violates the intent and clear language of HB 1822, which requires that the commission adopt rules that "include a list of defined terms" and that "applicable terms be labeled uniformly on each retail bill." Cities stated that using terms not defined by the commission introduces significant confusion into the billing process, violates both the clear language and intent of HB1822, and represents a slippery slope.

Commission Response

The commission disagrees with OPC's comments regarding consistency between §25.25 and §25.479, because the variety of customer service plans and the possibility of customer confusion are different between the integrated utility environment and a competitive market. However, the commission concludes that it is appropriate to add "system benefit fund" to the revised section §25.479(c)(2).

The commission believes that HB 1822 reflects the legislature's conclusion that customers are confused by non-uniform language. The legislative history particularly indicates a concern about billing by REPs in the electric market. However, the statute allows the commission some latitude in the degree of uniformity that it requires in terms used by REPs in billing their customers. In view of this history, the commission concludes that it is appropriate to allow alternative terms, within limits, and has specified parameters use of alternative terms and abbreviations.

Subsection (c)(3)

TLSC and AARP stated that subsection (c)(3) is understood to mean the term customer charge can be renamed to the appropriate new billing term or it can be shown as a sub-item of demand charge, energy charge, monthly charge, transmission and distribution charge, or taxes and other fees. TLSC and AARP stated that a REP should only be permitted to use terms defined in the commission rules to describe charges on electric bills. Cities stated that using terms not defined by the commission introduces significant confusion into the billing process, violates both the clear language and intent of HB1822, and represents a slippery slope.

TLSC and AARP noted that the billing rule, as structured, assumes that REPs sometimes bill customers using a "bundled rate" where various fees and charges are combined together for a single price per kilowatt hour. TSLC and AARP recommended the term, "bundled rate" be defined and that better information be made available to residential consumers about the bundled rates they pay. TLSC and AARP did not offer a definition for the term bundled rate. They stated that REPs should be required to make an itemized list of charges that are included in the bundled rate and made available on the REP's website consistent with the existing rule, §25.479(c)(3) and that REPs should be permitted to use billing terms only for non-recurring charges that are specifically authorized in the commission's rule. TSLC and AARP stated that the proposed rule defines terms that are rarely seen on residential bills, instead of identifying terms that are commonly seen.

Cities agreed with TLSC and AARP's recommendation and urged the commission to clearly delineate all of those charges to be itemized in bundled rates. Otherwise the use of a bundled rate would violate the intent of HB 1822. Cities presented the example of two hypothetical REPs that charged bundled rates but include different itemized charges. Both have bundled rates, but they include different components, which violates the intent of HB 1822 that billing terms be labeled in a uniform fashion. Cities urged the commission to bring uniformity to the bundling of rates, which would assist consumers in making apples-to-apples comparisons between rate plans.

Cities in their reply comments reiterated that REPs should be required to utilize only terms identified and defined by the rules. If a REP or electric utility seeks to use some other term to describe a billing practice, that REP should obtain approval from the commission. OPC supported Cities and TLSC and AARP in the position that REPs should only use terms, including non-recurring charges, defined in commission rules. In addition, OPC supported Cities' suggestion that, should a REP wish to use a term different from those billing terms approved by the commission in this rulemaking, the REP should obtain commission approval. OPC preferred the definitions for charge, fee, and tax in the proposed rule, over the REPs' suggestion of the use of "surcharge" to replace charge or fee.

Ambit stated that the rule could require that transmission and distribution service provider (TDSP) charges be displayed under the TDSP designated section on the bill, since the origin of these charges is the TDSP. Ambit stated that the following specific TDSP charges could be displayed in this section: the advanced metering system (AMS) meter charge and the energy efficiency recovery factor. Ambit also proposed that bundled product bills have a separate line item called "Gross Receipts Tax" instead of "Miscellaneous Gross Receipts Tax Reimbursement" in order to shorten and simplify the bill. Ambit suggested that taxes and other fees be adopted for both bundled and unbundled charges. Ambit proposed to authorize the separation of each transition charge as a separate line item.

Commission Response

Under the rule that the commission is adopting, a REP may not use a different term for a charge that is defined in this paragraph (2), previously (3). The rule does not require that REPs use only terms identified and defined by the rules. The commission concludes that such a restriction could preclude REPs from developing services or features that are attractive to customers.

To the extent that a REP uses a bundled rate, the commission agrees with Cities and TLSC and AARP that an itemized list of charges that are included in the bundled rate must be made available on the REP's website consistent with revised §25.479(c)(2).

The commission disagrees with Ambit's comments that TDSP charges must be displayed under the TDSP designated section on the bill. The commission is adopting uniform terms, as required by HB 1822, but it is not the commission's intention to adopt a rule that requires a uniform billing format, because of the cost to REPs and the potential customer confusion resulting from changes in the design of bills to which customers are accustomed. The commission also disagrees with Ambit's proposal to shorten the term miscellaneous gross receipts reimbursement, because the comptroller guidance requires the term be labeled as reimbursement. The commission is adopting an approved abbreviation for this term, however.

Subsection (c)(3)(A) - (K)

Ambit proposed identifying advanced metering charges and energy efficiency cost recovery factors in subsection (c)(3) as "TDSP" charges. Ambit also proposed to add in subsection (c)(3)(K) a provision permitting a REP to parse out Transition Charges into separate line item charges *(e.g.,* Transition Charge 1, Transition Charge 2).

OPC supported the adoption of subsection (c)(3)(A) - (K).

OPC recommended retaining the term "meter charge." OPC disagreed with REPs' claim that using meter charge and advanced meter surcharge could lead to customer confusion. OPC pointed out that, to date, only two TDUs have commission-approved advanced meter deployment applications and the other TDUs, including AEP TNC, AEP TCC, and TNMP do not have advanced meter deployment applications. OPC stated having both terms in the common terms would avoid customer confusion.

OPC supported the inclusion of the term "meter re-read," which is typically a discretionary service, in the list of common terms. OPC further suggested that all discretionary service charges be defined as common terms. REP's disagreed with OPC on this point, arguing that no other discretionary charges are defined in the proposed rule and that it is inappropriate to define meter re-read.

Commission Response

The commission agrees with OPC's recommendation to include "System Benefit Fund" in this paragraph. The commission does not agree with Ambit's proposals to modify subparagraphs (A) and (C). Identifying these charges on the bill as TDSP charges does not further the purposes of HB 1822. For the same reason, the commission does not adopt Ambit's suggested change to subparagraph (K). The commission also agreed with the REP's that no other discretionary charges are defined in the proposed rule and that it is inappropriate to define meter re-read and therefore removed this definition from this subsection. Because of revisions to the rule, subsection (c)(3) has been renumbered to subsection (c)(2)(A-M) as a result of removing the term meter re-read and adding a two definitions to clarify Transmission Distribution Utility charges and surcharges.

Subsection (c)(4)

OPC supported the adoption of subsection (c)(4).

Subsection (c)(6)

Cities suggested that the commission create a standard definition for contract term.

Commission Response

"Contract term" is defined in §25.475(b)(4), and the commission makes no additional change, in response to Cities' suggestion.

Cities took issue with proposed §25.479(c)(6), which states that "if the exact date is not known, the REP may estimate the expiration date by reference to the billing cycle and month or approximate date of expiration." Cities stated that the exact date should always be known, that it should come precisely on the date when a term product expires. Cities provided an example, stating that a twelve-month contract entered into on August 27, 2009 should end "precisely 12 months later" on August 27, 2010. Cities offered a change to §25.479(c)(6) that would require a REP to include on each billing statement the date that a fixed rate product will expire and proposed to delete the remainder of this provision.

REPs proposed in subsection (c)(6) that the rule specify that the contract end date on a bill applies only to residential contracts for fixed rate products.

REPs stated that Cities assume that a 12-month contract is intended by both parties to be in effect for one calendar year, which is unlikely to be the case since, as a general rule, the electricity market operates on a monthly time table. REP systems have been built around the meter reading cycle process that is a key component of the current market design, and REPs render bills in accordance with the market design. REPs stated that to ask a REP to render a bill on a date with no meter read will introduce new costs because systems changes will be needed. REPs stated that with the deployment of advanced meters, the TDU will be better able to commit to a specific date, and there is no need at this time to fundamentally alter contract practices of REPs to resolve an issue that will be taken care of with the deployment of advanced meters. REPs stated that Cities did not provide justification for why defining a contract as being 365 days in length is superior to defining it in terms of 12 meter reading cycles. REPs urged the commission to reject Cities' proposal and stated that contracts often end on meter reading dates for efficiency and customer convenience and to require date-certain contract end dates is counterproductive and reduces customer choice.

FSA stated that REPs describe and interpret the contract "term" in different ways, and this practice leads to the payment of termination fees when small commercial customers change REPs. FSA supported the provision of the contract expiration date on the bill. FSA stated that an accurate expiration date on the bill would reduce or eliminate termination fees and help eliminate time consuming early termination disputes between REPs and customers. In addition, FSA stated that the expiration date would help REPs do a better job of forecasting the power requirements for a contract and allow customers more flexibility to shop the market for a financially viable REP. FSA suggested that the commission afford a grace period to the REPs when the TDU

changes the meter read schedule from the annually published schedule. FSA stated that customers should not bear the cost of TDU modification of its published schedules. FSA also stated that customers should not be charged fees or penalties for inadvertently designating an erroneous end date when switching to a new provider because of a meter read that has been changed by the TDU and reflected in error by the REP. In addition, FSA stated that customers should be given a grace period from early termination fees imposed by REPs. FSA suggested a 14-day grace period before and after the actual switch occurs.

FSA also stated that it is a matter for commission investigation if a TDU's metering schedules are only estimates and cannot be counted on to provide the actual expiration date. FSA added, "the market should not be allowed to charge the customers fees and penalties when the market cannot provide customers with timely and accurate knowledge concerning its process." FSA proposed a requirement that a REP include the date that a fixed rate product will expire on each billing statement. If the REP cannot determine the end date of the contract, the REP could estimate the date by referring to the billing cycle in the month of the approximate end date. After the billing cycle schedule for the TDU is known for the year in which the contract expires, the REP's actual end date would have to be consistent with the TDU meter reading schedule for the customer during the month of expiration. If the TDU's actual meter reading varies from its published schedule, no termination fees or other fees could be imposed on the customer for switching during a period of 14 days before or after the actual switch date occurs. FSA stated the requirement of PURA §39.112(c) that all REPs provide all customers with their contract expiration date will empower all customers with the information necessary to find the best electric prices and products.

OPC proposed that it be made clear in §25.479(c)(6) that the HB 1822 requirement pertains to all customers and is not limited to residential customers alone. FSA, Public Citizen, TEPA, and Cities agreed. Cities stated that HB 1822 does not allow for any latitude in this matter. OPC agreed with REPs, Cities, and FSA that customers with a term contract should know with certainty when their contracts expire. OPC also concurred with FSA that a contract expiration date will enable a customer to select the date for the new REP contract to coincide with the end date of the existing REP contract. Cities stated that the exact end date of the contract should always be known.

REPs disagreed with OPC and Fox Smolen that new PURA §39.112(c) requires REPs to include end dates of fixed rate products on bills rendered to both residential and small commercial customers. REPs argued that Section 5 of HB 1822, which is codified in new PURA §39.112, clearly applies only to fixed rate products provided to residential customers. PURA §39.112(a) defines the term "fixed rate product," PURA §39.112(b) specifies the context in which this term is used, and PURA §39.112(c) further emphasizes the meaning of the phrase "the fixed rate product." REPs stated that the Legislature plainly intended the requirements in PURA §39.112(c) to apply only to bills provided to residential customers. REPs also cited the discussion on the Senate floor in which Senator Wendy Davis explained her amendment to HB 1822. The discussion centered solely on the provision of information to residential customers that may prompt those customers to shop on the Powertochoose website. The Powertochoose website is a tool for residential customers to compare REP offers, and non-residential retail electric products are not listed. Therefore, reading §39.112(c) to also encompass billing statements rendered to small commercial customers would be inconsistent with that discussion. REPs supported the requirement to include the end date of the contract on every bill for residential customers only, and opposed applying the requirement to apply to small commercial customers.

Commission Response

The commission disagrees with REPs that subsection (c)(6) should be limited to residential contracts for fixed rate products, because the commission believes that the contract date should appear on the bills of small commercial customers as well. The commission agrees in this case with REPs' reliance on the rule of statutory construction that every word or phrase in a statute is chosen for a particular reason and therefore given the difference in the language between subsections (b) and (c) in PURA §39.112, in reference to "fixed rate product," the commission believes that the Legislature intended the requirements in PURA §39.112(c) to apply only to bills provided to residential customers. To the extent that the statutory provision is construed to apply only to residential customers, the commission nevertheless has discretion in deciding whether to apply this requirement to other customers. The comments in support of extending the provision beyond the residential customers to small commercial customers provide solid policy reasons for doing so. The proposed rule would apply the provision to residential and small commercial customers, and the commission concludes that this is the appropriate result. Large commercial and industrial customers should have the bargaining power to negotiate provisions to protect their interests in connection with the expiration of a contract. Small commercial customers are in a situation like that of residential customers and, as FSA has pointed out, are frequently exposed to early-termination penalties because they do not have information about the termination dates of their contracts. The commission agrees with FSA's comments that an accurate expiration date on the bill would reduce or eliminate termination fees and help eliminate time consuming disputes between REPs and customers over such fees. In addition, an expiration date would give customers better information to shop the market for another contract or REP at the end of the contract term. The commission agrees with Cities and FSA that if the REP cannot determine the end date of the contract, the REP may estimate the date by referencing the billing cycle in the month of the approximate end date. The commission acknowledges that the REPs operate on a monthly time table and built systems around the meter reading cycle to render bills to customers. Accordingly, the adopted rule requires inclusion of the expiration date on the bill for small commercial and residential customers as provided for in §25.475(c)(3)(B) relating to General Retail Electric Provider Requirements and Information Disclosure to Residential and Small Commercial Customers.

Subsection (c)(8)

OPC proposed removing §25.479(c)(8) because it is more permissive than mandatory and could be read as limiting bill content to only residential and small commercial customers. OPC offered alternative language if the commission chooses to include this paragraph to require compliance with this section and §25.475(e).

REPs agreed with OPC's comments that this section is permissive and is not explicitly required but inferred that the commission had included it in the bill format rule for the sake of completeness, so that a cross reference exists to a key item that may appear in or with a bill as allowed by another rule.

Commission Response

The commission disagrees with OPC that bill content requirements are applicable to all customers, including large commercial customers. The bill content requirements are applicable only to residential and small commercial customers. The commission agrees with OPC and REPs that subsection (c)(8) may be interpreted as permissive but it does serve as a cross reference to a key item in §25.475, which is mandatory. Therefore, the commission makes no change to this provision.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting the amended sections, the commission makes other minor modifications for the purpose of clarifying its intent.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.25

The amendment to §25.25, relating to Issuance and Format of Bills, is adopted under the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §14.002 (Vernon 2007 & Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §17.001, which directs the commission to adopt and enforce customer protection rules; §17.003(c), which requires the commission to require REPs to give clear and understandable information to customers about rates and to use a list of defined terms; §17.004(a), which provides that customers are entitled to bills that are presented in clear, readable and easy-to-understand language that uses terms defined in the rules adopted under §17.003; §17.102, which directs the commission to adopt and enforce rules requiring that charges on a REP's bill be clearly and easily identified, using terms defined in the rules adopted under §17.003; and §55.016, which authorizes the commission to enforce a requirement bills for electric services provide sufficient information for customers to understand the basis and source of the charges and identify all charges.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.001, 17.003(c), 17.004(a), 17.102, and 55.016.

§25.25. Issuance and Format of Bills.

(a) Frequency of bills. An electric utility shall issue bills monthly, unless otherwise authorized by the Public Utility Commission, or unless service is provided for a period less than one month. Bills shall be issued as promptly as possible after reading meters.

(b) Billing information. The electric utility shall provide free to the customer a breakdown of charges at the time the service is initially installed or modified and upon request by the customer as well as the applicable rate schedule.

(c) Bill content. Each customer's bill shall include all the following information:

(1) if the meter is read by the electric utility, the date and reading of the meter at the beginning and at the end of the billing period;

(2) the due date of the bill, as specified in §25.28 of this title (relating to Bill Payment and Adjustments);

(3) the number and kind of units metered;

(4) the applicable rate schedule and title or code should be provided upon request by the customer;

(5) the total amount due after addition of any penalty for nonpayment within a designated period. The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall be used only when an actual discount for prompt payment is granted. The terms shall not be used when a penalty is added for nonpayment within a designated period;

(6) the word "Estimated" prominently displayed to identify an estimated bill;

(7) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill; and

(8) any amount owed under a written guarantee contract provided the guarantor was previously notified in writing by the electric utility as required by §25.24 of this title (relating to Credit Requirements and Deposits).

(9) To the extent that a utility applies a charge to the customer's bill that is consistent with one of the terms set out in this paragraph, the term shall be used in identifying charges on customer's bills, and the definitions in this paragraph shall be easily located on the utility's website. A utility may not use a different term for a charge that is defined in this paragraph.

(A) Advanced metering charge--A charge to recover the costs of an advanced metering system;

(B) Energy Charge--Any charge, other than a tax or other fee, that is assessed on the basis of the customer's energy consumption.

(C) Energy Efficiency Cost Recovery Factor--A charge approved by the Public Utility Commission to recover the electric utility's cost of providing energy efficiency programs.

(D) Fuel Charge--A charge approved by the Public Utility Commission for the recovery of the utility's costs for the fuel used to generate electricity.

(E) Meter Number--The number assigned by the utility to the customer's meter.

(F) Meter Charge--A charge approved by the Public Utility Commission for metering a customer's consumption.

(G) Miscellaneous Gross Receipts Fee--A fee assessed to recover the miscellaneous gross receipts tax imposed on utilities operating in an incorporated city or town having a population of more than 1,000.

(H) Municipal Franchise Fee--A fee assessed to compensate municipalities for the utility's use of public rights-of-way.

(I) Nuclear Decommissioning Fee--A charge approved by the Public Utility Commission to provide funds for decommissioning of nuclear generating sites.

(J) PUC Assessment--A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.

(K) Sales tax--Sales tax collected by authorized taxing authorities, such as the state, cities, and special purpose districts.

(10) To the extent that a utility uses the concepts identified in this paragraph in a customer's bill, it shall use the term set out in this paragraph, and the definitions in this paragraph shall be easily located on the utility's website. A utility may not use a different term for a charge that is defined in this paragraph.

(A) Current Meter Read--The meter reading at the end of the period for which the customer is being billed;

(B) kW--Kilowatt, the standard unit for measuring electricity demand, equal to 1,000 watts;

(C) kWh--Kilowatt-hour, the standard unit for measuring electricity energy consumption, equal to 1,000 watt-hours; and

(D) Previous Meter Read--The reading on the beginning the period for which the customer is being billed.

(d) Estimated bills.

(1) An electric utility may submit estimated bills for good cause provided that an actual meter reading is taken no less than every third month. In months where the meter reader is unable to gain access to the premises to read the meter on regular meter reading trips, or in months when meters are not read, the electric utility must provide the customer with a postcard and request the customer to read the meter and return the card to the electric utility. If the postcard is not received by the electric utility in time for billing, the electric utility may estimate the meter reading and issue a bill.

(2) If an electric utility has a program in which customers read their own meters and report their usage monthly and no meter reading is submitted by a customer the electric utility may estimate the customer's usage and issue a bill. However, the electric utility must read the meter if the customer does not submit readings for three consecutive months so that a corrected bill may be issued.

(e) Record retention. Each electric utility shall maintain monthly billing records for each account for at least two years after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given month. Copies of a customer's billing records may be obtained by that customer on request.

(f) Transfer of delinquent balances. If the customer has an outstanding balance due from another account in the same customer class, then the utility may transfer that balance to the customer's current account. The delinquent balance and specific account shall be identified as such on the bill.

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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Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.479

The amendment to §25.479, relating to Issuance and Format of Bills, is adopted under the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §14.002 (Vernon 2007 & Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §17.001, which directs the commission to adopt and enforce customer protection rules; §17.003(c), which requires the commission to require REPs to give clear and understandable information to customers about rates and to use a list of defined terms; §17.004(a), which provides that customers are entitled to bills that are presented in clear, readable and easy-to-understand language that uses terms defined in the rules adopted under §17.003; §17.102, which directs the commission to adopt and enforce rules requiring that charges on a REP's bill be clearly and easily identified, using terms defined in the rules adopted under §17.003; and §55.016, which authorizes the commission to enforce a requirement bills for electric services provide sufficient information for customers to understand the basis and source of the charges and identify all charges.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.001, 17.003(c), 17.004(a), 17.102, and 55.016.

§25.479. Issuance and Format of Bills.

(a) Application. This section applies, beginning April 1, 2010, to a retail electric provider (REP) that is responsible for issuing electric service bills to retail customers, unless the REP is issuing a consolidated bill (both energy services and transmission and distribution services) on behalf of an electric cooperative or municipally owned utility. This section does not apply to a municipally owned utility or electric cooperative issuing bills to its customers in its own service territory.

(b) Frequency and delivery of bills.

(1) A REP shall issue a bill monthly to each customer, unless service is provided for a period of less than one month. A REP may issue a bill less frequently than monthly if both the customer and the REP agree to such an arrangement.

(2) Bills shall be issued no later than 30 days after the REP receives the usage data and any related invoices for non-bypassable charges, unless validation of the usage data and invoice received from a transmission and distribution utility by the REP or other efforts to determine the accuracy of usage data or invoices delay billing by a REP past 30 days. The number of days to issue a bill shall be extended beyond 30 days to the extent necessary to support agreements between REPs and customers for less frequent billing, as provided in paragraph (1) of this subsection or for consolidated billing.

(3) A REP shall issue bills to residential customers in writing and delivered via the United States Postal Service. REPs may provide bills to a customer electronically in lieu of written mailings if both the customer and the REP agree to such an arrangement. An affiliated REP or a provider of last resort shall not require a customer to agree to such an arrangement as a condition of receiving electric service.

(4) A REP shall not charge a customer a fee for issuing a standard bill, which is a bill delivered via U.S. mail that complies with the requirements of this section. The customer may be charged a fee or given a discount for non-standard billing in accordance with the terms of service document.

(c) Bill content.

(1) Each customer's bill shall include the following information:

(A) The certified name and address of the REP and the number of the license issued to the REP by the commission;

(B) A toll-free telephone number, in bold-face type, which the customer can call during specified hours for inquiries and to make complaints to the REP about the bill;

(C) A toll-free telephone number that the customer may call 24 hours a day, seven days a week, to report power outages and concerns about the safety of the electric power system;

(D) The service address, electric service identifier (ESI), and account number of the customer;

(E) The service period for which the bill is rendered;

(F) The date on which the bill was issued;

(G) The payment due date of the bill and, if different, the date by which payment from the customer must be received by the REP to avoid a late charge or other collection action;

(H) The current charges for electric service as disclosed in the customer's terms of service document, including applicable taxes and fees labeled "current charges." If the customer is on a level or average payment plan, the level or average payment due shall be clearly shown in addition to the current charges;

(I) A calculation of the average unit price for electric service for the current billing period, labeled, "The average price you paid for electric service this month." The calculation of the average price for electric service shall reflect the total of all fixed and variable recurring charges, but not include state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, and any nonrecurring charges or credits, divided by the kilowatt-hour consumption, and shall be expressed as a cents per kilowatt-hour amount rounded to the nearest one-tenth of one cent.

(J) The identification and itemization of charges other than for electric service as disclosed in the customer's terms of service document;

(K) The itemization and amount of any non-recurring charge, including late fees, returned check fees, restoration of service fees, or other fees disclosed in the REP's terms of service document provided to the customer;

(L) The balances from the preceding bill, payments made by the customer since the preceding bill, and the amount the customer is required to pay by the due date, labeled "amount due;"

(M) A notice that the customer has the opportunity to voluntarily donate money to the bill payment assistance program, pursuant to §25.480(g)(2) of this title (relating to Bill Payment and Adjustments);

(N) If available to the REP on a standard electronic transaction, if the bill is based on kilowatt-hour (kWh) usage, the following information:

(i) the meter reading at the beginning of the period for which the customer is being billed, labeled "previous meter read," and the meter reading at the end of the period for which the customer is being billed, labeled "current meter read," and the dates of such readings;

(ii) the kind and number of units measured, including kWh, actual kilowatts (kW), or kilovolt ampere (kVa);

(iii) if applicable, billed kW or kVa;

(iv) whether the bill was issued based on estimated usage; and

(v) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill, unless the customer is provided conversion charts;

(O) Any amount owed under a written guarantee agreement, provided the guarantor was previously notified in writing by the REP of an obligation on a guarantee as required by §25.478 of this title (relating to Credit Requirements and Deposits);

(P) A conspicuous notice of any services or products being provided to the customer that have been added since the previous bill;

(Q) Notification of any changes in the customer's prices or charges due to the operation of a variable rate feature previously disclosed by the REP in the customer's terms of service document;

(R) The notice required by §25.481(d) of this title (relating to Unauthorized Charges); and

(S) For residential customers, on the first page of the bill in at least 12-point font the phrase, "for more information about residential electric service please visit www.powertochoose.com."

(2) If a REP separately identifies a charge defined by one of the terms in this paragraph on the customer's bill, then the term in this paragraph must be used to identify that charge, and such term and its definition shall be easily located on the REP's website and available to a customer free of charge upon request. Nothing in this paragraph precludes a REP from aggregating transmission and distribution utility (TDU) or REP charges. For any TDU charge(s) listed in this paragraph, the amount billed by the REP shall not exceed the amount of the TDU tariff charge(s). The label for any TDU charge(s) may also identify the TDU that issued the charge(s). A REP may use a different term than a defined term by adding or deleting a suffix, by adding the word "total" to a defined term, where appropriate, changing the use of lower-case or capital letters or punctuation, or using the acceptable abbreviation specified in this paragraph for a defined term. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's bill.

(A) Advanced metering charge--A charge assessed to recover a TDU's charges for Advanced Metering Systems, to the extent that they are not recovered in a TDU's standard metering charge. Acceptable abbreviation: Advanced Meter.

(B) Competition Transition Charge--A charge assessed to recover a TDU's charges for nonsecuritized costs associated with the transition to competition. Acceptable abbreviation: Competition Transition.

(C) Energy Efficiency Cost Recovery Factor--A charge assessed to recover a TDU's costs for energy efficiency programs, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission. Acceptable abbreviation: Energy Efficiency.

(D) Late Payment Penalty--A charge assessed for late payment in accordance with Public Utility Commission rules.

(E) Meter Charge--A charge assessed to recover a TDU's charges for metering a customer's consumption, to the extent that the TDU charge is a separate charge exclusively for that purpose that is approved by the Public Utility Commission.

(F) Miscellaneous Gross Receipts Tax Reimbursement--A fee assessed to recover he miscellaneous gross receipts tax imposed on retail electric providers operating in an incorporated city or town having a population of more than 1,000. Acceptable abbreviation: Gross Receipts Reimb.

(G) Nuclear Decommissioning Fee--A charge assessed to recover a TDU's charges for decommissioning of nuclear generating sites. Acceptable abbreviation: Nuclear Decommission.

(H) PUC Assessment--A fee assessed to recover the statutory fee for administering the Public Utility Regulatory Act.

(I) Sales tax--Sales tax collected by authorized taxing authorities, such as the state, cities and special purpose districts.

(J) System Benefit Fund--A non-bypassable charge approved by the Public Utility Commission, not to exceed 65 cents per megawatt-hour, that funds the low-income discount, one-time bill payment assistance, customer education, commission administrative expenses, and low-income energy efficiency programs.

(K) TDU Delivery Charges--The total amounts assessed by a TDU for the delivery of electricity to a customer over poles and wires and other TDU facilities not including discretionary charges.

(L) Transmission Distribution Surcharges--One or more TDU surcharge(s) on a customer's bill in any combination. Surcharges include charges billed as tariff riders by the TDU. Acceptable abbreviation: TDU Surcharges

(M) Transition Charge--A charge assessed to recover a TDU's charges for securitized costs associated with the transition to competition.

(3) If the REP includes any of the following terms in its bills, the term shall be applied in a manner consistent with the definitions, and such term and its definition shall be easily located on the REP's website and available to a customer free of charge upon request:

(A) Base Charge--A charge assessed during each billing cycle without regard to the customer's demand or energy consumption.

(B) Demand Charge--A charge based on the rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, during the billing cycle.

(C) Energy Charge--A charge based on the electric energy (kWh) consumed.

(4) A REP shall provide an itemization of charges, including non-bypassable charges, to the customer upon the customer's request and, to the extent that the charges are consistent with the terms set out in paragraph (2), of this subsection, the terms shall be used in the itemization.

(5) A customer's electric bill shall not contain charges for electric service from a service provider other than the customer's designated REP.

(6) A REP shall include on each residential and small commercial billing statement the date, as provided for in §25.475(c)(3)(B) of this title, (relating to General Retail Electric Provider Requirements and Information Disclosure to Residential and Small Commercial Customers), that a fixed rate product will expire.

(7) To the extent that a REP uses the concepts identified in this paragraph in a customer's bill, it shall use the term set out in this paragraph, and the definitions in this paragraph shall be easily located on the REP's website. A REP may not use a different term for a concept that is defined in this paragraph.

(A) kW--Kilowatt, the standard unit for measuring electricity demand, equal to 1,000 watts;

(B) kWh--Kilowatt-hour, the standard unit for measuring electricity energy consumption, equal to 1,000 watt-hours; and

(8) Notice of contract expiration may be provided in a bill in accordance with §25.475 of this title.

(d) Public service notices. A REP shall, as required by the commission after reasonable notice, provide brief public service notices to its customers. The REP shall provide these public service notices to its customers on its billing statements, as a separate document issued with its bill, by electronic communication, or by other acceptable mass communication methods, as approved by the commission.

(e) Estimated bills. If a REP is unable to issue a bill based on actual meter reading due to the failure of the TDU, the registration agent, municipally owned utility or electric cooperative to obtain or transmit a meter reading or an invoice for non-bypassable charges to the REP on a timely basis, the REP may issue a bill based on the customer's estimated usage and inform the customer of the reason for the issuance of the estimated bill.

(f) Non-recurring charges. A REP may pass through to its customers all applicable non-recurring charges billed to the REP by a TDU, municipally owned utility, or electric cooperative as a result of establishing, switching, disconnecting, reconnecting, or maintaining service to an applicant or customer. In the event of a meter test, the TDU, municipally owned utility, electric cooperative, and REP shall comply with the requirements of §25.124 of this title (relating to Meter Testing) or with the requirements of the tariffs of a TDU, municipally owned utility, or electric cooperative, as applicable. The TDU, municipally owned utility, or electric cooperative shall maintain a record of all meter tests performed at the request of a REP or a REP's customers.

(g) Record retention. A REP shall maintain monthly billing and payment records for each account for at least 24 months after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given period. A copy of a customer's billing records may be obtained by that customer on request, and may be obtained once per 12-month period, at no charge.

(h) Transfer of delinquent balances or credits. If the customer has an outstanding balance or credit owed to the customer's current REP that is due from a previous account in the same customer class, then the customer's current REP may transfer that balance to the customer's current account. The delinquent balance and specific account or address shall be identified as such on the bill. There shall be no balance transfers between REPs, other than transfer of a deposit, as specified in §25.478(j)(2) of this title.

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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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: August 14, 2009
For further information, please call: (512) 936-7223

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SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.52

The Public Utility Commission of Texas (commission) adopts amendments to §25.52, relating to Reliability and Continuity of Service, with changes to the proposed text as published in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7279).

The amendments will conform the rule to amendments the 81st Legislature made to the Public Utility Regulatory Act (PURA) §38.005. The amendments delete references to interim system-wide standards that are now obsolete, delete references to a utility's worst 10 percent performing feeders, and add an enforcement paragraph. These amendments are adopted under Project Number 37387.

The proposal for publication indicated that a public hearing would be held in this matter if requested. As no request for a hearing was received, none was held.

The commission received comments on the proposed amendments from Southwestern Public Service Company (SPS), CenterPoint Energy Houston Electric, LLC (CenterPoint), Oncor Electric Delivery Company, LLC (Oncor), Entergy Texas Inc. (Entergy), and AEP Texas Central Company, AEP Texas North Company, and Southwestern Electric Power Company (collectively, the "AEP Companies").

The commission received reply comments from CenterPoint and Oncor.

§25.52(c)(2)(C)

CenterPoint requested clarification or deletion of the proposed changes to §25.52(c)(2)(C) that amends the definition for "Outside Causes." CenterPoint stated it is concerned that the proposed change would create an ambiguous situation in which an outage qualifies as both a forced or scheduled outage and an "outside causes" outage, and that this could lead to double reporting of a single outage.

In reply comments, Oncor said it supports CenterPoint's position on this issue.

Commission response

The commission agrees with CenterPoint and Oncor that the proposed amendments to the definition of "Outside Causes" should be deleted, and has removed that language from the final rule. The language at issue is not required by the changes made to the Public Utility Regulatory Act (PURA) §38.005 by the 81st Legislature and is not necessary for clarification purposes.

§25.52(f)

SPS said it supports the commission's proposed modifications, but suggested one point of clarification. SPS requested that the rule require utilities to report the reliability indices based on the Institute of Electrical and Electronics Engineers (IEEE) standard 1366-2003. SPS believes that by using this standard of reporting, each utility's reliability indices would be more comparable.

Oncor replied that there is no evidence that all utilities use the IEEE standard, and that referencing a specific standard in the rule would make it impossible to move to a different or revised standard without having to use the rulemaking process.

In reply comments, CenterPoint stated that it does not agree with SPS' recommendation because the IEEE standard utilizes a more complex calculation of major event days that is based on the standard deviation of the major event day relative to other days. CenterPoint said that it does not believe that the IEEE standard would be any more effective than the current method, and that the IEEE standard would result in differences that skew comparability. CenterPoint noted that it is not aware of any problems with the current data reporting that would require making any changes.

Commission response

The commission declines to adopt the IEEE standard of reporting requested by SPS. The primary purpose of the reporting requirements is to allow the commission to review the performance of each utility individually and not to compare one utility to another. The reporting therefore needs to be consistent within each utility. The commission believes adopting a specific standard such as the IEEE standard would create unnecessary inflexibility in the rule, which currently allows the standard to be adjusted by the commission, if appropriate, for weather or improvements in data acquisition systems. Furthermore, adopting the IEEE standard could unnecessarily burden the commission and utilities by requiring future rule amendments if the IEEE standard proves unworkable for some utilities or is later revised. The commission is satisfied with the current rule standards, and believes that requiring all utilities to meet the IEEE standard would not be beneficial.

AEP Companies stated that they generally agree with the proposed amendments, but proposed one addition to the rule. AEP Companies said, given that the statutory amendments to PURA §38.005 went into effect on June 19, 2009, they believe it is proper to provide that the non-applicability of the 10 percent feeder standard change should be made effective for the full 2009 calendar year. AEP proposed that §25.52(f)(2) be amended to say, "The Commission will evaluate the performance of the distribution feeders with ten or more customers after each reporting year effective January 1, 2009."

In reply comments, CenterPoint and Oncor stated that they agree with AEP Companies proposal.

Commission response

The commission declines to adopt the language proposed by AEP Companies because the language is unnecessary and could cause confusion. Amendments to PURA §38.005 took effect in June 2009. Among the amendments, the legislature removed a requirement that "[t]he commission shall take appropriate enforcement action . . . against a utility if any feeder with 10 or more customers appears on the utility's list of worst 10 percent performing feeders for any two consecutive years . . ." Pursuant to §25.52(f), reliability standards are reported by each utility based on a "reporting year," which is the 12-month period beginning January 1 of each year. Because PURA §38.005 was amended in the middle of reporting year 2009, the commission is not required to enforce and will not enforce the worst 10 percent performing feeders provision for reporting year 2009. As a result, the commission finds it unnecessary to adopt AEP Companies' proposed amendment. The commission also declines to adopt the proposed amendment because the amendment could cause confusion about enforcement of provisions under the prior statute and rule. The commission notes that it may enforce all provisions of the prior statute and rule, including the worst 10 percent performing feeders provision, for reporting years prior to 2009. In addition, the commission may continue to require utilities to report data about their worst 10 percent performing feeders as part of the commission's oversight function and as necessary to compile agency reports.

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.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §38.005, which requires that the commission to implement service quality and reliability standards relating to the delivery of electricity to retail customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.003, 14.052, 31.001, 32.001, 37.151, 38.001, 38.002, and 38.005.

§25.52. Reliability and Continuity of Service.

(a) Application. This section applies to all electric utilities as defined by the Public Utility Regulatory Act (PURA) §31.002(6) and all transmission and distribution utilities as defined by PURA §31.002(19). The term "utility" as used in this section shall mean an electric utility and a transmission and distribution utility.

(b) General.

(1) Every utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.

(2) Each utility shall make reasonable provisions to manage emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service entities on a temporary basis until normal service to these agencies can be restored.

(4) Each utility shall maintain adequately trained and experienced personnel throughout its service area so that the utility is able to fully and adequately comply with the service quality and reliability standards.

(5) With regard to system reliability, no utility shall neglect any local neighborhood or geographic area, including rural areas, communities of less than 1,000 persons, and low-income areas.

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

(1) Critical loads--Loads for which electric service is considered crucial for the protection or maintenance of public safety; including but not limited to hospitals, police stations, fire stations, critical water and wastewater facilities, and customers with special in-house life-sustaining equipment.

(2) Interruption classifications:

(A) Forced--Interruptions, exclusive of major events, that result from conditions directly associated with a component requiring that it be taken out of service immediately, either automatically or manually, or an interruption caused by improper operation of equipment or human error.

(B) Scheduled--Interruptions, exclusive of major events, that result when a component is deliberately taken out of service at a selected time for purposes of construction, preventative maintenance, or repair. If it is possible to defer an interruption, the interruption is considered a scheduled interruption.

(C) Outside causes--Interruptions, exclusive of major events, that are caused by influences arising outside of the distribution system, such as generation, transmission, or substation outages.

(D) Major events--Interruptions that result from a catastrophic event that exceeds the design limits of the electric power system, such as an earthquake or an extreme storm. These events shall include situations where there is a loss of power to 10% or more of the customers in a region over a 24-hour period and with all customers not restored within 24 hours.

(3) Interruption, momentary--Single operation of an interrupting device which results in a voltage zero and the immediate restoration of voltage.

(4) Interruption, sustained--All interruptions not classified as momentary.

(5) Interruption, significant--An interruption of any classification lasting one hour or more and affecting the entire system, a major division of the system, a community, a critical load, or service to interruptible customers; and a scheduled interruption lasting more than four hours that affects customers that are not notified in advance. A significant interruption includes a loss of service to 20% or more of the system's customers, or 20,000 customers for utilities serving more than 200,000 customers. A significant interruption also includes interruptions adversely affecting a community such as interruptions of governmental agencies, military bases, universities and schools, major retail centers, and major employers.

(6) Reliability indices:

(A) System Average Interruption Frequency Index (SAIFI)--The average number of times that a customer's service is interrupted. SAIFI is calculated by summing the number of customers interrupted for each event and dividing by the total number of customers on the system being indexed. A lower SAIFI value represents a higher level of service reliability.

(B) System Average Interruption Duration Index (SAIDI)--The average amount of time a customer's service is interrupted during the reporting period. SAIDI is calculated by summing the restoration time for each interruption event times the number of customers interrupted for each event, and dividing by the total number of customers. SAIDI is expressed in minutes or hours. A lower SAIDI value represents a higher level of service reliability.

(d) Record of interruption. Each utility shall keep complete records of sustained interruptions of all classifications. Where possible, each utility shall keep a complete record of all momentary interruptions. These records shall show the type of interruption, the cause for the interruption, the date and time of the interruption, the duration of the interruption, the number of customers interrupted, the substation identifier, and the transmission line or distribution feeder identifier. In cases of emergency interruptions, the remedy and steps taken to prevent recurrence shall also be recorded. Each utility shall retain records of interruptions for five years.

(e) Notice of significant interruptions.

(1) Initial notice. A utility shall notify the commission, in a method prescribed by the commission, as soon as reasonably possible after it has determined that a significant interruption has occurred. The initial notice shall include the general location of the significant interruption, the approximate number of customers affected, the cause if known, the time of the event, and the estimated time of full restoration. The initial notice shall also include the name and telephone number of the utility contact person, and shall indicate whether local authorities and media are aware of the event. If the duration of the significant

interruption is greater than 24 hours, the utility shall update this information daily and file a summary report.

(2) Summary report. Within five working days after the end of a significant interruption lasting more than 24 hours, the utility shall submit a summary report to the commission. The summary report shall include the date and time of the significant interruption; the date and time of full restoration; the cause of the interruption, the location, substation and feeder identifiers of all affected facilities; the total number of customers affected; the dates, times, and numbers of customers affected by partial or step restoration; and the total number of customer-minutes of the significant interruption (sum of the interruption durations times the number of customers affected).

(f) System reliability. Reliability standards shall apply to each utility, and shall be limited to the Texas jurisdiction. A "reporting year" is the 12-month period beginning January 1 and ending December 31 of each year.

(1) System-wide standards. The standards shall be unique to each utility based on the utility's performance, and may be adjusted by the commission if appropriate for weather or improvements in data acquisition systems. The standards will be the average of the utility's performance from the later of reporting years 1998, 1999, and 2000 or the first three reporting years the utility is in operation.

(A) SAIFI. Each utility shall maintain and operate its electric distribution system so that its SAIFI value shall not exceed its system-wide SAIFI standard by more than 5.0%.

(B) SAIDI. Each utility shall maintain and operate its electric distribution system so that its SAIDI value shall not exceed its system-wide SAIDI standard by more than 5.0%.

(2) Distribution feeder performance. The commission will evaluate the performance of distribution feeders with ten or more customers after each reporting year. Each utility shall maintain and operate its distribution system so that no distribution feeder with ten or more customers sustains a SAIDI or SAIFI value for a reporting year that is more than 300% greater than the system average of all feeders during any two consecutive reporting years.

(3) Enforcement. The commission may take appropriate enforcement action, including action against a utility, if the system and feeder performance is not operated and maintained in accordance with this subsection. In determining the appropriate enforcement action, the commission shall consider:

(A) the feeder's operation and maintenance history;

(B) the cause of each interruption in the feeder's service;

(C) any action taken by a utility to address the feeder's performance;

(D) the estimated cost and benefit of remediating a feeder's performance; and

(E) any other relevant factor as determined by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2009.

TRD-200905964

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §25.94

The Public Utility Commission of Texas (commission) adopts new §25.94, relating to Report on Infrastructure Improvement and Maintenance, with changes to the proposed text as published in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7281).

The rule implements recently enacted §38.101 of Public Utility Regulatory Act, Texas Utilities Code §§11.001 - 66.016 (Vernon 2007 and Supp. 2009) (PURA) which requires electric utilities to submit a report to the commission that describes the utility's activities related to identifying areas that are susceptible to damage during severe weather and hardening transmission and distribution facilities in those areas, vegetation management and inspecting distribution poles. This new section is adopted under Project Number 37472.

The commission received comments on the proposed new section from CenterPoint Energy Houston Electric, LLC (CenterPoint), Oncor Electric Delivery Company, LLC (Oncor), Entergy Texas, Inc (Entergy), and the City of Houston, Texas (Houston).

CenterPoint commented that the proposed rule should be modified to more closely track the provisions of §38.101 of PURA. CenterPoint does not believe that there is a justification to adopt a rule that deviates from the statute. CenterPoint suggested that subsection (d) of the proposed rule be changed to delete the requirement for reporting on the inspections of "transmission and distribution facilities." Instead, CenterPoint suggested that the report only entail inspections of "distribution poles." Oncor and Houston filed similar comments. Oncor further commented that subsection (d)(4) should be changed to track §38.101 of PURA by including a provision that the report on utility activities relating to emergency preparations be a "summary" and that the requirement for that report not reference preparations for the "upcoming year."

Commission Response

The commission modifies the proposed rule based on these comments. These changes make the proposed rule consistent with §38.101 of PURA.

CenterPoint also indicated that subsection (a) regarding the purpose of the rule was incorrect, and recommended that subsection (a) be deleted.

Commission Response

The commission modifies the proposed rule based on these comments.

Entergy recommended that the reporting year be based on the calendar year.

Commission Response

The commission modifies subsection (b) of the proposed rule to indicate that the report shall be filed based on a calendar year.

Entergy also noted that broadening and/or accelerating storm hardening efforts beyond what has been outlined in the Entergy Hurricane Hardening Study filed in Docket Number 32182 would require significant costs. To the extent the commission orders hardening strategies that exceed recommendations by the Hardening Study, the costs for implementing such hardening strategies, Entergy comments, would need to be recovered pursuant to a rate rider or other rate mechanism through which these costs could be recovered. Oncor also agreed with Entergy that any commission-required hardening actions should be accompanied with timely cost recovery mechanisms.

Commission Response

The proposed rule does not impose any obligations on utilities beyond reporting requirements. Costs should be minimal.

Entergy also recommended that the utility be required to provide the information on a confidential basis with the Commission. Oncor agreed.

Commission Response

The commission does not agree with the suggested changes. A utility may use the existing confidentiality procedures of the commission as needed.

Houston suggested that this rulemaking and Project Number 37475 (Rulemaking for Utility Infrastructure Storm Hardening) be combined. Alternatively, Houston suggested that during the rulemaking process in Project Number 37475 that the commission considers whether language refers to or amends the proposed rule be considered.

Commission Response

Section 2.05 of House Bill 1831 (Acts 2009, 81st Legislature, Chapter 1280, effective September 1, 2009) (House Bill 1831) requires the commission to adopt a rule implementing §38.101 of PURA by January 1, 2010. This rule addresses that requirement. The commission will consider amendments to this rule in Project Number 37475 as needed to harmonize any provisions adopted in that docket with this rule.

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 new section is adopted pursuant to §2.05 of House Bill 1831 which directs the commission to adopt rules to implement §38.101 of PURA and §14.002 of PURA which provides the commission 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 §14.002 and §38.101 and Acts 2009, 81st Legislature, Chapter 1280, §2.05, effective September 1, 2009.

§25.94. Report on Infrastructure Improvement and Maintenance.

(a) Application. This rule applies to all electric utilities.

(b) Reports. By May 1st of each year, an electric utility shall file with the commission a report that contains the information described in subsection (c) of this section for the previous calendar year.

(c) The utility shall include in the report a description of the utility's activities related to:

(1) Identifying areas in its service territory that are susceptible to damage during severe weather and hardening transmission and distribution facilities in those areas;

(2) Vegetation management; and

(3) Inspecting distribution poles.

(d) Each electric utility shall include in a report required under subsection (b) of this section a summary of the utility's activities related to preparing for emergency operations.

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 December 14, 2009.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER D. GREYHOUND RACETRACKS

DIVISION 1. FACILITIES AND EQUIPMENT

16 TAC §309.307

The Texas Racing Commission adopts an amendment to 16 TAC §309.307, Lures, relating to the lures used in greyhound racing. The amendment is adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4604) and will not be republished.

The amendment requires that a noise-making "squawker" be added to the lure. The squawker is activated when the brake is applied to the lure. This will assist in stopping and recalling the greyhounds at the end of each race.

The Commission received no comments in response to the publication.

The amendment is adopted under the Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing 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 December 16, 2009.

TRD-200905890
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 5, 2010
Proposal publication date: July 10, 2009
For further information, please call: (512) 833-6699

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DIVISION 2. OPERATIONS

16 TAC §309.355, §309.363

The Texas Racing Commission adopts amendments to 16 TAC §309.355, Grading System, and §306.363, Official Program. Section 309.355 relates to the grading system used by greyhound racetracks to create races in which each participating greyhound will be competitive. Section 309.363 relates to the required program printed by a racetrack that lists information about each of the races and the participants that will be competing in those races on a particular day. The amendments are adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4605) and will not be republished.

The changes to §309.355 enable tracks to keep more greyhounds on the active list by permitting a racing secretary to advance a 2nd through 4th place greyhound in a maiden or Grade J race to a Grade D or Grade C level. The current rule only allows an advance to a Grade C level.

The change to §309.363 requires the greyhound racetracks to publish the Texas-bred emblem in the program to identify any accredited Texas-bred greyhounds.

The Commission received no comments in response to the publication.

The amendments are adopted under the Tex. Rev. Civ. Stat. Ann. art. 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

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 December 16, 2009.

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Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 5, 2010
Proposal publication date: July 10, 2009
For further information, please call: (512) 833-6699

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CHAPTER 311. OTHER LICENSES

SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §311.104

The Texas Racing Commission adopts amendments to 16 TAC §311.104, Trainers. Section 311.104 relates to the licensing requirements of trainers. The amendments are adopted without changes to the proposed text as published in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7489) and will not be republished.

The changes to §311.104 require trainer candidates to submit two character references and interview with the board of stewards or judges. The changes also require an additional $50 examination fee after candidates have failed a portion of the exam on their first two attempts, and places limits on how quickly a candidate may retake the exam after failing more than once. These changes will more closely align the licensing requirements for trainers with those of the national model rules. The fee changes will also encourage trainer candidates to adequately prepare before scheduling their examinations.

The Commission received no comments in response to the publication.

The amendments are adopted under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §7.02, which requires the Commission to adopt categories of licenses for the various occupations and to specify by rule the qualifications and experience required for licensing in each category.

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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Mark Fenner
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

The Texas Racing Commission adopts amendments to 16 TAC §§313.41, 313.101, 313.106, 313.301, 313.406, 313.441, 313.505, and 313.507, concerning Officials and Rules of Horse Racing, without changes to the proposed text as published in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7490) and will not be republished.

The adopted amended sections relate to: the duties of a horse racing association's racing secretary; the entry procedures for horses; the closing of entries for split races; eligibility to make a claim for a horse in a claiming race; the saddle cloths and head numbers that horses must wear in a race; the safety and fairness of the start in a horse race; official workouts of horses at a licensed training facility; and training facility occupational licenses. The amendments are adopted in conjunction with the Commission's rule review of Chapter 313 pursuant to Texas Government Code §2001.039. Notice of this rule review was pub-

lished in the December 19, 2008, issue of the *Texas Register* (33 TexReg 10335).

The change to §313.41 aligns the state's rules with national model rules in regard to the duties of a racing secretary. The amendment provides additional flexibility to a racetrack's racing secretary so that the secretary will have until the end of each day, rather than until only 10:30 a.m., to assign a weight to each horse in a handicap race on the day set for publication of the assigned weights.

The change to §313.101 aligns the state's rules with national model rules in regard to the race entry procedure for a horse. The amendment streamlines the entry process by: (1) eliminating the requirement that an entry made by phone or fax must be confirmed in writing no later than three hours before the post time for the first race on the day the entry is to run; and (2) adding new language that would require an entry made by phone or fax to be confirmed in writing only upon the request of the stewards or racing secretary. The amendment clarifies that an entry may be made in writing, by phone or by fax.

The change to §313.106 requires the racing secretary to provide notice of not less than 15 minutes before closing when an overnight race is split into two or more separate races. This change provides an additional opportunity for making entries into the split races. The amendment also provides that when an overnight race is split, it forms two separate races.

The change to §313.301 requires that any claim made by a minor must also be co-signed by a commission-licensed adult parent or guardian, and the parent or guardian is liable for the claim. This change will help ensure that claims are binding.

The changes to §313.406 align the state's rules with national model rules in regard to head numbers worn by horses in a race. The changes also increase safety by requiring jockeys to wear safety helmets that have been approved by the American Society for Testing and Materials.

The changes to §313.441 align the state's rules with national model rules in regard to the safety and fairness requirements governing the start of a horse race. The amendment clarifies the circumstances occurring at a starting gate that constitute an unfair start and clarifies the conditions under which stewards can declare a horse to be a non-starter, exclude individual horses from all pari-mutuel pools, or declare a "no contest."

The changes to §313.505 define the types of licensees that may ride a horse in an official workout to be a licensed jockey, apprentice jockey, exercise rider, or the trainer or assistant trainer of the horse. The changes also clarify that the timer may not also serve as the starter for a workout.

The changes to §313.507 specify that general managers and chief executive officers of a licensed training facility must obtain a training facility general manager license and not a training facility employee license. The changes also specify the rule number that establishes the fee for a general manager's license.

The Commission received no comments in response to the publication of the proposed rule amendments.

SUBCHAPTER A. OFFICIALS
DIVISION 3. DUTIES OF OTHER OFFICIALS

16 TAC §313.41

The amendment is adopted under the Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

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 December 16, 2009.

TRD-200905896
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 5, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 833-6699

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SUBCHAPTER B. ENTRIES, SCRATCHES, AND ALLOWANCES
DIVISION 1. ENTRIES

16 TAC §313.101, §313.106

The amendments are adopted under the Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

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 December 16, 2009.

TRD-200905897
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 5, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 833-6699

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SUBCHAPTER C. CLAIMING RACES

16 TAC §313.301

The amendment is adopted under the Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

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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Mark Fenner
General Counsel
Texas Racing Commission
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Proposal publication date: October 30, 2009
For further information, please call: (512) 833-6699

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SUBCHAPTER D. RUNNING OF THE RACE
DIVISION 1. JOCKEYS

16 TAC §313.406

The amendment is adopted under the Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

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-200905899
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 5, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 833-6699

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DIVISION 3. THE RACE

16 TAC §313.441

The amendment is adopted under the Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

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-200905900
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 5, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 833-6699

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SUBCHAPTER E. TRAINING FACILITIES

16 TAC §313.505, §313.507

The amendments are adopted under the Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

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 December 16, 2009.

TRD-200905901
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 5, 2010
Proposal publication date: October 30, 2009
For further information, please call: (512) 833-6699

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CHAPTER 315. OFFICIALS AND RULES FOR GREYHOUND RACING
SUBCHAPTER A. OFFICIALS
DIVISION 2. DUTIES

16 TAC §315.43, §315.44

The Texas Racing Commission adopts new 16 TAC §315.43, Track Superintendent, and new §315.44, Brakeman. Section 315.43 relates to the duties and responsibilities of the track superintendent at a greyhound racetrack. Section 315.44 relates to the duties and responsibilities of the brakeman at a greyhound racetrack. The new sections are adopted without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4606) and will not be republished.

New §315.43 assigns the track superintendent the responsibility for ensuring that the greyhound racetrack is properly maintained and that the track equipment is operable.

New §315.44 assigns the brakeman the responsibility for ensuring that the lure is stopped on the designated revolution on the racetrack at the end of each race.

The Commission received no comments in response to the publication.

The new sections are adopted under the Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound

racing involving wagering and other rules to administer the Texas Racing 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 December 16, 2009.

TRD-200905893
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: January 5, 2010
Proposal publication date: July 10, 2009
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.3

The Texas Funeral Service Commission (commission) adopts an amendment to §203.3, concerning Funeral Director in Charge, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7938).

The adopted amendments to §203.3 in conjunction with simultaneously adopted amendments to §203.6 and §203.22; and the adopted repeal of §203.27 are intended to: (i) clarify and simplify the rules related to the supervision of provision licensees for embalming and funeral directing; and (ii) reduce the paperwork burden on the commission and the persons who must supervise the provisional licensees.

No public comment was received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2009.

TRD-200905895
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 5, 2010
Proposal publication date: November 13, 2009
For further information, please call: (512) 936-2466

♦ ♦ ♦

22 TAC §203.6

The Texas Funeral Service Commission (commission) adopts an amendment to §203.6, concerning Provisional Licensees, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7939).

The adopted amendment to §203.6 in conjunction with simultaneously adopted amendments to §203.3 and §203.22; and adopted repeal of §203.27 are intended to: (i) clarify and simplify the supervision of provisional licensees for embalming and funeral directing; and (ii) reduce the paperwork burden on the commission and the persons who must supervise provisional licensees.

No public comment was received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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 December 16, 2009.

TRD-200905894
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 5, 2010
Proposal publication date: November 13, 2009
For further information, please call: (512) 936-2466

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22 TAC §203.22

The Texas Funeral Service Commission (commission) adopts an amendment to §203.22, concerning Required Documentation for Embalming, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7940).

The proposed amendment to §203.22 in conjunction with simultaneously adopted amendments to §203.3 and §203.6; and the adopted repeal of §203.27 are intended to: (i) clarify and simplify the rules related to the supervision of provision of licensees for embalming and funeral directing; and (ii) reduce the paperwork burden on the commission and the persons who must supervise the provisional licensees.

No public comment was received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

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 December 16, 2009.

TRD-200905902
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 5, 2010
Proposal publication date: November 13, 2009
For further information, please call: (512) 936-2466

♦ ♦ ♦

22 TAC §203.26

The Texas Funeral Service Commission (commission) adopts an amendment to §203.26, concerning Funeral Directors and Embalmers License Requirements and Procedure, without changes to the proposed text as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7761).

The amendment is adopted in order to clarify the changes in Texas Occupations Code Chapter 651 enacted by the 81st Legislature.

The 81st Texas Legislature amended the Texas Occupations Code to clarify the manner in which a funeral director or embalmer whose license has expired both before and after September 1, 2009 may be renewed. The adopted amendments to §203.26 are designed to implement the legislative changes.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2009.

TRD-200905958
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 7, 2010
Proposal publication date: November 6, 2009
For further information, please call: (512) 936-2469

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22 TAC §203.27

The Texas Funeral Service Commission (commission) adopts the repeal of §203.27, concerning Sponsors of Provisional Licensees, without changes to the proposal as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7941).

The adopted repeal of §203.27 in conjunction with simultaneously adopted amendments to §§203.3, 203.6, and 203.22 are intended to: (i) clarify and simplify the rules related to the supervision of provisional licensees for embalming and funeral directing; and (ii) reduce the paperwork burden on the commission and the persons who musts supervise provisional licensees.

No public comment was received regarding the proposed repeal.

The repeal is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2009.

TRD-200905906
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 5, 2010
Proposal publication date: November 13, 2009
For further information, please call: (512) 936-2466

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22 TAC §203.39

The Texas Funeral Service Commission (commission) adopts new §203.39, relating to Embalmer in Charge, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7942).

The new rule is adopted because of changes in the provisional licensing program and also to appoint a licensee in charge at a commercial embalming establishment.

No public comment was received regarding the proposed new section.

The new section is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2009.

TRD-200905907

O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 5, 2010
Proposal publication date: November 13, 2009
For further information, please call: (512) 936-2466

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CHAPTER 205. CEMETERIES AND CREMATORIES

22 TAC §205.2

The Texas Funeral Service Commission (commission) adopts an amendment to §205.2, concerning Ingress and Egress to Cemeteries and Private Burial Grounds Which Have No Public Ingress or Egress, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7942).

The amendment is adopted in order to clarify changes in the Texas Health and Safety Code, §711.041 enacted by the 81st Legislature.

Following are the public comments received and corresponding commission response:

Comment: Representatives Garnet F. Coleman and Warren Chisum wrote a letter in support of the proposed rule for enforcing Texas Health and Safety Code, §711.041. They stated they believe the rule comports with the spirit and intent of the law as amended by House Bill 1468 in the previous legislative session. They also stated Texas law has long recognized the importance of allowing Texans reasonable access to cemeteries to honor friends and loved ones who have passed away. The intent of the provisions of House Bill 1468 relating to access to cemeteries was to protect that reasonable access. This language is a modest amendment to existing law which carefully balances the rights of those wishing to pay their respects to the deceased against the private property rights of landowners.

Commission Response: The commission is very grateful for the support of Representatives Garnet F. Coleman and Warren Chisum.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

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 December 18, 2009.

TRD-200905946
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 7, 2010
Proposal publication date: November 13, 2009
For further information, please call: (512) 936-2469

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PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §371.3

The Texas State Board of Podiatric Medical Examiners adopts amendments to §371.3, concerning Fees, without changes to the proposed text as published in the August 28, 2009, issue of the *Texas Register* (34 TexReg 5859) and will not be republished.

The amendments to §371.3 are adopted to cover the contingent revenue as stipulated by the 81st Texas Legislature which required the board to assess or increase fees sufficient to generate during the FY2010-2011 biennium $17,875 in excess of $862,000 (Object Code 3562), contained in the Comptroller of Public Accounts biennial revenue estimate for FY2010-2011. Texas Occupations Code §202.153, Fees, states that the board, by rule, shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter.

No comments were received in response to the proposed amendments.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The amendments implement Texas Occupations Code, §202.153, Fees.

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 December 17, 2009.

TRD-200905920
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: January 6, 2010
Proposal publication date: August 28, 2009
For further information, please call: (512) 305-7000

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 543. RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

22 TAC §§543.4, 543.5, 543.12, 543.13

The Texas Real Estate Commission (commission) adopts amendments to §543.4 concerning Forms, §543.5 concerning

Violations, and new §543.13 concerning Assumed Names without changes to the proposed text as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7764) and will not be republished. The commission adopts amendments to §543.12 concerning Renewal of Registration with changes. A reference to TSR 8-0, Application to Renew the Registration of a Timeshare Plan, in §534.12(b) was not changed to reflect the new form number in the proposed text. The error has been corrected in the adoption to show the new form number, TSR 8-1.

The amendments to §543.4 adopt by reference four amended forms, TSR 1-5, 2-5, 3-3, and 8-1. The changes to the forms correct typographical errors, and TSR 1-5 is amended to be consistent with recent amendments to the Texas Timeshare Act, Chapter 221, Texas Property Code enacted under SB 1036 during the 81st Legislative Session. The revisions remove references to the name and address of the person who prepared the operating budget, and remove language that used to be required in the contract of purchase but is no longer required under SB 1036. The amendment to §543.5 adds to the list of material violations failure to properly comply with requirements for filing an assumed name. The amendment to §543.12 changes the reference to form number TSR 8-0 to 8-1 in subsection (b) and adds subsection (d) to provide a 60-day time period in which a developer must respond to a request for additional information from TREC in connection with an application to renew a timeshare plan. New §543.13 provides a process and time period for which developers must file assumed names with the commission to comply with changes to the Timeshare Act made by SB 1036.

No comments were received on the rules as proposed. The reasoned justification for the amendments is administrative compliance with new statutory requirements.

The amendments are adopted under the Texas Property Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare Act.

The statute which is affected by this adoption is Texas Property Code, Chapter 221. No other statute, code or article is affected by the adopted amendments and new rules.

§543.12. Renewal of Registration.

(a) If a timeshare plan was registered prior to January 15, 2006, the registration expires on the last day of the month 24 months after its last anniversary date prior to January 15, 2006. For timeshare plans registered on or after January 15, 2006, the registration expires on the last day of the month 24 months after the date the plan was registered.

(b) A developer of a timeshare plan may renew the registration for a 2-year period by completing an Application to Renew the Registration of a Timeshare Plan, Form TSR 8-1, and paying the appropriate filing fee.

(c) Three months prior to the expiration of a registration, the commission shall mail a renewal application form to the developer's last known permanent mail address as shown in the commission's computerized records.

(d) An application to renew a timeshare plan is considered void and is subject to no further evaluation or processing when the developer fails to provide information or documentation within sixty (60) days after the commission makes written request for correct or additional information or documentation.

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 December 16, 2009.

TRD-200905883
Loretta R. DeHay
Deputy Administrator and General Counsel
Texas Real Estate Commission
Effective date: January 5, 2010
Proposal publication date: November 6, 2009
For further information, please call: (512) 465-3926

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER NN. NONINSURANCE BENEFITS AND FEATURES

28 TAC §§21.4801 - 21.4807

The Commissioner of Insurance adopts new Subchapter NN, §§21.4801 - 21.4807, concerning requirements applicable to noninsurance benefits that are provided or disclosed as part of an insurance policy, contract or certificate of insurance and that are reasonably related to the type of policy, contract or certificate being issued. The new sections are adopted without changes to the proposed text published in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6092).

REASONED JUSTIFICATION. The sections are necessary to implement House Bill (HB) 1847, 80th Legislature, Regular Session, which amended the Insurance Code Chapter 1701 by adding §1701.061. Section 1701.061 provides for the offering of noninsurance benefits and requires full description and disclosure of the benefit to individuals to whom the benefit is to be offered, as well as explanation of events and/or conditions that will trigger termination of the benefit. Section 1701.061(f) authorizes the Commissioner to adopt rules to implement §1701.061, including rules to (i) determine which noninsurance benefits are reasonably related to the types of insurance subject to this chapter; (ii) ensure that noninsurance benefits included as part of a policy or certificate are not unfairly deceptive or do not otherwise constitute a prohibited inducement; and (iii) address application of other chapters of the Insurance Code to noninsurance benefits provided as part of a policy or certificate, including Chapters 82 - 84, 222, 257, 463, 541 - 544, 1501, and 1506. The sections implement §1701.061(f)(1) - (3).

HOW THE SECTIONS WILL FUNCTION. The sections provide the essential standards to be met in satisfaction of requirements applicable to noninsurance benefits intended to be offered as part of a policy, contract or certificate of insurance under the Insurance Code §1701.061.

Section 21.4801 addresses the applicability and scope of the new sections, providing that the subchapter applies to any insurer that provides or discloses a noninsurance benefit as part

of a life insurance policy or certificate, annuity contract or certificate, or an accident or health insurance policy, contract or certificate.

Section 21.4802 provides a definition for a noninsurance benefit, stating that it has the meaning provided in the Insurance Code §1701.061(a). Section §1701.061(a) defines the term to mean a good or service provided or disclosed as part of a policy or certificate of insurance that is reasonably related to the type of policy or certificate being issued.

Section 21.4803 states that the purpose of the new sections is to provide the essential standards to be met in satisfaction of requirements applicable to noninsurance benefits intended to be offered as part of a policy, contract or certificate of insurance under the Insurance Code §1701.061.

Section 21.4804 sets forth provisions addressing the reasonable relation between noninsurance benefits and the insurance policy, contract or certificate with which they are associated.

Section 21.4805 sets forth certain disclosure requirements for form filings that include noninsurance benefits, including (i) a description of the noninsurance benefit; (ii) a notice fully disclosing the noninsurance benefit to the policyholder, contract holder or certificate holder; and (iii) a statement explaining any condition on which termination of the noninsurance benefit will occur.

Section 21.4806 specifies additional provisions applicable to noninsurance benefits provided or disclosed as part of a policy, contract or certificate, including (i) a prohibition against provisions that are unfairly deceptive; (ii) the applicability of disciplinary, enforcement and administrative penalty provisions of the Insurance Code Chapters 82 - 84; and (iii) the requirement that if a noninsurance benefit is to be available to in-force business, commitment documentation setting out such availability must be submitted with the form filing.

Section 21.4807 addresses provisions applicable to noninsurance benefits composed of certain discount programs. These provisions recognize and assist in the transition of regulation of discount health care programs and discount health care program operators from the Texas Department of Licensing and Regulation to the Texas Department of Insurance, effective April 1, 2010, as provided in SECTIONS 3 - 6 of HB 4341, 81st Legislature, Regular Session.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: One commenter requests that in §21.4804(b) the word "specifically" be deleted from the sentence setting out a general example of a noninsurance benefit that would demonstrate existence of "reasonable relation" of a noninsurance benefit in association with an underlying policy, contract or certificate. The request is based on the premise that since the Insurance Code §1701.061 requires only a reasonable relation between noninsurance benefit and type of insurance with which it is associated, the inclusion of the word "specifically" is inappropriate.

Agency Response: The Department appreciates the comment but does not make the requested change, for the following reasons. First, although §1701.061 requires only a reasonable relation between noninsurance benefit and type of insurance with which it is associated, the sentence in question does not set forth a requirement that a noninsurance benefit be specifically related to the insurance product in order to establish or demonstrate "reasonable relation." Rather, the referenced sentence is included in subsection (b) to provide assistance and elucidation concerning a general example of a noninsurance benefit exhibiting a strong reasonable relation to the underlying contract. Second, when the referenced sentence is read in conjunction with both the sentence preceding it and the sentence following it, its purpose as a general representative example of strong reasonable relation is apparent. Third, a "reasonable relation" may be general or specific, as indicated in subsection (b) in its entirety. Whether it is general or specific depends on the interrelationship between and among the components of character, purpose and scope of both the underlying contract and the noninsurance benefit. For all these reasons, no change is made to the referenced sentence in §21.4804(b).

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: Office of Public Insurance Counsel.

Against: None.

Neither for nor against, with changes: American Council of Life Insurers.

STATUTORY AUTHORITY. The new sections are adopted under the Insurance Code §1701.061 and §36.001. Section 1701.061 authorizes the Commissioner to adopt rules to implement the section, including rules to determine which noninsurance benefits are reasonably related to the types of insurance subject to Chapter 1701, relating to life, accident and health insurance Policy Forms, and to ensure that noninsurance benefits included as part of a policy, contract or certificate are not unfairly deceptive or do not otherwise constitute a prohibited inducement. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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 December 15, 2009.

TRD-200905848
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: January 4, 2010
Proposal publication date: September 4, 2009
For further information, please call: (512) 463-6327

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 116. GENERAL PROVISIONS--SUBSEQUENT INJURY FUND

28 TAC §116.11, §116.12

The Commissioner of Workers' Compensation, Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §116.11, concerning Request for Reimbursement from the Subsequent

Injury Fund, and §116.12 concerning Subsequent Injury Fund Payment/Reimbursement Schedule, with changes to the proposed text as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 5026).

In accordance with Government Code §2001.033, this preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were in support of or in opposition to adoption of the rule, and the reasons why the Division agrees or disagrees with the comments and suggestions. Changes made to the proposed rule are in response to public comments received in writing; and are described in the summary of comments and responses section of this preamble. The public comment period closed August 31, 2009. There was not a request for a public hearing submitted to the Division.

These amendments are necessary to implement statutory provisions enacted by Senate Bill 1169, 80th Legislature, Regular Session, effective September 1, 2007 (SB 1169), to Labor Code §§403.006, 408.0041, and 408.042. Labor Code §403.006 provides that the Subsequent Injury Fund (SIF) is liable for the reimbursement of an insurance carrier as provided for by Labor Code §408.0041(f-1). Labor Code §408.0041(f-1) requires the SIF to reimburse an insurance carrier for an overpayment of benefits made by the insurance carrier based on the opinion of a designated doctor if that opinion is reversed or modified by a final arbitration award or a final order or decision of the Commissioner of Workers' Compensation (Commissioner) or a court. Labor Code §408.042(g) adds the provision that an insurance carrier is entitled to apply for and receive reimbursement from the SIF for the amount of death benefits, in addition to the amount of income benefits, if any, paid to an employee that are based on employment other than the employment during which the compensable injury occurred.

In response to written comments the Division has changed some of the proposed language in the text of the rule. The changes introduce no new subject matter nor do the changes affect persons in addition to those subject to the proposal as published. Further changes were made for consistency, clarity, editorial reasons, and to correct typographical and/or grammatical errors.

In response to comments the following amendments have been made to the proposed rule language in §116.11. The proposed deletion of "the State Office of Administrative Hearings" has been withdrawn, and the language has been added in adopted subsections (a)(1) and (c) because the Division agrees that it could be confusing to delete the reference to the State Office of Administrative Hearings (SOAH). Additionally, for clarity, the term "arbitration award" has been added to proposed subsection (g)(4), which is adopted as subsection (f)(4). The proposed deletion of "relevant" has been withdrawn and the language has been added in adopted subsection (c)(4); additionally, the term "relevant" has been added before specifying documents that must be filed with a request for reimbursement in subsections (c)(5) - (6), (f)(4) - (5), and (h) because the Division agrees that all relevant information should be submitted to the SIF in support of a proper reimbursement request.

In response to comments, the following amendments have been made to the proposed rule language in §116.12. The proposed provision in subsection (d) that claims attributable to multiple employment under §116.11(a)(4) should be processed in the first fiscal quarter following the fiscal year in which the request was submitted has been deleted because the Division agrees that a delay in processing may cause reimbursements to exceed the timeframe provided for in Labor Code §408.042(g). The proposed requirement that the insurance carrier must notify the SIF administrator of any pending disputes has been deleted in adopted subsection (f), which was proposed as §116.12(g), because the Division agrees that disputes should be submitted as part of the application process in §116.11. The Division has determined that there are no additional rules or rule amendments required in order to implement the adopted changes of these rules.

The adopted sections implement statutory changes enacted by SB 1169 which, in part, expanded the liability of the SIF by providing entitlement for insurance carriers to be reimbursed for overpayment of benefits based on the opinion of a designated doctor if that opinion is reversed or modified by a final arbitration award or a final order or decision of the Commissioner or a court. SB 1169 also provides that insurance carriers may seek reimbursement when death benefits are paid to eligible beneficiaries, in addition to reimbursement when income benefits are paid to an injured employee, when those amounts are based on employment other than the employment during which the compensable injury occurred.

Section 116.11 clarifies when and how a reimbursement request is to be submitted and what constitutes a proper and timely reimbursement request; this section is adopted with changes.

Section 116.12 clarifies the reimbursement schedule, payment allocations, and processing of reimbursements for claims; this section is adopted with changes.

Comments on §116.11.

Comment: Several commenters suggest that "the State Office of Administrative Hearings" should not be deleted from §116.11(a) and (c) because the omission could be confusing.

Agency Response: The Division agrees that SOAH should not be deleted from the rule. The Division has removed the proposed deletion in the adopted rule and included SOAH in the final language of §116.11(a) and (c) because an unappealed SOAH decision or order may entitle insurance carriers to SIF reimbursement under Labor Code §413.055.

Comment: A few commenters suggest that "final order and decision of the commissioner" should be clarified and defined to include final SOAH decisions and orders. In the alternative, the commenters suggest that §116.11(a)(1) and (c) include final decisions and orders of the SOAH that have not been appealed.

Agency Response: The Division agrees in part and disagrees in part. The Division agrees that the addition of SOAH will clarify the rule as set forth in the above comment. The Division disagrees that a SOAH order or decision is an order or decision of the Commissioner.

Comment: A few commenters suggest that "final order and decision of the commissioner" should be defined and clarified to include a decision by an Independent Review Organization (IRO). In the alternative, the commenters suggest that §116.11(a) and (c) also include final decisions of IROs that have not been appealed.

Agency Response: The Division disagrees with the comments regarding IROs and declines to make the suggested changes because there is no requirement or express authority to define an IRO decision as an order or decision of the commissioner under the Labor Code. Additionally, such a definition would be contrary to §133.308 of this title (relating to Medical Dispute Resolution by

Independent Review Organizations), which states that the Department and Division are not are considered a party to the IRO decision and the IRO decision is not considered an agency decision. Finally the references to IROs in §116.11(c)(6) and (g)(4) should not be construed as orders or decisions of the commissioner which may trigger SIF reimbursement but are merely requirements of the application for SIF reimbursement.

Comment: A commenter states that the ability of an insurance carrier to be reimbursed from the SIF for "unrecoupable payments" is unclear. The commenter recommends that either the Division should remove all references to "unrecoupable overpayments" in §116.11(a) and (b), or in the alternative, the Division should reaffirm its previously articulated policy that an insurance carrier may generally recoup income against non-wage replacement benefits and, in the case of benefits paid pursuant to a designated doctor's report, may recoup any income or death benefits against any other income or death benefits, regardless of type.

Agency Response: The Division disagrees and declines to make the change. To the extent that the comment is for a change to benefits an insurance carrier may recoup from persons other than the SIF, the comments are outside the scope of this proposed rule. An expansion of the SIF rule to include additional recoupable or unrecoupable overpayments is not contemplated by the Act, Division rules, or current administrative decisions interpreting same.

Comment: Two commenters request that the Commissioner amend §116.11(b) to provide that an insurance carrier may recover all overpayments and payments made in error. Commenters suggest that current language in §116.11(b) stating that SIF reimbursement does not include "any amounts the carrier overpaid voluntarily or as a result of its own errors" should be deleted. The commenters state that there is no statutory authority to support this restriction on reimbursement. A commenter requests that if the section cannot be amended that the request be considered a rule petition.

Agency Response: The Division disagrees with the recommendations and notes that there is no statutory authority to provide for reimbursement of amounts the carrier overpaid voluntarily or as a result of its own errors. The liability of the SIF is prescribed by Labor Code §403.006(b). A claimant for reimbursement from the SIF is only entitled to that which is specifically authorized by statute. *Second Injury Fund v. Keaton* 345 S.W. 2d 711. Additionally, the comment submitted cannot be considered a rule petition at this time because the request was not a proper petition for rulemaking with the Texas Department of Insurance, Division of Workers Compensation. The correct procedure for a rule-making petition is set forth in §2001.021 Government Code and §104.1 of this title (relating to Contents of Rule-Making Petitions).

Comment: Several commenters state that the term "relevant" should not be deleted in §116.11(c)(4) and the term "relevant" should be used to describe all documentation that must accompany the request for reimbursement. Commenters argue that a requirement to file irrelevant documentation creates additional expense on the workers compensation system for insurance carriers and the Division.

Agency Response: The Division agrees and has modified the final rule accordingly.

Comment: A commenter suggests that the term "arbitration awards and settlements" should be added to proposed §116.11(g)(4), adopted §116.11(f)(4).

Agency Response: The Division agrees in part and disagrees in part. Adopted §116.11(f)(4) has been modified to include "arbitration awards" to be consistent with statutory language in Labor Code §408.0041(f-1). However, adopted §116.11(f)(4) has not been modified to include arbitration "settlements" since the Legislature did not include that term in the statute.

Comment: A commenter suggests reversing the order of §116.11(f) and (g), stating that it would be more consistent with the ordering of the previous subsections.

Agency Response: The Division agrees and has modified the final rule accordingly.

Comments on §116.12.

Comment: Several commenters suggest that claims filed under §116.12(c) should be processed within 60 days, within which the SIF should be required to send written verification that the application is complete or requires additional documentation. Under the commenter's suggestion, failure of the SIF to respond within 60 days would constitute verification that the request is complete and the amount of requested reimbursement is authorized.

Agency Response: The Division disagrees. Labor Code §408.042 provides for reimbursement payments at least annually. Payments may be made earlier within that time. The Division will process applications as timely as possible in accordance with the Labor Code, Title 5.

Comment: Two commenters state that the time for processing under proposed §116.12(d) is not authorized by statute.

Agency Response: The Division agrees. Section 116.12(d) has been deleted as proposed. The Division will process applications as timely as possible in accordance with the Labor Code, Title 5.

Comment: Two commenters state that the required "notice of any pending disputes" in §116.12(g), which was §116.12(f) in the proposal, should be part of the application process in §116.11(c)(5) and §116.12(g) should be deleted.

Agency Response: The Division agrees in part and disagrees in part. The "notice of any pending disputes" language has been deleted from adopted §116.12(g). The Division disagrees that the language should be added to §116.11(c)(5) because the requirement is not limited to disputes involving overpayment of benefits.

Comment: A commenter objects to the language in §116.12(g) providing that the SIF will refrain from acting on a request for reimbursement until resolution of all disputes affecting the request for reimbursement. The commenter states that such a provision conflicts with Labor Code §410.209.

Agency Response: The Division disagrees. A final determination of the facts justifying a proper request for reimbursement cannot be made as long as there are relevant disputes that have not been resolved.

Comment: Several commenters suggest that §116.12(g) be revised to provide that it only pertains to disputes and information that are relevant to the Division's determination on the request for reimbursement.

Agency Response: The Division agrees and has modified the final rule accordingly.

For, with changes: American Insurance Association, Flahive, Ogden & Latson, Insurance Council of Texas, Property and Casualty Insurers Association of America, and the State Office of Risk Management.

Against: None

The amendments are adopted under the Labor Code §§402.00111, 402.061, 403.006, 408.0041, and 408.042. Labor Code §403.006 provides that the SIF is liable for the reimbursement of an insurance carrier as provided for by Labor Code §408.0041(f-1). Labor Code §408.0041(f-1) requires the SIF to reimburse an insurance carrier for an overpayment of benefits made by the insurance carrier based on the opinion of a designated doctor if that opinion is reversed or modified by a final arbitration award or a final order or decision of the Commissioner or a court. Labor Code §408.042(g) adds the provision that an insurance carrier is entitled to apply for and receive reimbursement from the SIF for the amount of death benefits, in addition to the amount of other income benefits, paid to an employee that are based on employment other than the employment during which the compensable injury occurred. Section 402.00111 provides that the Commissioner of Workers' Compensation (Commissioner) shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

§116.11. Request for Reimbursement from the Subsequent Injury Fund.

(a) An insurance carrier may request:

(1) reimbursement from the Subsequent Injury Fund (SIF), pursuant to Labor Code §403.006(b)(2), for an overpayment of income, death, or medical benefits when the insurance carrier has made an unrecoupable overpayment pursuant to decision of a hearing officer or the appeals panel or an interlocutory order, and that decision or order is reversed or modified by final arbitration, order, or decision of the commissioner, State Office of Administrative Hearings, or a court of last resort;

(2) reimbursement from the SIF pursuant to Labor Code §403.007(d) for death benefits paid to the SIF before a legal beneficiary was determined to be entitled to receive death benefits;

(3) for a compensable injury that occurs on or after July 1, 2002, reimbursement from the SIF for the amount of income benefits paid to an injured employee attributable to multiple employment and paid pursuant to Labor Code §408.042;

(4) for a compensable injury that occurs on or after September 1, 2007, reimbursement from the SIF for the amount of income, death benefits, or a combination paid to an injured employee or a legal beneficiary attributable to multiple employment and paid pursuant to Labor Code §408.042;

(5) reimbursement from the SIF, pursuant to Labor Code §408.0041(f) and (f-1), for an overpayment of benefits made by the insurance carrier based on the opinion of the designated doctor if that opinion is reversed or modified by a final arbitration award or a final order or decision of the commissioner or a court; or

(6) reimbursement from the SIF made in accordance with rules adopted by the commissioner pursuant to Labor Code §413.0141. For purposes of this subsection only, an injury is determined not to be compensable following:

(A) The final decision of the commissioner or the judgment of the court of last resort; or

(B) A claimant's failure to respond within one year of a timely dispute of compensability filed by an insurance carrier. In this instance only, the effective date of the determination of non compensability is one year from the date the dispute is filed with the division by the insurance carrier.

(i) A determination under this paragraph does not constitute final adjudication. It does not preclude a party from pursuing their claim through the division's dispute resolution process and it does not permit a health care provider to pursue a private claim against the claimant.

(ii) If the claim is later determined to be compensable, the insurance carrier shall reimburse the SIF for any initial pharmaceutical payment which the SIF previously reimbursed to the insurance carrier. The insurance carrier's reimbursement of the SIF shall be paid within the timeframe the insurance carrier has to comply with the agreement, decision and order, or other judgment which found the claim to be compensable.

(b) The amount of reimbursement that the insurance carrier may be entitled to is equal to the amount of unrecoupable overpayments paid and does not include any amounts the insurance carrier overpaid voluntarily or as a result of its own errors. An unrecoupable overpayment of income or death benefits for the purpose of reimbursement from the SIF only includes those benefits that were overpaid by the insurance carrier pursuant to an interlocutory order, a designated doctor opinion or decision which were finally determined to be not owed and which, in the case of an overpayment of income or death benefits to the injured employee or legal beneficiary, were not recoverable or convertible from other income or death benefits.

(c) Requests for reimbursement attributable to subsection (a)(1) of this section, insurance carrier claims of benefit overpayments made under an interlocutory order or decision of the commissioner that is later reversed or modified by final arbitration, order, decision of the commissioner, the State Office of Administrative Hearings, or court of last resort shall be filed with the SIF administrator in writing and include:

(1) a claim-specific summary of the reason the insurance carrier is seeking reimbursement and the total amount of reimbursement requested;

(2) a detailed payment record showing the dates of payments, the amounts of the payments, purpose of payments, the payees, the periods of benefits paid, all plain language notices (PLNs) regarding the payment of benefits, all certifications of maximum medical improvement, all assignments of impairment rating and documentation that demonstrates that the overpayment was unrecoupable as described in subsection (b) of this section, if applicable;

(3) the name, address, and federal employer identification number of the payee for any reimbursement that may be due;

(4) copies of all relevant orders and decisions (Benefit Review Conferences, Interlocutory Orders, Contested Case Hearing Decisions & Orders, Appeals Panel Decisions, and Court orders) regarding the payment for which reimbursement is being requested along with an indication of which document is the final decision on the matter;

(5) copies of all relevant reports and DWC forms filed by the employer with the insurance carrier; and

(6) if the request is based on an overpayment of medical benefits, copies of all medical bills and preauthorization request documents associated with the overpayment as well as all relevant Inde-

pendent Review Organization (IRO) decisions, fee dispute decisions and Contested Case Hearing Decisions and Orders, Appeals Panel Decisions, and court orders regarding medical disputes.

(d) Requests for reimbursement pursuant to subsection (a)(2) of this section, related to a reimbursement of death benefits paid to the SIF prior to a legal beneficiary being determined to be entitled to receive death benefits, shall be filed with the SIF administrator in writing and include:

(1) a claim-specific summary of the reason the insurance carrier is seeking reimbursement and the total amount of reimbursement requested;

(2) a detailed payment record showing the dates of payments, the amounts of the payments, purpose of payments, the payees, and the periods of benefits paid;

(3) the name, address, and federal employer identification number of the payee for any reimbursement that may be due;

(4) the documentation the legal beneficiary provided with the claim for death benefits in accordance with §122.100 of this title (relating to Claim for Death Benefits); and

(5) if applicable, the final award of the commissioner, or the final judgment of a court of competent jurisdiction determining that the legal beneficiary is entitled to the death benefits.

(e) Requests for reimbursement pursuant to subsection (a)(3) or (4) of this section, regarding multiple employment, shall be submitted on an annual basis for the payments made during the same or previous fiscal year. The fiscal year begins each September 1st and ends on August 31st of the next calendar year. For example, insurance carrier payments made during the fiscal year from September 1, 2009 through August 31, 2010, must be submitted by August 31, 2011. Any claims for insurance carrier payments related to multiple employment that are not submitted within the required timeframe will not be reviewed for reimbursement. These requests shall be filed with the SIF administrator in writing and include:

(1) a claim-specific summary of the reason the insurance carrier is seeking reimbursement and the total amount of reimbursement requested;

(2) a detailed payment record showing the dates of payments, the amounts of the payments, purpose of payments, the payees, and the periods of benefits paid, all PLNs regarding the payment of benefits, as well as documentation that shows that the overpayment was unrecoupable as described in subsection (b) of this section, if applicable;

(3) the name, address, and federal employer identification number of the payee for any reimbursement that may be due;

(4) information documenting the injured employee's average weekly wage amounts paid from all non claim employment held at the time of the work related injury pursuant to §122.5 of this title (relating to Employee's Multiple Employment Wage Statement); and

(5) information documenting the injured employee's average weekly wage amounts paid based on employment with the claim employer.

(f) Requests for reimbursement attributable to subsection (a)(5) of this section, insurance carrier claims of benefit overpayments made pursuant to a designated doctor opinion that is later reversed or modified by a final arbitration award or a final order or decision of the commissioner or a court, shall be filed with the SIF administrator in writing and include:

(1) a claim-specific summary of the reason the insurance carrier is seeking reimbursement and the total amount of reimbursement requested;

(2) a detailed payment record showing the dates of payments, the amounts of the payments, purpose of payments, the payees, and the periods of benefits paid; PLNs regarding the payment of benefits and all certifications of maximum medical improvement and all assignments of impairment rating;

(3) the name, address, and federal employer identification number of the payee for any reimbursement that may be due;

(4) copies of all relevant designated doctor opinions (including responses to letters of clarification) and orders and decisions (IRO decisions, Interlocutory Orders, Contested Case Hearing Decisions and Orders, arbitration awards, Appeals Panel Decisions, and Court orders) regarding the designated doctor opinion and the payment, made pursuant to the designated doctor opinion for which reimbursement is being requested along with an indication of which document is the final decision on the matter;

(5) copies of all relevant reports and DWC forms filed by the employer with the insurance carrier; and

(6) for an overpayment of medical benefits, copies of all medical bills and preauthorization request documents associated with the overpayment.

(g) Requests for reimbursement attributable to initial pharmaceutical coverage shall be submitted in the same or in the following fiscal year after a determination that the injury is not compensable in accordance with subsection (a)(6) of this section. The fiscal year begins each September 1st and ends on August 31st of the next calendar year. For example, if an injury is determined to be not compensable during the fiscal year from September 1, 2009 through August 31, 2010, the request for reimbursement pursuant to Labor Code §413.0141 must be submitted by August 31, 2011. Any claims for insurance carrier payments related to initial pharmaceutical coverage that are not submitted within the required timeframe will not be reviewed for reimbursement. The requests shall be filed with the SIF administrator in writing and include:

(1) a claim-specific summary of the reason the insurance carrier is seeking reimbursement and the total amount of reimbursement requested;

(2) a detailed payment record showing the dates of payments, specifically including documentation of payment of initial pharmaceutical coverage (i.e., first seven days following the date of injury); the amounts of the payments, the purpose of payments, the payees, and the periods of benefits paid;

(3) the name, address, and federal employer identification number of the payee for any reimbursement that may be due;

(4) documentation that the pharmaceutical services were provided during the first seven days following the date of injury, not counting the actual date the injury occurred, which is to include a description of the prescribed pharmaceutical service(s); and

(5) documentation of the final resolution of any dispute which determines the injury is not compensable either from the commissioner or court of last resort, or documentation of a claimant's failure to respond in accordance with subsection (a)(6)(B) of this section.

(h) An insurance carrier seeking reimbursement from the SIF shall timely provide all documentation reasonably required by the SIF administrator to determine entitlement to reimbursement or payment

from the SIF and the amount of reimbursement to which the insurance carrier is entitled. The insurance carrier must also provide notice to the SIF of any relevant pending dispute, litigation or other information that may affect the request for reimbursement.

§116.12. Subsequent Injury Fund Payment/Reimbursement Schedule.

(a) Claims against the Subsequent Injury Fund (SIF) shall be paid in the following priority:

(1) claims by insurance carriers for reimbursement made pursuant to Labor Code §403.007 and §132.10(g) of this title (relating to Payment of Death Benefits to the Subsequent Injury Fund);

(2) claims by injured employees for lifetime benefits, as provided by Labor Code §408.162;

(3) claims by insurance carriers for reimbursement, made pursuant to Labor Code §§408.0041, 410.209, and 413.055 and §116.11 of this title (relating to Request for Reimbursement from the Subsequent Injury Fund); and

(4) claims by insurance carriers for reimbursement made pursuant to Labor Code §408.042(g) relating to multiple employment and those in accordance with division rule(s) adopted pursuant to Labor Code §413.0141.

(b) The SIF uses the fiscal year September 1 through August 31.

(c) Claims described in subsection (a) of this section should be reviewed and, if appropriate, paid in the fiscal quarter following the quarter in which the request was submitted and no later than one year following the submission.

(d) In accordance with Labor Code §403.006(d), if the commissioner determines that partial payments of the claims described in subsection (a)(4) of this section are necessary, partial payments shall be calculated in the following manner:

(1) The total amount of completed eligible requests for reimbursement submitted under subsection (a)(4) of this section that are received during the previous fiscal year will be used to establish a baseline amount.

(2) The baseline amount will be divided by the total amount of SIF funding available as determined in accordance with the Labor Code.

(3) The resulting fraction will be equally applied to all claims submitted under subsection (a)(4) of this section to determine the partial reimbursement amount.

(4) If reimbursement requests are paid with partial payments, no further future recovery is available from the SIF for the non-reimbursed portion of that particular request.

(e) If reimbursement requests are paid with partial payments, the SIF administrator shall, no later than October 30 of the following fiscal year, enter appropriate orders for claims described in subsection (a)(4) of this section. The order shall specify the amount the SIF shall pay to the insurance carrier.

(f) The SIF administrator will refrain from acting on an insurance carrier's request for reimbursement from the SIF until final resolution of all disputes affecting the request for reimbursement.

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 December 18, 2009.

TRD-200905960
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: January 7, 2010
Proposal publication date: July 31, 2009
For further information, please call: (512) 804-4703

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PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §276.4

The Office of Injured Employee Counsel (OIEC) adopts new §276.4, concerning OIEC's Sick Leave Pool Program. The new section is adopted without changes to the proposed text as published in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7290).

Texas Government Code §661.002(c) requires state agencies to adopt rules relating to the agency's sick leave pool program. OIEC sought guidance on this rulemaking initiative from the Office of the Attorney General. A letter was received from the Office of the Attorney General dated July 15, 2009, recommending OIEC needed to pursue a rule governing the agency's sick leave pool program.

Adopted new §276.4 alleviates hardship caused to an OIEC employee and an employee's immediate family if a catastrophic injury or illness forces an employee to exhaust all sick leave and to lose compensation from the state. This adopted section is also needed to designate a pool administrator and to establish policy, operating procedures, and forms for the administration of the sick leave pool program.

OIEC received no public comments on this rulemaking initiative.

For: None.

Against: None.

The new section is adopted pursuant to Texas Government Code §§661.001 - 661.008 and Texas Labor Code §404.106. Texas Government Code §661.001 provides for definitions for Subchapter A. Section 661.002 provides for the establishment and administration of the sick leave pool. Section 661.003 provides guidelines for contribution to the sick leave pool. Section 661.004 provides guidance on the use of time in the pool. Section 661.005 provides guidelines for withdrawal of time from the pool. Section 661.006 provides for the limitation of withdrawal from the sick leave pool. Section 661.007 provides for equal treatment of leave used from the sick leave pool. Section 661.008 provides the estate of the deceased is not entitled to payment of unused time withdrawn by the deceased employee. Texas Labor Code §404.106 provides the Public Counsel rulemaking authority to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 17, 2009.

TRD-200905909
Brian White
Deputy Public Counsel
Office of Injured Employee Counsel
Effective date: January 6, 2010
Proposal publication date: October 23, 2009
For further information, please call: (512) 804-4182

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.3

The Texas State Soil and Water Conservation Board (TSSWCB) adopts an amendment to §523.3(j), concerning water quality management plans for poultry facilities, without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 7039) and will not be republished. The amendment brings agency procedures into compliance with legislative directives.

The amendment to §523.3(j)(1) deletes reference to a schedule of implementation dates by which poultry facilities must have obtained a certified water quality management plan, the latest of which expired January 1, 2008. The amendment adds language to clarify that all poultry facilities must request a certified water quality management plan prior to placing poultry at a facility consistent with Texas Water Code §26.302(b) and Senate Bill 1339 of the 77th Texas Legislature.

The amendment to §523.3(j)(2) deletes reference to a table of scheduled implementation dates that have all expired. The amendment adds language which is being moved from the former §523.3(j)(3) regarding the process by which poultry facilities may obtain a water quality management plan, deletes reference to §523.3(a) - (d), which are not part of the process of obtaining a water quality management plan, and adds conditional language referring to an assessment process in a new §523.3(j)(3).

In accordance with Senate Bill 1693 of the 81st Texas Legislature, the State Board is promulgating rules to assess the siting and construction of certain new or expanding poultry facilities. The amendment to add a new §523.3(j)(3) describes the facilities affected.

The amendment to add §523.3(j)(3)(A)(i) - (vi) lists the assessment criteria that will cause certain new or expanding poultry facilities to obtain an odor control plan.

The amendment to add §523.3(j)(3)(B) provides a table that will be used to assess those poultry facilities that do not meet the criteria in subparagraph (A).

The amendment to add §523.3(j)(3)(C) causes any expanding poultry facility that was previously approved under subparagraphs (A) or (B) to again submit to this process to gain approval for the expansion.

The amendment to add §523.3(j)(3)(D) allows a proposed poultry facility to avoid the requirements of subparagraphs (A) - (C) if each neighbor within one half of one mile of the proposed facility provides a letter of consent.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the TSSWCB to adopt rules that are necessary for the performance of its functions under the Agriculture 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 December 17, 2009.

TRD-200905933
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Effective date: January 6, 2010
Proposal publication date: October 9, 2009
For further information, please call: (254) 773-2250 x252

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CHAPTER 525. AUDIT REQUIREMENTS FOR SOIL AND WATER CONSERVATION DISTRICTS

SUBCHAPTER A. AUDITS OF DISTRICTS

31 TAC §§525.1, 525.3 - 525.9

The Texas State Soil and Water Conservation Board (TSSWCB) adopts amendments to §§525.1 and 525.3 - 525.9, Audit Requirements for Soil and Water Conservation Districts, concerning the requirements and guidelines for soil and water conservation districts to implement an audit. The amendments are adopted without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 7040) and will not be republished.

Section 525.1, Policy Statement, as amended inserts the word "Texas" in front of our agency name to better formalize our name.

Section 525.3, Duty to Audit and §525.4, Form of the Audit, as amended deletes the word "the" and replaces it with the word "an" for purposes of grammar.

Section 525.5, Audit Exemptions, as amended changes annual financial "report" to annual financial "statement" for those districts that do not meet the criteria for having an audit required; the audit requirement trigger as amended was raised from $25,000 in any year of the biennial period to $50,000; the connector word

"and" is deleted from §525.5(a)(3) as it is not needed with new additions to the section.

Section 525.5(a)(4) the connector word "and" is added to tie in the new additions; §525.5(a)(5) adds new language to exempt a district from having a required audit if the district is not otherwise required by the State Board to have an audit.

Section 525.5(b) as amended inserts the words "compilation and" in front of review and this requirement for the compilation and review is amended to not require it be completed by a certified public accountant provided new criteria is met; §525.5(b)(1) is created from prior language and amended by deleting "that"; §525.5(b)(2) adds new language to provide the audit exemption that a district did not have gross state revenues in excess of $100,000 in any year of the biennial; §525.5(b)(3) adds new language to provide the audit exemption that the district did not have cash, receivables, and short term investments balances were not in excess of $50,000 in any year of the biennial period.

Section 525.5(b)(4) adds new language to provide the audit exemption that the district is not otherwise required by any other state, federal or local entity to have an audit; §525.5(b)(5) adds new language to provide the audit exemption that the district is not required by the State Board to have an audit; §525.5(b)(6) adds new language to provide the person who performs a compilation and review shall be a certified public accountant or public accountant holding a permit from the Texas Board of Public Accountancy.

Section 525.5(c) and §525.5(d) as amended delete "report" and replace it with "statement, compilation and review, or audit" to reflect the changes already discussed; §525.5(d) as amended specify the annual financial statement, compilation and review or audit must be accompanied by an original affidavit signed by the district chairman.

Section 525.6, Access to and Maintenance of District Records, as amended delete the word "report" in two places and have that portion of the rule read "audit, compilation and review or annual financial statement" to reflect the changes already discussed.

Section 525.7, Filing of Audits and Annual Financial Reports, the sectional title as amended reads: "Filing of Audits, Compilation and Reviews, and Annual Financial Statements" to reflect the changes already discussed; §525.7(a) as amended insert the same descriptive terms as used in the title; deletes the unnecessary word "the" as used in the prior language; and amends the rule to stipulate that the documents required by this rule are no longer required to be filed with the Governor's Office and the Legislative Budget Board, and instead specify the documents will be available to them upon request; §525.7(b) as amended capitalize Audit Exemption, since it is in reference to a section title; delete language specifying three copies of an audit must be submitted and reduce the number to two as that number will serve the State Board's requirements; and specifying "an audit" instead of "the Audit Report" to make the sentence read correctly.

Section 525.7(c) as amended specifies that districts governed by the provisions of §525.5(a) (as amended) of this subchapter will need to file two copies of the audit, instead of three, as previously discussed; capital letters are changed and "statement" replaces the word "report" to be consistent with previous changes; and new language is added to specify that districts governed by the provisions of §525.5(b) (as amended) of this subchapter must file two copies of the compilation and review with the state board no later than 120 days after August 31 of each year to be consistent with previous text in this title.

Section 525.7(e) which stated that after proper review, the State Board would forward the required copies of the Audit Report or the Annual Financial Report to the Governor's Office and the Legislative Budget Board was deleted as the State Board is no longer required to automatically forward the documents.

Section 525.8(a) as amended replaces the "Annual Financial Report" with "An annual financial statement" as previously discussed.

Section 525.8(a)(1) as amended remove capitalization from the words "Annual Financial Statement" as previously discussed; and it removes "Soil and Water Conservation" from the name of the State Board to be consistent with overall language in this title.

Section 525.8(a)(2) as amended remove capitalization from the words "Annual Financial Statement" as previously discussed and deletes "on the Annual Financial Statement" as it is redundant language.

Section 525.8(b) replaces "The Audit Report" with "An audit" as previously discussed. §525.8(b)(1) replaces "Audit Report" with "audit" as previously discussed and deletes Soil and Water Conservation from the State Board name as previously discussed.

Section 525.8(b)(2) as amended to deletes "the Audit Report" and insert "an audit" as previously discussed and deletes "on the Audit Report" as redundant language.

Section 525.8(c) adds new language to specify that a compilation and review must be filed no later than 120 days after August 31 of each year as established in prior text.

Section 525.8(c)(1) adds new language to specify a district's funds will be considered out of compliance and placed on "hold" status if a compilation and review is not received by the State Board by January 1 as established in prior text.

Section 525.8(c)(2) adds new language to specify a district's funds will be placed on "hold" status if the compilation and review has been received by the due date but the district has not corrected errors by February 28 of each fiscal year as established in prior text.

Section 525.9(b) as amended replaces the word "report" with "statement" as discussed previously.

Section 525.9(c) as amended restates that two copies of an audit must be submitted instead of three.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the TSSWCB to adopt rules that are necessary for the performance of its functions under the Agriculture 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 December 17, 2009.

TRD-200905934

Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Effective date: January 6, 2010
Proposal publication date: October 9, 2009
For further information, please call: (254) 773-2250 x252

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 14. SCHOOL BUS SAFETY STANDARDS

SUBCHAPTER D. SCHOOL BUS SAFETY STANDARDS

37 TAC §14.52

The Texas Department of Public Safety (the department) adopts an amendment to §14.52, concerning School Bus Safety Standards, without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 7043).

Adoption of the amendment is necessary in order to update the rule so that it reflects the revised 2010 Texas School Bus Specifications as the current publication for model school buses that will be operated in the State of Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, §34.002, which authorizes the department to adopt safety standards for school buses; and Texas Transportation Code, §547.102, which authorizes the department to adopt standards and specifications for school bus equipment; and §547.7015, which authorizes the department to adopt rules governing the design, color, lighting, and other equipment, construction, and operation of a school bus for the transportation of schoolchildren.

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 December 17, 2009.

TRD-200905915
Stuart Platt
General Counsel
Texas Department of Public Safety
Effective date: January 6, 2010
Proposal publication date: October 9, 2009
For further information, please call: (512) 424-5848

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CHAPTER 27. CRIME RECORDS

SUBCHAPTER J. UNIFORM CRIME REPORTING

37 TAC §27.121

The Texas Department of Public Safety (the department) adopts amendments to §27.121, concerning Sexual Assault Reporting, without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 7044).

Adoption of the amendments is necessary in order to implement provisions of Texas Government Code, §411.042, directing the Texas Department of Public Safety, in consultation with statewide, nonprofit sexual assault programs, to establish rules and procedures to ensure law enforcement agencies report sexual assault offenses in the proper form and manner and at regular intervals.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, §411.042(i).

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 December 17, 2009.

TRD-200905916
Stuart Platt
General Counsel
Texas Department of Public Safety
Effective date: January 6, 2010
Proposal publication date: October 9, 2009
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT MANAGEMENT

SUBCHAPTER A. GENERAL

43 TAC §9.3

The Texas Department of Transportation (department) adopts amendments to §9.3, concerning Protest of Department Purchases under the State Purchasing and General Services Act. The amendments to §9.3 are adopted without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 7058) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department previously adopted §9.3 to provide a procedure for vendors to protest purchases made by the department. Under the current rule, the protest is addressed to the district engineer or the director of purchasing, depending on the location of the purchase, but sent to the director of general services. Revisions to this delegation authority are necessary due to recent

department organizational changes. The delegation authority afforded by this revision will also serve to accommodate future organizational changes that may affect personnel associated with the receipt and processing of department purchases under the State Purchasing and General Services Act.

Amendments to §9.3 update the delegation authority associated with department personnel responsible for the receipt and processing of protests related to the applicable purchases. All references to district engineer are removed throughout the section. The amendments also simplify the process prescribed for vendor complainants filing protests with the department by providing one point of contact within the department to whom complainants will send their complaints. The department point of contact will handle any further distribution of the complaint to department personnel.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §2155.076, which provides the department with the authority to develop rules for protest procedures associated with the State Purchasing and General Services Act.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101 and Government Code, §2155.076.

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 December 18, 2009.

TRD-200905938
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 7, 2010
Proposal publication date: October 9, 2009
For further information, please call: (512) 463-8680

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SUBCHAPTER D. BUSINESS OPPORTUNITY PROGRAMS

43 TAC §9.51, §9.54

The Texas Department of Transportation (department) adopts amendments to §9.51, Definitions, and §9.54, Historically Underutilized Business (HUB) Program, concerning business opportunity programs. The amendments to §9.51 and §9.54 are adopted without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 7059) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

House Bill 2702, 79th Legislature, Regular Session, 2005 amended Government Code, §2166.302 to exempt the department's building contracts from the requirement that all state building contracts incorporate the Comptroller of Public Accounts' (CPA) Uniform General Conditions, which require compliance with CPA's HUB rules. These rule amendments will enable bidders on building construction contracts to use the department's newly implemented electronic bidding system, which will improve the continuity and efficiency of the letting process without reducing contracting opportunities for participants in the HUB and SBE programs. The amendments will also allow building construction contracts to use the same contract provisions as construction contracts, which will improve contract management.

Amendments to §9.51 add a definition for CPA, which stands for Comptroller of Public Accounts. This definition is added due to the statutory change in responsibility from the Texas Building and Procurement Commission, later renamed to the Texas Facilities Commission, to the Comptroller of Public Accounts. Subsequent definitions are renumbered for clarity. Renumbered definition (17) corrects a reference to the Texas Building and Procurement Commission, changing the reference to the Comptroller of Public Accounts instead. Former definition (24), which refers to the Texas Building and Procurement Commission, is deleted as it is no longer necessary.

Amendments to §9.54 remove aviation contracts from the department's HUB program. The reference to aviation contracts is deleted as superfluous because, while the department administers aviation grants, it does not enter into aviation contracts. The amendments also correct the references to the CPA and the CPA's rules related to the HUB program.

Amendments to §9.54 also exempt building contracts from the requirement that each bidder submit a HUB plan prior to contract award. The amended rule will instead require only the low bidder to submit a HUB plan. Requirements for the form of the plan and submittal deadlines will be included in the contract or proposal for each project.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.702, which establishes the department's disadvantaged business program.

CROSS REFERENCE TO STATUTE

Government Code, §2161.004 and §2166.302.

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 December 18, 2009.

TRD-200905939

Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 7, 2010
Proposal publication date: October 9, 2009
For further information, please call: (512) 463-8683

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CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING
SUBCHAPTER A. TRANSPORTATION PLANNING

43 TAC §15.9, §15.10

The Texas Department of Transportation (department) adopts amendments to §15.9, Corridor Advisory Committees, and new §15.10, Corridor Segment Advisory Committees, concerning transportation planning. The amendments to §15.9 and new §15.10 are adopted without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 8016) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

At the July 26, 2007 and August 23, 2007 meetings of the Texas Transportation Commission (commission), the commission requested that rules be drafted that would authorize the creation of committees to assist the department in the planning and development of major corridors in the state, including elements of the Trans-Texas Corridor. The commission established that focusing only on what can be viewed as one piece of the puzzle, in that case the development of the Trans-Texas Corridor, would not fully provide the transportation solutions needed to remedy critically important mobility needs in the state. The commission subsequently adopted §15.9, concerning corridor advisory committees, providing that the commission by order will create advisory committees to assist the department in the transportation planning process for the Interstate Highway 35 corridor and in the corridor planned as part of Interstate Highway 69 (including TTC-69), and may create an advisory committee for any other corridor, including an element of the Trans-Texas Corridor. Corridor advisory committees have been created for the Interstate Highway 35 and Interstate Highway 69 corridors.

Transportation Code, §201.601 and 23 U.S.C. §135 require the department to develop a statewide transportation plan and transportation improvement program that encompasses all modes of transportation. Transportation Code, §201.601, 23 U.S.C. §135, and other law requires the department to seek opinions and assistance from other state agencies, political subdivisions, and other interested parties concerning the transportation plan and transportation improvement program. Transportation Code, §201.117 authorizes the commission to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, and to determine the purpose, duties, and membership of each advisory committee.

Transportation improvement programs are created for metropolitan planning areas and other areas of the state outside metropolitan planning areas. Generally, segments of a corridor will be located in those areas but not the entire corridor. Segment level advisory committees, as opposed to corridor advisory committees, are best able to assist the department in this part of the transportation planning process, as those committees, given their structure and membership, would be more focused on local issues and concerns.

Under current 43 TAC §24.13, the commission creates corridor segment committees for proposed segments of the Trans-Texas Corridor or certain transportation facilities that may become segments of the Trans-Texas Corridor to provide input, advice, and recommendations to the commission and the department regarding the designation of a route for the segment for which the committee was created and the construction of the proposed segment of the Trans-Texas Corridor or a facility that may become all or part of the segment. A corridor segment committee may also provide input, advice, and recommendations on other segment level planning, development, and financing matters as requested by the department. New §15.10 provides for the creation of corridor segment advisory committees. The functions of corridor segment committees created under 43 TAC §24.13 will be transitioned to these new advisory committees under new §15.10. The committee structure provided in §15.9 and new §15.10 will better address and distinguish between corridor-wide issues and local issues and concerns.

Amendments to §15.9(a) delete references to TTC-35, the proposed element of the Trans-Texas Corridor that, as proposed, would generally parallel Interstate Highway 35. The department has recommended the no action alternative on the TTC-35 environmental study to the Federal Highway Administration. This recommendation by the department will effectively end efforts to develop TTC-35 through the Trans-Texas Corridor concept.

Amendments to §15.9(c) clarify that corridor advisory committees may coordinate with, or obtain information from, a corridor segment advisory committee created under new §15.10, instead of the corridor segment committees created under 43 TAC §24.13.

Amendments to §15.9(e) revise the sunset date of corridor advisory committees created by the commission. Subsection 15.9(e) currently provides that each advisory committee created under §15.9 is abolished December 31, 2009. This sunset date was established in accordance with Government Code, §2110.008. The commission determines that each existing advisory committee created under §15.9 is necessary for improved communication between the department and the public. Therefore, §15.9(e) is amended to revise the sunset date to December 31, 2011.

New §15.10(a) provides that the commission by order will create a corridor segment advisory committee to assist the department in the transportation planning process for the Interstate Highway 35 corridor and in the corridor planned as part of Interstate Highway 69 (including TTC-69), and may create an advisory committee for any other corridor.

The purpose of a corridor segment advisory committee is to facilitate and achieve support and consensus from affected communities, governmental entities, and other interested parties in the planning of transportation improvements in the segment of a corridor for which it is created and in the establishment of development plans for that segment. An advisory committee's advice and recommendations will provide the department with an enhanced understanding of public, business, and private concerns about the segment for which it is created, facilitating the department's communications and project development objectives and resulting in greater cooperation between the department and all affected parties during project planning and development.

New §15.10(b) prescribes the membership of a corridor segment advisory committee. Members of a committee will be appointed by counties, metropolitan planning organizations, and other entities designated by the commission within whose boundaries or service area all or part of a proposed segment is located. The commission may appoint as a member individuals who reside or have a business in the area in which a segment may be located, and who have an interest in transportation. Having members appointed by those entities will ensure that a committee represents the interests of local and regional groups that will best be able to carry out the purposes of an advisory committee as prescribed in §15.10(a).

New §15.10(c) prescribes the duties of a corridor segment advisory committee. An advisory committee shall report to the executive director its advice and recommendations on transportation improvements to be made in the segment of a corridor for which it is created, including facilities to be included in a development plan for that segment, facilities to be included in a development plan for a segment of the Trans-Texas Corridor, and upgrades and other improvements to be made to existing facilities located in that segment, and on other segment level planning and development matters as requested by the department. In developing advice and recommendations, an advisory committee will evaluate economic, political, societal, and demographic population trends affecting transportation, and will consider existing facilities, upgrades to existing facilities, new or planned facilities, multimodal solutions, and available financing options.

New §15.10(d) provides that a corridor segment advisory committee is subject to the requirements for operating procedures applicable to a department advisory committee under 43 TAC §1.85.

New §15.10(e) provides that a corridor segment advisory committee may be abolished at any time by the commission, but in no event may a committee continue beyond completion of the segment for which the committee is created. Except as otherwise specified, an advisory committee created under §15.10 is abolished December 31, 2011, unless the commission amends its rules to provide for a different date.

COMMENTS

No comments on the proposed amendments and new section were received.

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, and Government Code, Chapter 2110, which requires a state agency establishing an advisory committee to by rule state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 201 and Government Code, Chapter 2110.

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 December 18, 2009.

TRD-200905940
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 7, 2010
Proposal publication date: November 13, 2009
For further information, please call: (512) 463-8683

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Appraiser Licensing and Certification Board

Title 22, Part 8

The Texas Appraiser Licensing and Certification Board (TALCB) proposes to review Chapters 155 (Rules Relating to Standards of Practice, §155.1) and 157 (Rules Relating to Practice and Procedure, §§157.2 - 157.20) in accordance with the Texas Government Code, §2001.039.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. During the review process, TALCB may also determine (1) that a specific rule may need to be amended to further refine TALCB's legal and policy considerations, (2) whether the rules reflect current TALCB procedures, (3) that no changes to a rule as currently in effect are necessary, or (4) that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

TALCB invites comments during the review process for 30 days following the publication of this notice in the *Texas Register.* Any questions or comments pertaining to this notice of intention to review should be directed to Devon V. Bijansky, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to devon.bijansky@trec.state.tx.us within 30 days of publication.

TRD-200905962
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Filed: December 18, 2009

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Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission files this notice of intent to review Chapter 307, Proceedings Before the Commission, Chapter 321, Pari-Mutuel Wagering, and Chapter 323, Disciplinary Action and Enforcement. This review is conducted pursuant to the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption their administrative rules every four years.

The review shall assess whether the reasons for initially adopting the rules within each chapter continue to exist and whether any changes to the rules should be made.

All comments or questions in response to this notice of rule reviews may be submitted in writing to Carolyn Weiss, Assistant to the Executive Director of the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907. The Commission will accept public comments regarding the chapter and the rules within it for 30 days following publication of this notice in the *Texas Register.*

Any proposed changes to the rules within Chapters 307, 321, and 323 as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-200905905
Mark Fenner
General Counsel
Texas Racing Commission
Filed: December 16, 2009

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Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 356, Groundwater Management, in accordance with Texas Government Code §2001.039.

The Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 356 continues to exist. The comment period will end at 5:00 p.m., 30 days after this notice is published in the *Texas Register.*

Comments regarding this rule review may be submitted by email to *rulescomments@twdb.state.tx.us*, by fax: at (512) 463-5580 or by mail: Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

TRD-200905925
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: December 17, 2009

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The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 371, Drinking Water State Revolving Fund, in accordance with Texas Government Code §2001.039.

The Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 371 continues to exist. The comment period will end at 5:00 p.m., 30 days after this notice is published in the *Texas Register.*

Comments regarding this rule review may be submitted by email to *rulescomments@twdb.state.tx.us,* by fax: at (512) 463-5580 or by mail: Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

TRD-200905926
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: December 17, 2009

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The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 375, Clean Water State Revolving Fund, in accordance with Texas Government Code §2001.039.

The Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 375 continues to exist. The comment period will end at 5:00 p.m., 30 days after this notice is published in the *Texas Register.*

Comments regarding this rule review may be submitted by email to *rulescomments@twdb.state.tx.us,* by fax: at (512) 463-5580 or by mail: Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

TRD-200905927
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: December 17, 2009

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The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 380, Alternative Dispute Resolution, in accordance with Texas Government Code §2001.039.

The Board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in 31 TAC Chapter 380 continues to exist. The comment period will end at 5:00 p.m., 30 days after this notice is published in the *Texas Register.*

Comments regarding this rule review may be submitted by email to *rulescomments@twdb.state.tx.us,* by fax: at (512) 463-5580 or by mail: Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

TRD-200905928
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: December 17, 2009

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Adopted Rule Reviews

Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission has completed its review of 16 TAC Part 8, Chapter 313, Officials and Rules of Horse Racing, in accordance with Government Code, §2001.039. Notice of the rule review was published in the December 19, 2008, issue of the *Texas Register* (33 TexReg 10335). During the review, the Commission has proposed and adopted amendments to 16 TAC §§313.41, 313.101, 313.106, 313.301, 313.406, 313.426, 313.441, 313.505, and 313.507.

The commission received no comments on the rule review in response to the notice other than the comments received in response to individual rule proposals.

The commission has determined that the reasons for initially adopting each rule within the chapter continue to exist and readopts the chapter with the amended rules as referenced above.

This completes the review of 16 TAC Part 8, Chapter 313.

TRD-200905903
Mark Fenner
General Counsel
Texas Racing Commission
Filed: December 16, 2009

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The Texas Racing Commission has completed its review of 16 TAC Part 8, Chapter 315, Officials and Rules of Greyhound Racing, in accordance with Government Code, §2001.039. Notice of the rule review was published in the December 19, 2008, issue of the *Texas Register* (33 TexReg 10335). During the review, the Commission proposed and adopted an amendment to 16 TAC §315.1. The Commission also proposed and adopted new §315.43 and §315.44.

The commission received no comments on the rule review in response to the notice other than the comments received in response to individual rule proposals.

The commission has determined that the reasons for initially adopting each rule within the chapter continue to exist and readopts the chapter with the new and amended rules as referenced above.

This completes the review of 16 TAC Part 8, Chapter 315.

TRD-200905904
Mark Fenner
General Counsel
Texas Racing Commission
Filed: December 16, 2009

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §84.204(h)

Texas Disclosure of Equity in Trade-in Motor Vehicle		
The information below is valid as of _____ (date) and after this date is no longer valid.		
Name of Buyer(s) Date	Trade-in Make / Model / Year VIN#	
Dealership Allowance for Trade-in	$	
Amount Owed on Trade-in	$	
Equity Amount *If the EQUITY amount is NEGATIVE, the value the dealer is offering for your trade-in is less than what you currently owe on your trade-in. The amount of negative equity may be further reduced by the amount of any cash downpayment and manufacturer's rebate and may be included in the Amount Financed under your retail installment contract as an itemized charge.	$	Equity: ☐ POSITIVE ☐ NEGATIVE
Cash Price of Vehicle	$	
Amount Financed	$	
Buyer(s) Signature(s) _____ _____	Date _____ _____	
Dealer's Signature _____ Dealer's Printed Name _____	Date _____	
Name of Dealership _____ Street Address _____ City, State, Zip _____ Telephone No. _____		

Figure: 7 TAC §84.308(e)(1)

Original Financing Term (Months)	Rate per $1,000 of Amount Financed	
	Retail Installment Sales Contract	Balloon Retail Installment Sales Contract / Lease
0-12	$ 2.00	$ 6.50
13-23	4.00	10.50
24-35	8.00	14.50
36-60	14.00	27.00
61+	25.00	37.00

Figure: 7 TAC §84.308(e)(2)

Original Financing Term (Months)	Rate per $100 or Percentage of Amount Financed
0-12	4.75
13-35	6.00
36-+	7.00

Figure: 16 TAC §25.126(e)

[TDU Letterhead]

Date: _____

Address: _____

ESI-ID: _____

NOTICE OF METER TAMPERING, DIVERSION, OR THEFT OF SERVICE

We have identified electric meter tampering, diversion, or theft of electric service at your home or business.

You will be billed for any applicable charges relating to correcting the condition at the site and up to six months of usage. A bill for these charges will be issued by your retail electric provider (REP). Your REP may bill you for these charges and may authorize disconnection of service if satisfactory payment arrangements cannot be reached. You will not be able to switch your service to another REP until you make satisfactory payment arrangements for these charges.

Figure: 22 TAC §153.24(9)

Penalty Matrix

Nature of Violation(s)	Range of Recommended Actions
1st occurrence – violation(s) of the Act, Rules, and/or USPAP that do not, individually or collectively, constitute evidence of a serious inability or unwillingness to comply	First-time violator letter with acknowledgement of violation and/or adminstrative penalty of $100 to $500 per violation
1st occurrence – violation(s) of the Act, Rules, and/or USPAP that, individually or collectively, constitute evidence of a serious but remediable deficiency	First time violator letter with agreement to take remedial course work and/or to adopt preventive policies and procedures and/or administrative penalty of $250 to $1,000 per violation
1st occurrence – violation(s) of the Act, Rules, and/or USPAP that, individually or collectively, was done willfully or in a grossly negligent manner	Suspension or revocation and an administrative penalty of $500 to $1,500 per violation
2nd occurrence – violation(s) of the Act, Rules, and/or USPAP that do not, individually or collectively, constitute evidence of a serious inability or unwillingness to comply	Administrative penalty of $500 to $1,500 per violation with requirement to take remedial course work and/or to adopt preventive policies and procedures
2nd occurrence – violation(s) of the Act, Rules, and/or USPAP that, individually or collectively, constitute evidence of a serious but remediable deficiency	Administrative penalty of $500 to $1,500 per violation plus requirement to take remedial in-class course work and to adopt preventive policies and procedures
2nd occurrence – violation(s) of the Act, Rules, and/or USPAP that, individually or collectively, were done willfully or in a grossly negligent manner	Revocation and administrative penalty of $1,500 per violation
3rd occurrence – violation(s) of the Act, Rules, and/or USPAP that do not, individually or collectively, constitute evidence of a serious inability or unwillingness to comply	Administrative penalty of $1,000 to $1,500 per violation with requirement to take remedial in-class course work and/or to adopt preventive policies and procedures
3rd occurrence – violation(s) of the Act, Rules, and/or USPAP that, individually or collectively, constitute evidence of a serious but remediable deficiency	Administrative penalty of $1,500 per violation and/or revocation or suspension for up to 180 days with requirement to take remedial in-class course work and to adopt preventive policies and procedures
Unlicensed activity	Administrative penalty of $1,500 to $5,000

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective January 1, 2010

An additional 1/2 percent special purpose district sales and use tax for County Health Services District as permitted under Chapter 324 of the Tax Code will become effective January 1, 2010 in the special purpose district listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Mason County Health Services	5157500	.010000	.072500

A 1/2 percent special purpose district sales and use tax will become effective January 1, 2010 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Iowa Colony Crime Control and Prevention District	5020514	.005000	SEE NOTE 1
Rockdale Municipal Development District	5166518	.005000	SEE NOTE 2

NOTE 1: The boundaries of the Iowa Colony Crime Control and Prevention District are the same boundaries as the city of Iowa Colony.

NOTE 2: The Rockdale Municipal Development District is located in the south central portion of Milam county, which has a County sales and use tax. The district includes areas annexed by the city of Rockdale starting in 2002 and the city's extra-territorial jurisdiction. Contact the district representative at (512) 446-2511 for additional boundary information.

TRD-200905943
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: December 18, 2009

♦ ♦ ♦

Employees Retirement System of Texas

Revised Notice - Request for Applications Texas Employees Group Benefits Program Health Maintenance Organizations

This Notice takes place of the previous Notice published on November 27, 2009, issue of the *Texas Register* (34 TexReg 8559), TRD-200905234.

In accordance with §1551.213 and §1551.214 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Application ("RFA") from qualified Health Maintenance Organizations ("HMOs") to provide services within their approved service areas in Texas under the Texas Employees Group Benefits Program ("GBP"), during Fiscal Year 2011, beginning September 1, 2010 through August 31, 2011. The locations in Texas for which applications may be made are included in the RFA. HMOs shall provide the level of benefits required in the RFA and meet other requirements.

An HMO wishing to submit an application to this request must meet at least the following minimum qualifications: 1) have a current Certificate of Authority from the Texas Department of Insurance, 2) have been providing managed care services in the service area for which the application is made at least since March 1, 2009, and 3) demonstrate that it has a provider network in the proposed service area, as of the due date of the application, adequate to provide health care to GBP participants. The RFA will be available on or after December 22, 2009 from the ERS' website, and all applications must be received at ERS by 12:00 Noon (CT) on February 2, 2010. To access the RFA from the website, qualified HMOs shall email their request to: ivendorquestions@ers.state.tx.us. The email request shall include the HMO's full legal name, street address, as well as phone and fax numbers of an immediate HMO contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting HMO that will permit access to the secured RFA. General questions concerning the RFA shall be emailed to: ivendorquestions@ers.state.tx.us. Inquiries and responses, if applicable, are frequently updated. The RFA will be discussed at an

HMO telephone conference call on January 7, 2010, beginning at 3:00 p.m. (CT). HMOs may access ERS' website for details regarding the telephone conference call by selecting the Vendor link.

The ERS Board of Trustees is not required to select the lowest bid but shall take into consideration other relevant criteria, including ability to service contracts, past experience, and financial ability. ERS reserves the right to select none, one, or more than one HMO per service area when it is determined that such action would be in the best interest of ERS, the GBP, its participants or the state of Texas. ERS reserves the right to reject any or all applications and call for new applications if deemed by ERS to be in the best interests of ERS, the GBP, its participants or the state of Texas. ERS also reserves the right to reject any application submitted that does not fully comply with the RFA's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFA and will not pay any costs incurred by any entity in responding to this notice or the RFA or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFA and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the GBP, its participants or the state of Texas.

TRD-200905921

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: December 17, 2009

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 1, 2010.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 1, 2010.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Kathy Luu dba A Nam Gas; DOCKET NUMBER: 2009-1229-PST-E; IDENTIFIER: RN100884709; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $3,149; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: City of Berryville; DOCKET NUMBER: 2009-1728-PWS-E; IDENTIFIER: RN101390003; LOCATION: Berryville, Henderson County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification within 24 hours of a water outage; and 30 TAC §290.46(f)(3)(A)(vi), by failing to maintain maintenance records for water system equipment and facilities, including any information about flushing procedures, pressure maintenance issues, or disinfection of the lines that occurred as a result of water outages; PENALTY: $305; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: CITY INTERNATIONAL, LIMITED dba Courtesy Food Mart 7; DOCKET NUMBER: 2009-1499-PST-E; IDENTIFIER: RN102780269; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS); and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $3,620; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Crystal City; DOCKET NUMBER: 2009-1560-PWS-E; IDENTIFIER: RN101242162; LOCATION: Crystal City, Zavala County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.41(c)(1)(F)(iv), by failing to obtain a sanitary control easement or sanitary control easements covering land within 150 feet of the wells, or executive director approval for a substitute authorized under 30 TAC §290.41(c)(1)(F)(iv); and 30 TAC §290.45(b)(1)(D)(iii), by failing to provide two or more pumps that have a total capacity of two gallons per minute (gpm) per connection; PENALTY: $856; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: D & K Development Corporation; DOCKET NUMBER: 2009-0143-MWD-E; IDENTIFIER: RN102287109; LOCATION: Tarrant County; TYPE OF FACILITY: domestic wastewater collection and treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013518001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permit effluent limits for flow, ammonia nitrogen, and total suspended solids; and 30 TAC §305.125(17) and TPDES Permit Number WQ0013518001, Sludge Provisions, by failing to submit the annual sludge report at the interval specified in the permit; PENALTY: $62,400; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: East Crawford Water Supply Corporation; DOCKET NUMBER: 2009-1660-PWS-E; IDENTIFIER: RN101436418; LOCATION: Crawford, McLennan County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(v) and THSC,

§341.0315(c), by failing to provide emergency power that will deliver water at a rate of 0.35 gpm per connection; PENALTY: $802; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2008-0080-AIR-E; IDENTIFIER: RN100210574; LOCATION: Liverpool, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §111.111(a)(4) and (1)(C), Air Permit Number 4634B, Special Condition (SC) Numbers 1 and 10, Standard Permit Registration Number 81006, 40 Code of Federal Regulations (CFR) §60.18(c)(2), and THSC, §382.085(b), by failing to prevent unauthorized emissions and maintain a flame on the Olefins Main Flare; PENALTY: $50,000; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: City of Evant; DOCKET NUMBER: 2009-1356-PWS-E; IDENTIFIER: RN101396802; LOCATION: Evant, Coryell County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.41(c)(3)(O) and §290.43(e) and TCEQ Agreed Order Docket Numbers 2006-0813-PWS-E and 2007-1291-PWS-E, Ordering Provision Numbers 2.b.iii. and 2.b.i., by failing to provide an intruder-resistant fence or lockable building that protects the wells and ground storage tanks from contamination and damage by trespassers; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure good working condition and general appearance of the facility and its equipment; PENALTY: $1,872; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: ExxonMobil Corporation; DOCKET NUMBER: 2009-1221-IHW-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petroleum refining; RULE VIOLATED: 30 TAC §335.2(a), by failing to prevent the shipment of industrial hazardous waste to an unauthorized hazardous facility; PENALTY: $40,550; Supplemental Environmental Project (SEP) offset amount of $16,220 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2009-1227-AIR-E; IDENTIFIER: RN101975746; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: bulk petroleum storage; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(C), and 122.146(2), Federal Operating Permit (FOP) Number O-02754, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit an annual compliance certification and semi-annual deviation report in a timely and accurate manner; PENALTY: $5,000; SEP offset amount of $2,000 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Federal Aviation Administration; DOCKET NUMBER: 2009-0829-PST-E; IDENTIFIER: RN104783832; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: control tower with an emergency generator and one underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST for releases; and 30 TAC §334.45(e)(4)(B)(i), by failing to install, as a minimum, a four-inch diameter (nominal) observation well; PENALTY: $4,375; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: First National Bank of Hebbronville; DOCKET NUMBER: 2009-1494-PST-E; IDENTIFIER: RN102281821; LOCATION: Benavides, Duval County; TYPE OF FACILITY: inactive USTs; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs; PENALTY: $2,375; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(13) COMPANY: David Gillott; DOCKET NUMBER: 2009-1916-WOC-E; IDENTIFIER: RN105796684; LOCATION: Wise County; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Theresa Griffin; DOCKET NUMBER: 2009-1915-WOC-E; IDENTIFIER: RN105813703; LOCATION: Ingleside, San Patricio County; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(15) COMPANY: Hess Corporation; DOCKET NUMBER: 2009-1173-AIR-E; IDENTIFIER: RN103758470; LOCATION: Seminole, Gaines County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), New Source Review (NSR) Flexible Permit Number 9235/PSD-TX-485M1, SC Number 3, and THSC, §382.085(b), by failing to maintain the tail gas incinerator fire box temperatures at or above the permitted limits; and 30 TAC §101.20(3) and §116.115(c), NSR Flexible Permit Number 9235/PSD-TX-485M1, SC Number 8, and THSC, §382.085(b), by failing to maintain a minimum required in-stack incinerator oxygen concentration; PENALTY: $19,050; SEP offset amount of $7,620 applied to RC&D - Clean School Buses; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(16) COMPANY: INEOS USA, LLC; DOCKET NUMBER: 2009-1084-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), NSR Flexible Permit Number 95/PSD-TX-854M2, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $40,000; SEP offset amount of $20,000 applied to RC&D - Clean School Buses; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Kesss Investments Number 10001, LLC dba The Market; DOCKET NUMBER: 2009-1399-PST-E; IDENTIFIER: RN105073381; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $4,429; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(18) COMPANY: Mobil Chemical Company, Inc.; DOCKET NUMBER: 2009-1397-AIR-E; IDENTIFIER: RN100211903; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: polyethylene plastic manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), FOP Number O-02277, SC Number 9, Air Permit Number 8758, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $3,150; SEP offset amount of $1,260 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: MULTI-CHEM GROUP, LLC; DOCKET NUMBER: 2009-0475-IHW-E; IDENTIFIER: RN103948733; LOCATION: Sonora, Sutton County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §335.4, by failing to manage industrial solid waste in a manner as to prevent the discharge or threat of discharge into or adjacent to water in the state; 30 TAC §§335.62, 335.503(a), and 335.513 and 40 CFR §262.11, by failing to conduct hazardous waste determinations and classifications; 30 TAC §335.6(c) and (h), by failing to provide notification to the TCEQ of changes in the management of industrial solid and hazardous waste and to notify the TCEQ of the intent to conduct recycling of industrial solid or municipal hazardous waste; 30 TAC §335.9(a)(2)(A) and (B), by failing to provide a complete and correct annual waste summary; 30 TAC §335.69(a) and 40 CFR §262.34(a), by failing to comply with the 90-day accumulation time limitation for storing hazardous waste; 30 TAC §335.69(a)(1)(B) and §335.112(a)(8) and 40 CFR §§262.34(a)(1)(ii), 265.192(a), 265.1085(c)(3), and 265.202, by failing to keep a container holding waste closed during storage, except when adding or removing hazardous waste; 30 TAC §335.69(a)(2) and 40 CFR §262.34(a)(2), by failing to clearly mark a container storing hazardous waste with the date on which the accumulation period began; 30 TAC §335.69(a)(1)(B) and §335.112(a)(9) and 40 CFR §§262.34(a)(1) and (ii), 265.192(b) and (d), and 265.193(a)(1), by failing to conduct proper tank assessments, provide secondary containment, have an independent qualified installation inspector or a professional engineer inspect the system, and conduct tank and ancillary tightness testing; 30 TAC §335.10(c) and §335.431(c) and 40 CFR §262.20(a)(1) and §268.7(a)(2), by failing to properly complete all manifests for the shipment of hazardous and Class 1 wastes; and 30 TAC §335.67(b) and 40 CFR §262.32(b), by failing to properly mark each container of 119 gallons or less used to store hazardous waste; PENALTY: $141,335; SEP offset amount of $56,534 applied to RC&D - *Abandoned Tire Clean Up*; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(20) COMPANY: N & D MEKHAIL ENTERPRISES, INC. dba N & D Enterprise; DOCKET NUMBER: 2009-1392-PST-E; IDENTIFIER: RN102917937; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $2,048; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Natural Gas Pipeline Company of America, LLC; DOCKET NUMBER: 2009-1362-AIR-E; IDENTIFIER: RN100225481; LOCATION: Gray County; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §106.8(c)(2) and THSC, §382.085(b), by failing to maintain sufficient information in records of blowdowns to demonstrate that they are appropriately categorized as routine maintenance, and are therefore authorized by Permit by Rule 30 TAC §106.512; and 30 TAC §122.145(4) and §122.145(2), Generating Operating Permit Number O-00826, Oil and Gas General Operating Permit Number 514, GTC and Site-Wide Requirements (b)(2) and (b)(8)(B)(iv)(e)(2), and THSC, §382.085(b), by failing to report deviations; PENALTY: $10,100; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(22) COMPANY: Regency Field Services, LLC; DOCKET NUMBER: 2009-1670-AIR-E; IDENTIFIER: RN100211408; LOCATION: Coyanosa, Pecos County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §122.147(a)(3), 40 CFR §64.7(c), FOP Number O-02546, Special Terms and Conditions Numbers 6A and C; and THSC, §382.085(b), by failing to document all compliance assurance monitoring readings; and 30 TAC §106.8 and §106.512(2)(C)(ii), Permit by Rule Registration Number 31232, Permit Exemption Registration Numbers X-21634, X-21635, and 25624, Standard Exemption Number 6, Condition 6.(b)(3)(B) (Effective dates July 20, 1992 and May 4, 1994), and THSC, §382.085(b), by failing to record all quarterly measurements of nitrogen oxides and carbon monoxide.; PENALTY: $938; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(23) COMPANY: RP25 Development, LP; DOCKET NUMBER: 2009-0855-WQ-E; IDENTIFIER: RN105245013; LOCATION: Colleyville, Tarrant County; TYPE OF FACILITY: residential development; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; and the Code, §26.121(a), by failing to prevent the unauthorized discharge of sediment; PENALTY: $14,560; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: S.L.C. Water Supply Corporation; DOCKET NUMBER: 2009-1315-MLM-E; IDENTIFIER: RN101265908; LOCATION: Limestone County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(e)(6)(A) and TCEQ Agreed Order Docket Number 2007-1275-PWS-E, Ordering Provision Number 2.a.i., by failing to employ at least one operator who holds a valid Class "B" or higher surface water license; 30 TAC §290.42(d)(2)(E) and TCEQ Agreed Order Docket Number 2007-1275-PWS-E, Ordering Provision Number 2.a.ii., by failing to provide an appropriate air gap on the filter-to-waste line; 30 TAC §290.42(d)(11)(D)(i) and TCEQ Agreed Order Docket Number 2007-1275-PWS-E, Ordering Provision Number 2.b.iii., by failing to equip each filter unit with a manually adjustable rate-of-flow controller that includes a rate-of-flow indicator or a flow control valve with an indicator; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.5 milligrams per liter total chlorine; 30 TAC §290.46(f)(2), (3)(D)(ii), and (E)(iv), by failing to maintain all facility operation and maintenance records and have those records available for review; 30 TAC §290.43(c)(8), by failing to maintain the exterior coating on the clearwell in accordance with American Water Works Association standards; 30 TAC §290.45(b)(2)(G) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(b)(2)(A) and THSC, §341.0315(c), by failing to provide a raw water pumping capacity of 0.6 gpm per connection; and the Code, §26.121(c), by failing to prevent an unauthorized discharge from a detention pond at the facility; PENALTY: $12,215; SEP offset amount of $12,215 applied to Keep Texas Beautiful - Texas Waterways Cleanup Program; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: Sofia Enterprises, L.P. dba HTC Industries; DOCKET NUMBER: 2009-1291-AIR-E; IDENTIFIER: RN102754652; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: rendering plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 8710, SC Numbers 5 and 6, and THSC, §382.085(b), by failing to place all rendering raw materials received at the plant in the rendering processing receiving pit within eight hours after arrival and within 18 hours after slaughter or leaving a refrigerated environment; PENALTY: $5,200; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(26) COMPANY: Strike Construction, LLC; DOCKET NUMBER: 2009-1140-AIR-E; IDENTIFIER: RN105758478; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: pipeline construction site; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain permit authorization; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent nuisance dust conditions; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: Wallace Allen Raynor dba Sun Acres Mobile Home Park; DOCKET NUMBER: 2009-1732-PWS-E; IDENTIFIER: RN101204097; LOCATION: Kilgore, Gregg County; TYPE OF FACILITY: mobile home park with PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total trihalomethanes; PENALTY: $390; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(28) COMPANY: Richard Tomlin and Vicki Tomlin; DOCKET NUMBER: 2009-1384-MSW-E; IDENTIFIER: RN103000055; LOCATION: Shelby County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent unauthorized disposal of municipal solid waste; PENALTY: $1,300; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(29) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2009-1640-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 3908B, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: VAM USA; DOCKET NUMBER: 2009-1308-IWD-E; IDENTIFIER: RN105378178; LOCATION: Harris County; TYPE OF FACILITY: pipe threading and coating; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0004841000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number WQ0004841000, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $33,280; SEP offset amount of $16,640 applied to Gulf Coast Waste Disposal Authority - River, Lakes, Bays, and Bayous Trash Bash; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(31) COMPANY: WWY, INC. dba King Food Mart; DOCKET NUMBER: 2009-1587-PST-E; IDENTIFIER: RN102006715; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that each current employee received in-house Stage II vapor recovery training; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II VRS; PENALTY: $3,865; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200905945
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 18, 2009

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 1, 2010.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 1, 2010.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Mark Forster and Linda Forster; DOCKET NUMBER: 2008-1136-MLM-E; TCEQ ID NUMBER: RN104947023; LOCATION: 4125 South Interstate 35 West, Alvarado, Johnson County; TYPE OF FACILITY: furniture store; RULES VIOLATED: 30 TAC §111.201 and §330.15(c) and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the general prohibition relating to outdoor burning and disposing of waste; PENALTY: $1,050; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Marvin Wayne Taylor; DOCKET NUMBER: 2008-0115-MSW-E; TCEQ ID NUMBER: RN105362701; LOCATION: 1071 County Road 3341, Joaquin, Shelby County; TYPE OF FACILITY: automotive repair shop; RULES VIOLATED: 30 TAC §324.6 and 40 Code of Federal Regulations (CFR) §279.22(c), by failing to label or clearly mark containers used to store used oil with the words "used oil"; 30 TAC §324.15 and 40 CFR §279.22(d), by failing to properly respond to the release of used oil upon detection; 30 TAC §324.4 and 40 CFR §279.12(b), by failing to comply with used oil prohibitions; 30 TAC §328.23(b) and (c)(2), by failing to prevent used oil filters from being placed on the ground and failing to store used oil filters in a closed container; and 30 TAC §328.56(d)(4), by failing to apply vector controls every two weeks; PENALTY: $2,250; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Micah Mosonyi dba Shenandoah Corporation International; DOCKET NUMBER: 2007-1634-WQ-E; TCEQ ID NUMBER: RN104990445; LOCATION: 6196 Teague Road, Fort Worth, Tarrant County; TYPE OF FACILITY: landfill; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to develop and implement a storm water pollution prevention plan, and obtain permit coverage to discharge storm water at an industrial site; PENALTY: $3,150; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: N.E. Construction, L.L.P.; DOCKET NUMBER: 2007-1197-MSW-E; TCEQ ID NUMBER: RN105242549; LOCATION: 103 High School Drive, Grand Prairie, Dallas County; TYPE OF FACILITY: construction company; RULES VIOLATED: 30 TAC §330.7 and §330.15(a)(3), by failing to prevent the unauthorized transportation and disposal of municipal solid waste; PENALTY: $33,061; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: SSS Construction, L.L.C.; DOCKET NUMBER: 2008-0139-MLM-E; TCEQ ID NUMBER: RN105137434; LOCATION: 30204 Smithson Valley Road, Bulverde, Bexar County; TYPE OF FACILITY: construction materials facility; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer protection plan prior to conducting a regulated activity over the Edwards Aquifer Recharge Zone; 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with sand and gravel mining activities to water in the state through an individual permit or Multi-Sector General Permit issued under the Texas Pollutant Discharge Elimination System; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of approximately 20 - 30 cubic yards of municipal solid waste at an unauthorized disposal site; PENALTY: $15,000; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Wood Processing Services, Inc.; DOCKET NUMBER: 2008-0678-MSW-E; TCEQ ID NUMBER: RN104606801; LOCATION: 3236 Chambers Street, Venus, Johnson County; TYPE OF FACILITY: wood recycling; RULES VIOLATED: 30 TAC §328.5(d) and §37.921, and TCEQ AO Docket Number 2005-1314-MSW-E; Ordering Provision 2.c.ii and 2.d, by failing to establish and maintain approved financial assurance for the closure of a recycling facility that stores combustible materials outdoors; and TWC, §5.702 and §26.0291, and 30 TAC §205.6, by failing to pay outstanding fees associated to General Permit Stormwater for fiscal year 2008; PENALTY: $5,862; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200905913
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 17, 2009

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 1, 2010.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 1, 2010.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: James Kaufman; DOCKET NUMBER: 2009-0970-PST-E; TCEQ ID NUMBER: RN101835395; LOCATION: 3001 Commerce Street, Port Arthur, Jefferson County; TYPE OF FACILITY: tractor/truck repair shop; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an underground storage tank system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.54(d)(2), by failing to ensure that any residue from stored regulated substances which remained in the system did not exceed a depth of 2.5 centimeters at the deepest point and did

not exceed 0.3% by weight of the system at full capacity; 30 TAC §334.54(b), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the underground storage tanks (UST) within 30 days of the occurrence of the change or addition; PENALTY: $6,300; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: KDP, L.L.C. dba Grapevine Food Market; DOCKET NUMBER: 2009-0587-PST-E; TCEQ ID NUMBER: RN105487573; LOCATION: 14522 South Post Oak Road, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §115.244(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to perform daily and monthly inspections of the Stage II vapor recovery system; and 30 TAC §115.246(5) and THSC, §382.085(b), by failing to maintain Stage II records at the station; PENALTY: $19,964; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Moore's Water System of Beaver Lake, Inc.; DOCKET NUMBER: 2009-0917-PWS-E; TCEQ ID NUMBER: RN102682291; LOCATION: 476 Beaver Lane, Waco, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(s)(1), by failing to calibrate all well meters at least once every three years; 30 TAC §290.46(f)(2) and TCEQ Agreed Order (AO) Docket Number 2008-0105-PWS-E, Ordering Provision Number 2.a., by failing to provide facility records and make them accessible for commission review during inspections; 30 TAC §290.45(b)(1)(C)(iii), THSC, §341.0315(c), and TCEQ AO Docket Number 2008-0105-PWS-E, Ordering Provision Number 2.e., by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute (gpm) per connection; 30 TAC §290.42(1) and TCEQ AO Docket Number 2008-0105-PWS-E, Ordering Provision Number 2.c.i., by failing to develop and maintain an up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(j) and TCEQ AO Docket Number 2008-0105-PWS-E, Ordering Provision Number 2.c.ii., by failing to complete Customer Service Inspection certificates prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvements, corrections, or additions to the private water distribution facilities; and 30 TAC §290.46(e)(4)(A), by failing to operate the facility by a licensed operator who holds a Class "D" or higher license; PENALTY: $3,851; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3696; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Naji Ahmad dba Airline Square; DOCKET NUMBER: 2009-1572-PWS-E; TCEQ ID NUMBER: RN102436250; LOCATION: 9000 Airline Drive, Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of October 2007 - January 2009, April 2009, and May 2009, and failing to provide public notification of the failure to sample for the months of October 2007 - January 2009, April 2009, and May 2009; PENALTY: $9,113; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Nora Ghani dba Airline Square; DOCKET NUMBER: 2009-1033-PWS-E; TCEQ ID NUMBER: RN102436250; LOCATION: 9000 Airline Drive, Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of October 2007 - January 2009, April 2009, and May 2009, and failing to provide public notification of the failure to sample for the months of October 2007 - January 2009, April 2009, and May 2009; PENALTY: $9,113; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: Santos Barcenas dba Tyre King Recycling; DOCKET NUMBER: 2009-0812-MSW-E; TCEQ ID NUMBER: RN102954625; LOCATION: 1100 East 34th Street, Plainview, Hale County; TYPE OF FACILITY: used tire transporting and recycling business; RULES VIOLATED: 30 TAC §330.15(a)(1), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $2,500; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3520, (806) 796-7092.

TRD-200905912
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 17, 2009

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Texas Facilities Commission

Request for Proposals #303-0-10790

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Pro-

posals (RFP) #303-0-10790. TFC seeks a 5 year lease of approximately 11,668 square feet of office space in Alvin, Brazoria County, Texas.

The deadline for questions is February 12, 2010, and the deadline for proposals is February 26, 2010, at 3:00 p.m. The award date is March 26, 2010. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=86491*.

TRD-200905957
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 18, 2009

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Office of the Governor

Request for Grant Applications for General Juvenile Justice and Delinquency Prevention Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that support juvenile justice and delinquency prevention during the state fiscal year 2010 grant cycle.

Purpose: The purpose of the this program is to support programs that prevent violence in and around schools and to improve the juvenile justice system and develop effective education, training, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency.

Available Funding: Federal funding is authorized for these projects under the Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 107-273, 42 U.S.C 5601 et seq; the No Child Left Behind Act of 2001, Public Law 107-110, §102.056 of the Texas Code of Criminal Procedure establishes state funding for this purpose, and §772.006 of the Texas Government Code.

Congress has not finalized federal appropriations for federal fiscal year 2010.

All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Standards: Grantees must comply with the standards applicable contained in the *Texas Administrative Code*, Title 1, Part 1, Chapter 3 (1 TAC Chapter 3) and the requirements of the federal statutes that authorize this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) lobbying;

(3) any portion of the salary of, or any other compensation for, an elected or appointed government official;

(4) vehicles or equipment for government agencies that are for general agency use;

(5) weapons, ammunition, explosives or military vehicles;

(6) admission fees or tickets to any amusement park, recreational activity or sporting event;

(7) promotional gifts;

(8) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(9) membership dues for individuals;

(10) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);

(11) fundraising;

(12) construction;

(13) medical services;

(14) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(15) legal services for adult offenders; and

(16) overtime pay.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Independent school districts;

(4) Nonprofit corporations;

(5) Indian tribes performing law enforcement functions;

(6) Crime control and prevention districts;

(7) Universities;

(8) Colleges; and

(9) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Eligible Activities:

(1) Alternatives to Detention;

(2) Community Assessment Center;

(3) Data Information/Sharing Systems;

(4) Delinquency Prevention;

(5) Diversion;

(6) Gangs - Juvenile;

(7) Jail Removal;

(8) Juvenile Probation;

(9) Juvenile Sex Offender Programs;

(10) Mentoring;

(11) Professional Therapy and Counseling;

(12) Reentry of Offender into the Community;

(13) Removal of Juvenile Status Offenders from Secure Facilities;

(14) School Based Delinquency Prevention;

(15) Services to Children of Incarcerated Parents;

(16) Substance Abuse;

(17) Training and Technology;

(18) Youth Advocacy; and

(19) Youth Courts/Teen Courts.

Project Period: Grant-funded projects must begin on or after September 1, 2010, and expire on or before August 31, 2011.

Application Process: Applicants must access CJD's grant management website at https://cjdonline.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to those applicants that demonstrate cost effective programs focused on proven or promising approaches to services provision.

Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before March 5, 2010.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based on approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost effectiveness.

Contact Information: If additional information is needed, contact the eGrants Help Desk at egrants@governor.state.tx.us or (512) 463-1919.

TRD-200905949
Kate Fite
Assistant General Counsel
Office of the Governor
Filed: December 18, 2009

♦ ♦ ♦

Request for Grant Applications for General Victim Assistance - Direct Services Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that provide services to victims of crime under the state fiscal year 2011 grant cycle.

Purpose: The purpose of this program is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process. Services may include the following:

(1) responding to the emotional and physical needs of crime victims;

(2) assisting victims in stabilizing their lives after a victimization;

(3) assisting victims to understand and participate in the criminal justice system; and

(4) providing victims with safety and security.

Available Funding: Federal funding is authorized for these projects under the Victims of Crime Act of 1984 (VOCA) as amended, and under the Violence Against Women Act of 2005 (VAWA 2005) 42 U.S.C. 3796gg through 3796gg-5 as amended. Congress has not finalized federal appropriations for federal fiscal year 2010. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Funding Levels: Minimum grant award - $5,000.

Required Match: Grantees, other than Native American Tribes, may be required to provide matching funds of at least twenty percent (20%) of total project expenditures. Native American Tribes may be required to provide a five percent (5%) match. This requirement may be met through either cash or in-kind contributions or a combination of both.

Standards: Grantees must comply with all statutes, requirements, and guidelines cited in the *Texas Administrative Code* (1 TAC Chapter 3) applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) lobbying and administrative advocacy;

(3) perpetrator rehabilitation and counseling or services to incarcerated individuals;

(4) needs assessments, surveys, evaluations, and studies;

(5) prosecution activities;

(6) reimbursing crime victims for expenses incurred as a result of the crime;

(7) most medical costs. Grantees may not use grant funds for nursing-home care (except for short-term emergency), home health-care costs, in-patient treatment costs, hospital care, or other types of emergency or non-emergency medical or dental treatment. Grant funds cannot support medical costs resulting from a crime, except for forensic medical examinations for sexual assault victims;

(8) relocation expenses. Grant funds may not support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments;

(9) administrative staff expenses. Grantees may not use grant funds to pay salaries, fees and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantee incurs the expense while providing direct services to crime victims;

(10) costs of sending individual crime victims to conferences;

(11) activities exclusively related to crime prevention or community awareness;

(12) non-emergency legal representation such as for divorces or civil restitution recovery efforts;

(13) victim-offender meetings that serve to replace criminal justice proceedings;

(14) management and administrative training for executive directors, board members, and other individuals that do not provide direct services;

(15) training to persons or groups outside the applicant agency;

(16) indirect organization costs;

(17) any activities or related costs for diligent search;

(18) job skills training;

(19) alcohol and drug abuse treatment;

(20) fundraising activities;

(21) property loss: Grant funds may not be used to reimburse crime victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills;

(22) any portion of the salary of, or any other compensation for, an elected or appointed government official. Grants that fund juvenile courts or drug courts, regardless of the funding source, are exempt from this subsection;

(23) purchase of vehicles;

(24) purchase of equipment for governmental agencies that are for general agency use;

(25) admission fees or tickets to any amusement park, recreational activity, or sporting event;

(26) promotional gifts;

(27) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and that event is not related to amusement and/or social activities in any way; and

(28) membership dues for individuals.

Eligible Applicants:

(1) State Agencies;

(2) Units of Local Governments;

(3) Hospital Districts;

(4) Nonprofit Corporations;

(5) Native American Tribes;

(6) Crime Control and Prevention Districts;

(7) Universities;

(8) Colleges;

(9) Community Supervision and Corrections Departments;

(10) Councils of Governments that offer direct services to victims of crime;

(11) Hospital and Emergency Medical Facilities that offer crisis counseling, support groups, and/or other types of victims services; and

(12) Faith-Based Organizations that provide direct services to victims of crime. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Eligible Activities:

(1) Crisis Services;

(2) Forensic Interviews;

(3) Legal Advocacy;

(4) Multi-Disciplinary Teams and Case Coordination;

(5) Peer Support Groups;

(6) Professional Therapy and Counseling;

(7) Protective Order Assistance;

(8) Public Presentations;

(9) Shelter; and

(10) Victim-Offender Meetings.

Program Requirements:

(1) Applicants agree to promote collaboration and coordination among local service systems that involve multiple disciplines and support a seamless delivery of a continuum of services that focus on each individual's return of physical, mental, and emotional health to the fullest extent possible while incorporating an emphasis on cultural competency in underserved populations. Applicants must explain how their organization is culturally competent when providing services to victims. Here are some guidelines to follow: Victim service providers must have the ability to blend cultural knowledge and sensitivity with victim restoration skills for a more effective and culturally appropriate recovery process. Cultural competency occurs when: 1) cultural knowledge, awareness and sensitivity are integrated into action and policy; 2) the service is relevant to the needs of the community and provided by trained staff, board members, and management; and 3) an advocate or organization recognizes each client is different with different needs, feelings, ideas and barriers.

(2) Applicants must certify that they will comply with the following requirements:

(a) Services to Victims of Crime - Applicant agrees to provide services to victims of crime which include: responding to the emotional and physical needs of crime victims; assisting victims in stabilizing their lives after victimization; assisting victims to understand and participate in the criminal justice system; and providing victims with safety and security.

(b) Effective Services - Applicant must demonstrate a record of providing effective services to crime victims. If the applicant cannot yet demonstrate a record of providing effective services, the applicant must demonstrate that at least 25 percent of its financial support comes from non-federal sources.

(c) Volunteers - Applicant agrees to use volunteers to support either the project or agency-wide services, unless CJD determines that a compelling reason exists to waive this requirement.

(d) Community Efforts - Applicant agrees to promote community efforts to aid crime victims. Applicants should promote, within the community, coordinated public and private efforts to aid crime victims. Coordination efforts qualify an organization to receive these funds, but are not activities that can be supported with these funds.

(e) Crime Victims' Compensation - Applicant agrees to assist crime victims in applying for crime victims' compensation benefits.

(f) Records - Applicant agrees to maintain daily time and attendance records specifying the time devoted to allowable victim services.

(g) Civil Rights Information - Applicant agrees to maintain statutorily required civil rights statistics on victims served by race, national origin, sex, age, and disability of victims served, within the timeframe established by CJD. This requirement is waived when providing services, such as telephone counseling, where soliciting the information may be inappropriate or offensive to the crime victim.

(h) Victims of Federal Crime - Applicant agrees to provide equal services to victims of federal crime. (Note: Victim of federal crime is a victim of an offense that violates a federal criminal statute or regulation; federal crimes also include crimes that occur in an area where the federal government has jurisdiction, such as Indian reservations, some national parks, some federal buildings, and military installations.)

(i) No Charge - Applicant agrees to provide grant-funded services at no charge to victims of crime.

(j) Confidentiality - Applicant agrees to maintain the confidentiality of client-counselor information and research data, as required by state and federal law.

(k) Discrimination - Applicant agrees not to discriminate against victims because they disagree with the State's prosecution of the criminal case.

(l) Forensic Medical Examination Payments - Health care facilities shall conduct a forensic medical examination of a victim of an alleged sexual assault if the victim arrived at the facility within 96 hours after the assault occurred and the victim consented to the examination. The victim is not required to participate in the investigation or prosecution of an offence as a condition of receiving a forensic medical examination, nor pay for the forensic examination or the evidence collection kit. In addition, if a health care facility does not provide diagnosis or treatment services for sexual assault victims, the facility is required to refer the victim to a facility that provides those services. A law enforcement agency that requests a forensic medical examination of a victim of sexual assault shall pay full cost of the examination. Crime Victim Compensation funds may be used to pay for forensic medical examinations performed by trained examiners except that such funds may not be used to pay for the examinations if victims of sexual assault are required to seek reimbursement for such examinations from their insurance carriers.

(m) Protection Orders - Victims applying for a protective order or their attorney may not bear the costs associated with the filing of an order of protections.

(n) Nondisclosure of Confidential or Private Information - Personally identifying information or individual information collected in connection with services requested, utilized, or denied may not be disclosed; or, reveal individual client information without informed, written, reasonably time-limited consent of the person about whom information is sought. If release of information is compelled by statutory or court mandate, reasonable attempts to provide notice to victims affected by the disclosure of information will be made and steps necessary will be taken to protect the privacy and safety of the persons affected by the release of information.

Project Period: Grant-funded projects may begin on or after September 1, 2010, and expire on or before August 31, 2011.

Application Process: Applicants can access CJD's eGrants website at https://cjdonline.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to applicants that promote comprehensive victim restoration while incorporating an emphasis on cultural competency in underserved populations. Applicants are also encouraged to streamline administrative and reporting processes by consolidating grant requests whenever possible in lieu of submitting multiple applications.

Closing Date for Receipt of Applications: All applications must be certified via CJD's grant management website on or before March 5, 2010.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community priorities and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based upon approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by CJD's Executive Director. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Information: If additional information is needed, contact the eGrants Help Desk at egrants@governor.state.tx.us or (512) 463-1919.

TRD-200905951
Kate Fite
Assistant General Counsel
Office of the Governor
Filed: December 18, 2009

♦ ♦ ♦

Request for Grant Applications for the Criminal Justice Programs Solicitation

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that reduce crime and improve the criminal justice system during the state fiscal year 2011 grant cycle.

Purpose: The purpose of this solicitation is to reduce crime and improve the criminal justice system.

Available Funding: This solicitation is funded from authorized state and federal sources and will be administered in accordance with regulations required by these sources.

(1) State funds are authorized under §102.056 of the Texas Code of Criminal Procedure, and §772.006 of the Texas Government Code designates CJD as the administering agency. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

(2) Federal funds are authorized under the Edward Byrne Memorial Justice Assistance Grant Program (JAG) (42 U.S.C. 3751(a)). JAG funds are made available through a Congressional appropriation to the United States Department of Justice. Congress has not finalized federal appropriations for federal fiscal year 2010. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Funding Levels:

Minimum amount is $10,000.

Maximum: Units of local government are limited to no more than the total amount of local funds expended on criminal justice services in the entity's previous fiscal year. Criminal justice services are defined as the total amount the unit of government spent in local funds for law enforcement, corrections and judicial services during the previous fiscal year.

Match Requirement: None.

Standards: Grantees must comply with the standards applicable to this funding source cited in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) Supplanting or use of grant funds to replace any other existing federal, state or local funds;

(2) Proselytizing or sectarian worship;

(3) Lobbying;

(4) Any portion of the salary of, or any other compensation for, an elected or appointed government official;

(5) Vehicles or equipment for government agencies that are for general agency use;

(6) Weapons, ammunition, explosives or military vehicles;

(7) Admission fees or tickets to any amusement park, recreational activity or sporting event;

(8) Promotional gifts;

(9) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(10) Membership dues for individuals;

(11) Fundraising;

(12) Construction;

(13) Medical services;

(14) Transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training; and

(15) Legal services for adult offenders.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Independent school districts;

(4) Nonprofit corporations;

(5) Native American tribes;

(6) Crime control and prevention districts;

(7) Public universities;

(8) Public colleges;

(9) Hospital districts;

(10) Community supervision and corrections departments; and

(11) Councils of governments.

Eligibility Requirements:

(1) Eligible applicants are limited to one application;

(2) Projects must focus on reducing crime and improving the criminal justice system;

(3) Eligible applicants must provide law enforcement, corrections, and judicial services;

(4) Applicants who were eligible to apply under the December 18, 2009 solicitation for law enforcement projects are not eligible to apply for additional law enforcement projects under this solicitation. They may apply for other criminal justice related projects.

(5) Eligible applicants operating a law enforcement agency must be current on reporting Part I violent crime data to the Texas Department of Public Safety for inclusion in the annual Uniform Crime Report (UCR) and must have been current for the three previous years;

(6) Eligible applicants must have a Data Universal Numbering System (DUNS) number assigned to its agency at http://fedgov.dnb.com/webform/displayHomePage.do; and

(7) Eligible applicants must be registered in the federal Central Contractor Registration (CCR) database at http://www.ccr.gov.

Project Period: Projects selected for funding with must begin on or after September 1, 2010 and expire on or before September 30, 2011.

Application Process: Applicants can access CJD's eGrants website at https://cjdonline.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to applicants who demonstrate cost effective programs focused on a comprehensive and effective approach to services that compliment the criminal justice system.

Closing Date for Receipt of Applications: All applications must be submitted via CJD's eGrants website on or before March 5, 2010.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee prioritizes all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based on COG priorities, reasonableness, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact Information: If additional information is needed, contact the eGrants Help Desk at egrants@governor.state.tx.us or (512) 463-1919.

TRD-200905948
Kate Fite
Assistant General Counsel
Office of the Governor
Filed: December 18, 2009

♦ ♦ ♦

Request for Grant Applications for Violent Crimes Against Women Criminal Justice and Training Projects - Domestic Violence, Sexual Assault, Dating Violence, and Stalking

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that promote a coordinated, multidisciplinary approach to improving the criminal justice system's response to violent crimes against women during the state fiscal year 2011 grant cycle.

Purpose: The purpose of this funding is to assist in developing and strengthening effective law enforcement, prosecution and court strategies to combat family violence, sexual assault, dating violence and stalking crimes against women and to develop and strengthen victim services in such cases.

Available Funding: Federal funding is authorized for these projects under the Violence Against Women Act of 2005 (VAWA 2005) 42 U.S.C. 3796gg through 3796gg-5 as amended. Congress has not finalized federal appropriations for federal fiscal year 2010. All awards are subject to the availability of appropriated federal funds and any modifications or additional requirements that may be imposed by law.

Funding Levels: Minimum grant award - $5,000.

Required Match: Grantees, other than Native American tribes and non-profit, non-governmental victim service providers, must provide matching funds of at least thirty-five percent (35%) of total project expenditures. This requirement may be met through either cash or in-kind contributions or a combination of both.

Standards: Grantees must comply with all statutes, requirements, and guidelines cited in the *Texas Administrative Code* (1 TAC Chapter 3) applicable to this funding.

Prohibitions: Grantees may not use grant funds or program income to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) lobbying;

(3) any portion of the salary of, or any other compensation for, an elected or appointed government official;

(4) purchase of vehicles;

(5) admission fees or tickets to any amusement park, recreational activity, or sporting event;

(6) promotional gifts;

(7) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and that event is not related to amusement and/or social activities in any way;

(8) membership dues for individuals;

(9) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds (e.g., supplanting), including the Texas Crime Victims Compensation Fund;

(10) fundraising;

(11) overtime;

(12) cash payments to victims;

(13) legal assistance and representation in civil matters other than protective orders;

(14) legal defense services for perpetrators of violence against women;

(15) liability insurance on buildings;

(16) major maintenance on buildings;

(17) property loss. Grant funds may not be used to reimburse victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills;

(18) services for programs that focus on children and/or men;

(19) activities exclusively related to violence prevention, such as media campaigns to educate the general public about violence against women;

(20) criminal defense work, including women who assault, kill, or otherwise injure their abusers;

(21) to serve any person incarcerated for committing a crime of domestic violence, dating violence, sexual assault, or stalking;

(22) relocation expenses. Grant funds may not support expenses for victims of domestic violence, sexual assault, or stalking such as moving household goods to a new location in another state or acquiring furniture or housing in a new location;

(23) creation of a voucher program. Grant funds may not support the creation of a voucher program where victims are directly given vouchers for such services as housing or counseling; and

(24) grant funds may not be used to pay for the prosecution of child sexual abuse when the victim is now an adult.

Eligible Applicants:

(1) Community Supervision and Corrections Departments;

(2) Councils of Governments (COGs);

(3) Crime Control and Prevention Districts;

(4) Indian Tribal Governments;

(5) Nonprofit Corporations;

(6) Senior Universities and Colleges;

(7) State Agencies; and

(8) Units of Local Governments.

Eligible Activities:

(1) Court Services/Improvements (including specialized courts except drug courts);

(2) Crisis Services;

(3) Forensic Interviews;

(4) Investigation;

(5) Legal Advocacy;

(6) Multi-Disciplinary Teams and Case Coordination;

(7) Peer Support Groups;

(8) Professional Therapy and Counseling;

(9) Prosecution;

(10) Protective Order Assistance;

(11) Public Presentations;

(12) Shelter;

(13) Training; and

(14) Victim-Offender Meetings.

Program Requirements:

Applicants agree to promote collaboration and coordination among local service systems that involve multiple disciplines and support a seamless delivery of a continuum of services that focus on each individual's return of physical, mental, and emotional health to the fullest extent possible while incorporating an emphasis on cultural competency in underserved populations. Applicants must explain how their organization is culturally competent when providing services to victims. Here are some guidelines to follow: Victim service providers must have the ability to blend cultural knowledge and sensitivity with victim restoration skills for a more effective and culturally appropriate recovery process. Cultural competency occurs when: (1) cultural knowledge, awareness and sensitivity are integrated into action and policy; (2) the service is relevant to the needs of the community and provided by trained staff, board members, and management; and (3) an advocate or organization recognizes each client is different with different needs, feelings, ideas and barriers.

Applicant agrees to implement comprehensive strategies that are sensitive to the concerns and safety of the victims and hold offenders accountable for their crimes. Applicants must indicate the percentage of their project that benefits Victim Services, Law Enforcement, Prosecution, Courts or other areas. Program emphasis decisions should be made based on the beneficiary of the funded activities. For example, a victim services coalition who provides training to police throughout

the state would fall under the "law enforcement" category because the training is to benefit law enforcement.

(1) Applicants must certify that they will comply with the following requirements:

(a) Forensic Medical Examination Payments - Health care facilities shall conduct a forensic medical examination of a victim of an alleged sexual assault if the victim arrived at the facility within 96 hours after the assault occurred and the victim consented to the examination. The victim is not required to participate in the investigation or prosecution of an offence as a condition of receiving a forensic medical examination, nor pay for the forensic examination or the evidence collection kit. In addition, if a health care facility does not provide diagnosis or treatment services for sexual assault victims, the facility is required to refer the victim to a facility that provides those services. A law enforcement agency that requests a forensic medical examination of a victim of sexual assault shall pay full cost of the examination. Crime Victim Compensation funds may be used to pay for forensic medical examinations performed by trained examiners except that such funds may not be used to pay for the examinations if victims of sexual assault are required to seek reimbursement for such examinations from their insurance carriers.

(b) Polygraph Testing Prohibition - A peace officer or attorney representing the state may not require an adult or child victim of an alleged sex offense to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense. In addition, the refusal of a victim to submit to a polygraph or other truth telling examination will not prevent the investigation, charging, or prosecution of an alleged sex offense or on the basis of the results of a polygraph examination.

(c) Protection Orders - Neither victims applying for a protective order nor their attorney may bear the costs associated with the filing of an order of protections.

(d) Judicial Notification - Offenders involved in a protection order are not allowed to possess a firearm unless the offender is a peace officer who is actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

(e) Criminal Charges - In connection with the prosecution of any misdemeanor or felony domestic violence offense, the victim may not bear the costs associated with the filing of criminal charges against a domestic violence offender, issuance or service of a warrant, or witness subpoena.

(f) Nondisclosure of Confidential or Private Information - Personally identifying information or individual information collected in connection with services requested, utilized, or denied may not be disclosed; or, reveal individual client information without informed, written, reasonably time-limited consent of the person about whom information is sought. If release of information is compelled by statutory or court mandate, reasonable attempts to provide notice to victims affected by the disclosure of information will be made and steps necessary will be taken to protect the privacy and safety of the persons affected by the release of information.

Project Period: Grant-funded projects must begin on or after September 1, 2010, and will expire on or before August 31, 2011.

Application Process: Applicants can access CJD's eGrants website at https://cjdonline.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to applicants that promote comprehensive victim restoration while incorporating an emphasis on cultural competency in underserved populations. Applicants are also encouraged to streamline administrative and reporting processes by consolidating grant requests whenever possible in lieu of submitting multiple applications.

Closing Date for Receipt of Applications: All applications must be certified via CJD's grant management website on or before March 5, 2010.

Selection Process:

(1) For eligible local and regional projects:

(a) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).

(b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community priorities and program effectiveness.

(c) CJD will accept priority listings that are approved by the COG's executive committee.

(d) CJD will make all final funding decisions based on eligibility, approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by CJD's Executive Director. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

CJD Contact Information: If additional information is needed, contact the eGrants Help Desk at egrants@governor.state.tx.us or (512) 463-1919.

TRD-200905952
Kate Fite
Assistant General Counsel
Office of the Governor
Filed: December 18, 2009

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" 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
League City	Gulf Coast Heart Clinic P.L.L.C.	L06286	League City	00	12/09/09
San Antonio	Sonterra Cardiovascular Institute P.A.	L06264	San Antonio	00	12/04/09
Throughout TX	Four Lane Inc.	L06269	Corsicana	00	12/10/09
Wichita Falls	WFCC Radiation Management Company L.L.C. dba Texoma Cancer Center	L06288	Wichita Falls	00	12/11/09

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	45	12/14/09
Andrews	Waste Control Specialists L.L.C.	L06153	Andrews	03	11/24/09
Arlington	Columbia Medical Center of Arlington Subsidiary L.P. dba Medical Center of Arlington	L02228	Arlington	69	12/01/09
Austin	Austin Heart P.L.L.C.	L04623	Austin	65	12/11/09
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	92	12/09/09
Bryan	St. Joseph's Regional Health Center	L00573	Bryan	73	11/30/09
College Station	College Station Hospital L.P. dba College Station Medical Center	L02559	College Station	65	12/10/09
Corpus Christi	Wilson Inspection X-Ray Services	L04469	Corpus Christi	65	12/09/09
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	102	12/09/09
Cypress	North Cypress Medical Center Operating Company L.L.C. dba North Cypress Medical Center	L06020	Cypress	17	12//11/09
Dallas	Baylor Radiosurgery Center dba Baylor University Medical Center	L05842	Dallas	15	11/30/09
Dallas	Baylor University Medical Center	L01290	Dallas	96	11/30/09
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	71	12/09/09
Dallas	North Texas Heart Center P.A.	L04608	Dallas	36	12/11/09
Dallas	Heart Consultants of North Texas	L05898	Dallas	04	12/04/09
Denison	UHS of Texoma Inc.	L01624	Denison	64	12/04/09
El Paso	Center for Integrative Cancer Medicine P.A.	L05880	El Paso	09	12/03/09
El Paso	Providence Memorial Hospital	L02353	El Paso	97	12/02/09
El Paso	Tenet Hospitals Limited dba Sierra Providence East Medical Center	L06152	El Paso	07	12/02/09
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L02365	El Paso	66	12/02/09
Fort Worth	Cook Children's Medical Center	L04587	Fort Worth	15	12/04/09
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	72	12/09/09
Gonzales	KI4U Inc.	L05515	Gonzales	07	12/01/09
Greenville	Hunt Memorial Hospital District dba Hunt Regional Medical Center	L01695	Greenville	37	12/11/09
Houston	Columbia/HCA Healthcare Corporation dba Spring Branch Medical Center	L02473	Houston	73	11/25/09
Houston	University of Houston	L01886	Houston	61	12/03/09
Houston	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	59	12/07/09
Houston	Memorial Hermann Hospital System dba River Oaks Imaging and Diagnostic	L06181	Houston	07	12/04/09

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Memorial Hermann Hospital System dba Memorial Hospital - Memorial City	L01168	Houston	113	12/04/09
Houston	The University of Texas Health Science Center	L02774	Houston	58	12/14/09
Houston	Methodist Health Centers dba Methodist Willowbrook Hospital	L05472	Houston	31	12/04/09
Humble	Cardiovascular Association P.L.L.C.	L05421	Humble	13	12/07/09
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	79	12/04/09
Laredo	South Texas Testing Laboratories Inc.	L05190	Laredo	05	12/02/09
Laredo	Laredo Texas Hospital Company L.P. dba Laredo Medical Center	L01306	Laredo	68	12/14/09
Lubbock	Cardinal Health	L02737	Lubbock	57	12/04/09
Lufkin	Memorial Medical Center of East Texas	L01346	Lufkin	79	11/30/09
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	34	12/11/09
Pasadena	Conam Inspection and Engineering Inc.	L05010	Pasadena	176	12/10/09
Pasadena	CHCA Bayshore L.P. dba Bayshore Medical Center	L00153	Pasadena	86	12/09/09
Plano	Texas Health Presbyterian Hospital - Plano	L04467	Plano	54	12/01/09
San Angelo	Regional Employee Assistance Program dba Community Medical Associates	L06172	San Angelo	02	12/14/09
San Antonio	Northeast Baptist Surgery Center L.L.C. dba Village Specialty Surgical Center	L06119	San Antonio	02	11/25/09
San Antonio	Southwest Foundation for Biomedical Research	L00468	San Antonio	52	12/11/09
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	193	12/14/09
Snyder	Scurry County Hospital District dba Cogdell Memorial Hospital	L02409	Snyder	34	12/09/09
Stafford	Ramco Laboratories	L02172	Stafford	19	12/10/09
Sugar Land	Texas Oncology P.A. dba Texas Oncology Cancer Center - Sugar Land	L05816	Sugar Land	10	12/04/09
Sugar Land	Methodist Sugar Land Hospital Cancer Center	L06232	Sugar Land	01	12/08/09
Throughout TX	Eagle NDT L.L.C.	L06176	Abilene	13	12/14/09
Throughout TX	Ramming Paving Company Ltd.	L04666	Austin	08	11/24/09
Throughout TX	Spectro Analytical Instruments Inc.	L02788	Austin	50	12/02/09
Throughout TX	Lower Colorado River Authority	L02738	Austin	45	12/08/09
Throughout TX	Frac Tech Services Ltd.	L06188	Cisco	06	12/09/09
Throughout TX	Professional Services Industries Inc,	L02476	El Paso	23	12/04/09
Throughout TX	Associated Testing Laboratories Inc.	L01553	Houston	28	11/25/09
Throughout TX	RDT Pipeline Services USA L.P.	L05985	Houston	13	12/02/09
Throughout TX	Roxar Inc.	L05547	Houston	15	12/03/09
Throughout TX	Metco	L03018	Houston	204	12/08/09
Throughout TX	Wood Group Logging Services Inc.	L05262	Houston	36	12/14/09
Throughout TX	Stork Testing & Metallurgical Consulting Inc.	L00299	Houston	135	12/10/09
Throughout TX	Dialog Wireline Services L.L.C.	L06104	Kilgore	04	12/03/09
Throughout TX	Marco Inspection Services L.L.C.	L06072	Kilgore	28	12/01/09
Throughout TX	Master Industries Inc.	L05872	Liberty	24	12/01/09
Throughout TX	Techcorr USA L.L.C.	L05972	Palestine	70	12/01/09
Throughout TX	Conam Inspection & Engineering Inc.	L05010	Pasadena	175	11/30/09
Throughout TX	Petrochem Inspection Services Inc.	L04460	Pasadena	100	12/09/09
Throughout TX	Zachry Industrial Inc.	L01995	San Antonio	26	12/10/09
Throughout TX	NRG Texas Power L.L.C.	L02063	Thompsons	70	12/04/09
Tyler	Trinity Mother Frances Health System	L01670	Tyler	149	12/09/09
Victoria	Citizens Medical Center	L00283	Victoria	81	12/01/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Texas City	BP Products North America Inc.	L00254	Texas City	63	12/01/09

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Price Construction Ltd.	L05205	Big Spring	06	12/01/09
Throughout TX	Celanese Ltd.	L04210	Pampa	22	12/14/09
Tyler	Tyler Cardiovascular Consultants P.A.	L05242	Tyler	19	12/09/09

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-200905914
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: December 17, 2009

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Texas Department of Insurance, Division of Workers' Compensation

Notice of Public Hearing

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) will hold a public hearing on Monday, January 11, 2010 in the Tippy Foster Room at the TDI-DWC Central Office, 7551 Metro Center Drive, Suite 100 in Austin. TDI-DWC will audio stream the public hearing for persons who are unable to appear in person.

The public hearing will begin at 2:00 p.m. and TDI-DWC will take testimony on the following rule:

Chapter 137 - Disability Management

Subchapter A - General Provisions

Section 137.5. Certified Case Managers (new)

This proposed rule was published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8460) and may be viewed on the TDI website at *http://www.tdi.state.tx.us/wc/rules/proposedrules/index.html*. The comment period for this rule will close on Monday, January 11, 2010 at 5:00 p.m. TDI-DWC will accept comments at the public hearing.

To listen to the audio stream of the public hearing, access the TDI-DWC Public Outreach Events /Training Calendar on the TDI website at *http://www.tdi.state.tx.us/wc/events/index.html*. Then click on the "Link to Live Webcast" link for the public hearing. The applications Media Player 7 (or new version) or RealPlayer 10 (or newer version) are required to hear the audio stream. Audio streaming will begin approximately five minutes before the public hearing begins.

TDI offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Idalia Salazar at (512) 804-4403 at least two business days prior to the public hearing date.

For further information regarding this notice, contact Patrick Hyde of TDI-DWC Workers' Compensation Counsel at (512) 804-4295.

TRD-200905963
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 18, 2009

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North Central Texas Council of Governments

Request for Proposals for the American Recovery and Reinvestment Act of 2009 Hybrid Transit Vehicle Pilot Project

North Central Texas Council of Governments (NCTCOG) is requesting sealed written proposals from qualified vendor(s) to design, manufacture, and deliver quality transit vehicles to support transportation services related to the American Recovery and Reinvestment Act of 2009, Transit Capital Assistance federal grant program. NCTCOG is

requesting sealed written proposals from vendor(s) for fourteen (14) to eighteen (18) Lift-equipped, ADA Accessible, Hybrid-electric Transit Buses. Copies of the Request for Proposals (RFP) will be available beginning Monday, January 4, 2010.

Vehicles must meet all requirements related to NCTCOG, Federal Transit Administration (FTA), and the U.S. Department of Transportation (US DOT).

Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, January 29, 2010, to Jessie Huddleston, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the RFP, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The vendor(s) selected to design, manufacture, and deliver the vehicles will be recommended by a Vendor Selection Committee (VSC). The VSC will use evaluation criteria and methodology consistent with the scope of work contained in the RFP. The NCTCOG Executive Board will review the VSC's recommendations and, if found acceptable, will issue a contract(s) for award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200905908
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: December 17, 2009

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Texas State Soil and Water Conservation Board

Notice of Public Hearing

The Texas State Soil and Water Conservation Board (TSSWCB) will conduct a public hearing January 20, 2010 at 1:00 p.m. in Temple at the Hilton Garden Inn, 1749 Scott Boulevard, to receive comments from the public and from soil and water conservation districts on the State Brush Plan.

The public hearing is being held under authority of §203.051 and §203.052 of the Agriculture Code of Texas.

The Brush Plan may be reviewed and downloaded from the TSSWCB website, URL address http://www.tsswcb.state.tx.us.

Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible.

Comments on the proposed plan should include appropriate sections, subsections, page numbers, paragraphs, and etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed plan should be submitted in written form.

Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Dawn Heitman, Public Information/Human Resources Office, 4311 South 31st Street, Temple, Texas 76502, (254) 773-2250 Ext. 252 at least two working days prior to the hearing so that appropriate services can be provided.

Written comments on the proposed plan may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503.

TRD-200905956
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: December 18, 2009

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Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200905941
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 18, 2009

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Texas Water Development Board

Request for Proposals for Brackish Groundwater Desalination Demonstration Projects

The Texas Water Development Board (TWDB) invites interested parties to submit proposals for brackish groundwater desalination demonstration projects.

Goals:

To provide tangible examples of the use of water desalination technologies and management strategies that can serve as replicable models for implementing small scale desalination projects (less than 5 million gallons per day), showcase technological advances and/or promising strategies to increase the efficiency of waste desalination and concentrate management processes.

Eligible expenses include facility planning, feasibility studies, pilot testing, and plant design or construction. All proposals should include a procedure to document and broadcast the project development and its results as an educational activity for others to learn and benefit from.

Background:

In 2003, the TWDB estimated that there was about 2.7 billion acre-feet of brackish groundwater in the state and, to accelerate accessing this valuable resource, in 2005 the TWDB launched the Brackish Groundwater Desalination Initiative. Since then, the TWDB has funded eight demonstration projects for a total awarded amount of $2,065,840 in grants. Collectively, these demonstration projects provide tangible examples on the use of newer water treatment technologies and of practical solutions to issues associated with implementing desalination projects. Information on past and current brackish groundwater desalination demonstration projects may be accessed via the Internet at http://www.twdb.state.tx.us/iwt/desal/studies. In 2009, the 81st Texas Legislature appropriated an additional $600,000 to the TWDB to continue and expand the state's efforts at developing new water supplies through brackish groundwater water desalination.

General Requirements:

Five double-sided copies on recycled paper and one digital copy (CD) of a complete TWDB Research and Planning application for financial assistance for brackish groundwater desalination demonstration projects including the required attachments must be filed with the Board by 5:00 p.m., Central Standard Time, March 1, 2010. The application form may be downloaded from http://www.twdb.state.tx.us/iwt/desal/2010RFP.

Applications can be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to:

Brackish Groundwater Demonstration Projects [APPLICATIONS]

David Carter, Agency Contract Administrator

Texas Water Development Board

P.O. Box 13231, Capitol Station

Austin, TX 78711-3231

Staff will consider the following screening criteria in reviewing and ranking the applications:

A. Technical approach: 20 points

B. Potential Demonstration Value: 20 Points

C. Technical Qualifications of Key Personnel: 20 points

D. Cash and In-kind Contributions: 20 points

E. Proposed deliverables: 20 points

Requests for information relative to the Request for Proposals should be directed to Mr. Jorge Arroyo at 512-475-3003, via email at jorge.arroyo@twdb.state.tx.us, or at the preceding address.

TRD-200905932

Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: December 17, 2009

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Request for Statements of Interest for Federal Funding Under the Texas Environmental Infrastructure Program

The Texas Water Development Board (board) requests Statements of Interest (SOIs) from interested political subdivisions under the Texas Environmental Infrastructure Program (TEIP). "Political subdivision" includes a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party. Contingent on congressional appropriations for federal fiscal year 2011, up to $40,000,000 will be available through TEIP for water resources projects identified by the board.

The board's objective is to facilitate construction of projects (or discrete increments of projects) to meet near-term water supply needs. Pre-construction activities are also eligible for TEIP assistance, but preference will be given to those SOIs that support construction of water supply within a reasonable time frame.

TEIP Background

The TEIP is administered by the U.S. Army Corps of Engineers (USACE) under Public Law 110-114, the Water Resources Development Act of 2007 (WRDA). TEIP authorizes the USACE to provide financial assistance to develop water supply projects in Texas, including implementation of water management strategies recommended in "Water for Texas - 2007," the Texas State Water Plan and not otherwise authorized under WRDA. This assistance is to be provided "in the form of planning, design and construction assistance for water-related environmental infrastructure and resource protection and development projects in Texas, including projects for water supply, storage, treatment and related facilities, environmental restoration, and surface water resource protection and development."

Funding Limitations

The $40,000,000, if appropriated, will be dedicated to a cost-sharing program. The federal share of a project cost will be 75 percent, which may be provided in the form of grants or reimbursements of project costs. The non-federal share of 25 percent may be provided in the form of materials and in-kind services, including planning, design, construction and management services, as determined to be necessary for the project. Therefore, design work carried out before the date of the project funded under WRDA may be considered for credit toward the non-federal share. Additionally, the non-federal share may be in the form of a credit for land, easements, rights-of-way, and relocations. The eligible applicant may apply for funding of the non-federal 25 percent share through one of the board's non-federal financial assistance programs.

Contingent on congressional appropriations, funds will be distributed directly from the USACE to the political subdivision. Entities receiving TEIP funding will be required to comply with all applicable federal laws for the funded project.

This solicitation initiates a new round of SOI priorities for consideration of funding exclusively out of fiscal year 2011 congressional appropriations. Therefore, project SOIs submitted for fiscal years 2009 or 2010 TEIP funding will not be considered for this cycle unless a new SOI is submitted in response to this solicitation.

Eligibility and Ranking

The board's executive administrator will prioritize SOIs on the basis of the criteria specified herein and will forward the prioritized list of SOIs to Congress and USACE for consideration in fiscal year 2011 congressional appropriations. The list will also be posted to the TWDB website and provided to all political subdivisions that submit a SOI.

The ranking criteria to be used by the executive administrator are as follows:

1. Whether the proposed project is identified in the State Water Plan;

2. Whether the proposed project is for new water supply in the near-term;

3. Construction projects are preferred over pre-construction projects;

4. Projected completion date;

5. Status of federal 404 permit authorization; and

6. Other benefits.

General Requirements

Political subdivisions otherwise eligible for funding from the board should submit an SOI to the address below no later than 5:00 p.m. on February 16, 2010. Responses should be limited to ten pages, excluding necessary maps.

The SOI shall contain the following information:

1. Name, address and geographical jurisdiction of the project sponsor(s);

2. Name, phone number and email address of main points of contact for the sponsor;

3. Name of project as identified by page number in the State Water Plan, "Water for Texas - 2007," and in the applicable Regional Water Plan;

4. Description of the physical boundaries of the project and the geographic area and region to be served by the project; the congressional district in which the project is located;

5. Brief description of overall project and estimated total cost of entire project;

6. Brief description of the project or portion of the project (i.e., usable increment) for which federal funding is requested under the TEIP, to include the following:

a. General budget of cost categories, with a breakout of amounts to be funded with federal funds and non-federal funds in fiscal year 2011;

b. Identification of source of non-federal funds; and,

c. Estimated date of completion of project or usable increment.

Note: If requesting funding for a discrete portion of a project, the portion must be a 'usable increment', meaning that the funded portion will provide benefits once it is completed.

7. A resolution from the governing body of the political subdivision approving the project and committing to meet non-federal cost share requirements. If, due to the schedule for governing body meetings, the applicant cannot provide a resolution by the February 16, 2010 deadline for SOI, then the board will accept a letter from the chair or chief executive of the governing body stating the intent to request a resolution at the next regularly scheduled meeting (must include date of the meeting) of the governing body; and

8. Statement by the project sponsor that the project has not been specifically authorized in WRDA 2007 or previous Acts.

Submission of SOI and Questions

The SOI shall be submitted by electronic mail to: Mr. Dave Mitamura, Texas Water Development Board, Email: dave.mitamura@twdb.state.tx.us, Phone: (512) 463-7965

The SOI must be received by 5:00 p.m. Central Standard Time, February 16, 2010.

TRD-200905929
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: December 17, 2009

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 34 (2009) is cited as follows: 34 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 "34 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 34 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).