TEXAS REGISTER

Volume 35 Number 36 *September 3, 2010* *Pages 7961 – 8198*

Cristina Medrano

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*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

IN THIS ISSUE

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

THE GOVERNOR

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

Appointments

Appointments for July 29, 2010

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2012, Aaron W. Bangor of Austin (reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2012, Rodolfo Becerra, Jr. of Nacogdoches (reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2012, Maureen Faith McClain of Pharr (reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2012, Kathy S. Strong of Garrison (reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2012, Patricia A. Watson of Flower Mound (reappointed).

Appointed to the Task Force on Indigent Defense for a term to expire February 1, 2012, Jon H. Burrows of Temple (reappointed).

Appointed to the Task Force on Indigent Defense for a term to expire February 1, 2012, Knox Fitzpatrick of Dallas (reappointed).

Appointed to the Task Force on Indigent Defense for a term to expire February 1, 2012, B. Glen Whitley of Hurst (reappointed).

Appointments for August 2, 2010

Appointed to the Texas Department of Motor Vehicles Board for a term to expire February 1, 2015, Laura Ryan Heizer of Cypress (replacing Janet Marzett of Keller who resigned).

Appointments for August 9, 2010

Appointed to the Texas Higher Education Coordinating Board for a term to expire August 31, 2013, Harold W. Hahn of El Paso (replacing Brenda Pejovich of Dallas who resigned).

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2015, John Todd Henry of Wimberley (replacing Patrick Allen of Lubbock who is deceased).

Appointed as Judge of the 180th Judicial District Court, Harris County for a term until the next General Election and until his successor shall be duly elected and qualified, Marc W. Brown of Houston. Mr. Brown is replacing Judge Debbie Mantooth Stricklin who resigned.

Appointed as Judge of the 438th Judicial District Court, Bexar County, pursuant to HB 4833, 81st Legislature, Regular Session, effective September 1, 2010, for a term until the next General Election and until his successor shall be duly elected and qualified, Victor Negrón, Jr. of San Antonio.

Appointments for August 11, 2010

Appointed to the Camino Real Regional Mobility Authority for a term to expire February 1, 2011, Scott A. McLaughlin of El Paso (replacing Harold Hahn of El Paso who resigned). Mr. McLaughlin will serve as presiding officer of the authority.

Appointed to the Aerospace and Aviation Advisory Committee for a term at the pleasure of the Governor, Sandra K. Shoemaker of Fort Worth (replacing Richard Stevenson of Annetta who resigned).

Appointments for August 16, 2010

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2015, Ernest Aliseda of McAllen (replacing Ralph Gauer, Sr. of Harker Heights who resigned).

Appointments for August 19, 2010

Appointed as Judge of the 309th Judicial District Court, Harris County, effective September 15, 2010, for a term until the next General Election and until her successor shall be duly elected and qualified, Sherill Y. Dean of Houston. Ms. Dean is replacing Judge Frank Rynd who resigned.

Appointed as Judge of the 360th Judicial District Court, Tarrant County for a term until the next General Election and until his successor shall be duly elected and qualified, Michael K. Sinha of Hurst. Judge Sinha is replacing Justice Debra Lehrmann who was appointed to the Texas Supreme Court.

Appointed to the Coastal Water Authority Board of Directors for a term to expire April 1, 2012, Alan D. Conner of Dayton (replacing Ray Stoesser of Dayton whose term expired).

Appointed to the Texas Guaranteed Student Loan Corporation for a term to expire January 31, 2011, Steven V. Tays of San Antonio (replacing Steven Wroe Jackson of San Antonio who resigned).

Rick Perry, Governor

TRD-201004864

♦ ♦ ♦

Proclamation 41-3241

TO ALL TO WHOM THESE PRESENTS SHALL COME:

BE IT KNOWN THAT I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, DO HEREBY ORDER A GENERAL ELECTION to be held throughout the State of Texas on the first TUESDAY NEXT AFTER THE FIRST MONDAY IN NOVEMBER, 2010, same being the 2nd day of NOVEMBER, 2010; and

NOTICE THEREOF IS HEREBY GIVEN to the people of Texas and to the COUNTY JUDGE of each county who is directed to cause said election to be held at each precinct in the county on such date for the purpose of electing state and district officers, members of the Texas Legislature and members of the United States Congress, as required by Section 3.003 of the Texas Election Code.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 20th day of August, 2010.

Rick Perry, Governor

Attested by: Hope Andrade, Secretary of State

TRD-201004916

♦ ♦ ♦

THE ATTORNEY GENERAL

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

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

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

Request for Opinions

RQ-0909-GA

Requestor:

The Honorable Susan D. Reed

Bexar County Criminal District Attorney

Cadena-Reeves Justice Center

300 Dolorosa, Fifth Floor

San Antonio, Texas 78205-3030

Re: Whether a county director of judicial support services may simultaneously serve as a visiting statutory county court judge in the same county (RQ-0909-GA)

Briefs requested by September 16, 2010

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

TRD-201004931
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 24, 2010

♦ ♦ ♦

Opinions

Opinion No. GA-0789

Mr. Steven C. McCraw, Director

Texas Department of Public Safety

5805 North Lamar Boulevard

Austin, Texas 78752-4422

Re: Whether a county's disclosure on its website of driver's license photographs received from the Department of Public Safety would violate the Motor Vehicle Records Disclosure Act or the federal Driver's Privacy Protection Act (RQ-0799-GA)

S U M M A R Y

The Federal Driver's Privacy Protection Act and the Texas Motor Vehicle Records Disclosure Act do not prohibit the Department of Public Safety from disclosing driver's license photographs to the Dallas County Sheriff for use in carrying out law enforcement purposes. We cannot state as a matter of law whether the publication of such photos online would be permissible or would constitute an unauthorized redisclosure under the state or federal act.

Opinion No. GA-0790

The Honorable Byron Cook

Chair, Committee on Environmental Regulation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Combining real property and improvements on one parcel identification number or taxpayer account for appraisal district record purposes (RQ-0827-GA)

S U M M A R Y

The chief appraiser of an appraisal district determines whether land and improvements are combined into a single taxpayer account or parcel. A taxpayer's separate rendition of land and improvements does not change this conclusion.

Opinion No. GA-0791

The Honorable Richard P. Bianchi

Aransas County Attorney

301 North Live Oak Street

Rockport, Texas 78382

Re: Use and management of a county jail commissary fund under Local Government Code section 351.0415 (RQ-0841-GA)

S U M M A R Y

Local Government Code section 351.0415 grants the sheriff exclusive control of funds generated by the operation of a jail commissary, requires the sheriff to maintain commissary accounts, and provides that commissary proceeds may be used only to benefit inmates of the county jail. Commissary proceeds are not funds "belonging to the county" under Local Government Code section 113.021(a).

Texas courts follow the common-law rule that interest follows principal unless lawfully separated from the principal. Section 113.021 separates interest from funds "belonging to the county" and allocates it to the county general fund. Because the commissary fund is not a fund "belonging to the county," interest remains with the commissary fund.

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

TRD-201004929
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 24, 2010

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.81

The Texas Ethics Commission (the Commission) proposes new §12.81, relating to the procedures for investigating and resolving technical and clerical violations of laws within the Commission's jurisdiction as provided by §571.0631 of the Government Code.

Section 12.81 describes procedures used for investigating and resolving technical and clerical violations of laws within the Commission's jurisdiction.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The new §12.81 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The new §12.81 affects §571.0631 of the Government Code.

§12.81. Technical, Clerical, or De Minimis Violations.

(a) A technical, clerical, or de minimis violation for purposes of §571.0631 of the Government Code may include a first-time allegation against a respondent for:

(1) Typographical or incomplete information on a campaign finance report that is not misleading or does not substantially affect disclosure;

(2) Failure to include a disclosure statement on political advertising;

(3) Failure of a non-incumbent to use the word "for" in a campaign communication, where the communication is not otherwise misleading;

(4) Failure to include the highway right-of-way notice on political advertising;

(5) Filing a late campaign finance report if the total amount of political contributions does not exceed $2,500, the total amount of political expenditures does not exceed $2,500, and the report is not a report due 30 or 8 days before an election, or a special pre-election report;

(6) Filing an incomplete or corrected campaign finance report that is not a report due 30 or 8 days before an election or a special pre-election report if:

(A) the total amount of incomplete or incorrectly reported political contributions does not exceed the lesser of 10% of the total amount of political contributions on the corrected report, or $5,000; or

(B) the total amount of incomplete or incorrectly reported political expenditures does not exceed the lesser of 10% of the total amount of political expenditures on the corrected report, or $5,000; or

(C) the total amount of incomplete or incorrectly reported political contributions or political expenditures does not exceed the amount of the filing fee for a place on the ballot for the office sought or held by the respondent during the period covered by the report at issue, or, if there is not a set filing fee, $500; or

(7) Failure to timely file a campaign treasurer appointment if, before filing the campaign treasurer appointment, the total amount of political contributions accepted does not exceed $2,500 and the total amount of political expenditures made or authorized does not exceed $2,500.

(b) A technical, clerical, or de minimis violation for purposes of §571.0631 of the Government Code may include allegations against a respondent for:

(1) Typographical or incomplete information on a campaign finance report that is not misleading or does not substantially affect disclosure;

(2) Filing an incomplete or corrected campaign finance report if:

(A) the total amount of incomplete or incorrectly reported political contributions does not exceed the lesser of 5% of the total amount of political contributions on the corrected report, or $2,500; or

(B) the total amount of incomplete or incorrectly reported political expenditures does not exceed the lesser of 5% of the total amount of political expenditures on the corrected report, or $2,500.

(c) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the executive director determines that all the alleged violations are technical, clerical, or de minimis under subsection (a) of this section, the executive director may enter into an assurance of voluntary compliance with the respondent. Before entering into an assurance of voluntary compliance, the executive director may require a respondent to correct the violations.

(d) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the executive director determines that all the alleged violations are technical, clerical, or de minimis under subsection (b) of this section, the executive director may enter into an agreed resolution with the respondent. Before entering into an agreed resolution, the executive director may require a respondent to correct the violations.

(e) An assurance of voluntary compliance or an agreed resolution entered into under this section are confidential under §571.140 of the Government Code.

(f) An assurance of voluntary compliance or an agreed resolution entered into under this section may include a penalty not to exceed $500.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004834
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 463-5800

♦ ♦ ♦

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION

SUBCHAPTER B. GENERAL

7 TAC §3.22

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), proposes to amend §3.22, concerning sale or lease agreements with an officer, director, or principal shareholder of the bank or of an affiliate of the bank. The amended rule is proposed to correct references to Financial Accounting Statements issued by the Financial Accounting Standards Board.

The amendment to §3.22 arises from the codification of accounting standards by the Financial Accounting Standards Board (FASB). On June 29, 2009, the FASB issued Statement No. 168, which reorganized all accounting standards and guidance relating to Generally Accepted Accounting Principles (GAAP), in order to provide a single source of authoritative GAAP literature. As part of this reorganization, the FASB changed citation syntax to, and renumbered its Statements. As a result, the reference in §3.22 to FASB Statement Number 13 is now incorrect. The proposed amendment would update the reference to conform with the FASB's codification.

Robert Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is an updated and accurate rule.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended section must be submitted no later than 5:00 p.m. on October 4, 2010. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Finance Code, §31.003, which authorizes the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Finance Code, Chapters 11, 12, and 13, and under Finance Code, §11.012(a), which authorizes the Commission to adopt rules to preserve or protect the safety and soundness of state banks.

Finance Code, §33.109 is affected by the proposed amendment.

§3.22. Sale or Lease Agreements with an Officer, Director, or Principal Shareholder of the Bank or of an Affiliate of the Bank.

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

(d) Application for approval. If a sale or lease agreement requires the written approval of the banking commissioner prior to consummating, renewing, or extending a sale or lease agreement, a written request for approval must be submitted to the banking commissioner at least 60 days prior to the proposed effective date of the sale or lease agreement and must include the following information:

(1) - (6) (No change.)

(7) in the case of a lease agreement, evidence demonstrating that the state bank will account for the lease in accordance with FASB ASC Topic 840, Leases [~~Financial Accounting Standards Board Statement Number 13~~]; and

(8) (No change.)

(e) - (f) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004845
A. Kaylene Ray
General Counsel, Texas Department of Banking
Finance Commission of Texas
Proposed date of adoption: October 15, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

CHAPTER 10. CONTRACT PROCEDURES

The Finance Commission of Texas (the Commission), on behalf of the Commission, and the three Finance Agencies, the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the Finance Agencies), proposes new Chapter 10, §§10.1 - 10.21 and 10.30, concerning contract procedures. The new rules are proposed to provide a formal procedure for alternate dispute resolution of disputes arising from contracts awarded by the Commission and any of the Finance Agencies and for protest of any solicitation or award of a contract to provide goods or services to the Commission or any of the Finance Agencies.

The Commission and Finance Agencies propose these new rules to replace any formal or informal policies or procedures governing resolution of contract disputes and to carry out the requirements of Government Code, Chapter 2260 concerning alternate dispute resolution of claims by contractors for breach of contract against state agencies and Government Code §2155.076 concerning resolution of vendor protests concerning purchasing issues. Chapter 2260 of the Government Code directs each state agency or other unit of state government with rulemaking authority to adopt rules providing for alternate dispute resolution of claims by contractors for breach of contract against such state agency. Section 2155.076 of the Government Code requires each state agency by rule to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues.

Proposed new §§10.1 - 10.21 are based on model rules adopted by the Office of the Attorney General. Section 10.1 states that the purpose of the rules is the implementation of Government Code, Chapter 2260. Section 10.2 contains the definitions of terms used in the proposed rules. Section 10.3 establishes that the procedures in the proposed rules are a prerequisite to suit under the Civil Practice & Remedies Code, Chapter 107, and the Government Code, Chapter 2260. Section 10.4 states that the provisions do not waive sovereign immunity to suit or liability.

Section 10.5 sets out the procedures for a contractor to file a claim with the Commission or any Finance Agency. Section 10.6 sets out the procedures for the Commission or Finance Agency to assert a counterclaim against the contractor.

Section 10.7 requires that the parties, in accordance with the timetable set out in §10.8, negotiate to attempt to resolve claims and counterclaims. Section 10.9 describes the conduct of negotiation. Section 10.10 requires the parties to disclose their settlement approval procedures prior to negotiations, and §10.11 provides that an agreement to settle a claim must be in writing, signed by authorized representatives of the contractor and the unit of state government. Section 10.12 provides that each party is responsible for its own costs incurred during negotiations.

Section 10.13 describes the process by which a contractor may request a contested case hearing before the State Office of Administrative Hearings on an unresolved claim. Section 10.14 describes the timetable for mediation of a claim and §§10.15 - 10.21 describe the mediation process and procedures.

Proposed new §10.30 is based upon the rules adopted by the Comptroller of Public Accounts concerning contract protests and provides a procedure for an actual or proposed bidder, offeror or contractor to follow to protest the solicitation, evaluation, or award of a contract. The contents of the protest, time period for filing a protest, and notice required is set out in the proposed new rule. The Commission and the Finance Agencies are given the authority to settle the protest, or if it is not resolved, to issue a written determination on the protest. The proposed new rule provides a procedure for the appeal of the decision and requires that in the event of a protest, documents collected in association with the solicitation, evaluation, and/or award of a contract be maintained in accordance with the applicable retention schedule.

Leslie Pettijohn, the Executive Director of the Texas Finance Commission, the Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner each have determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules. These rules, if adopted, merely formalize procedures, as required by the Government Code, Chapter 2260 and §2155.076 to resolve purchasing and contract disputes, which would require similar amounts of staff time and effort to resolve regardless of whether the disputes were governed by formal or informal policies or procedures or by the proposed rules, and would involve the same consideration of facts and the governing state law.

Ms. Pettijohn also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that vendors and state contractors of the Commission and Finance Agencies will have access to clear, published rules governing the mediation of breach of contract claims or the resolution of any protests they may wish to file concerning contract solicitation or award against the Commission or any of the Finance Agencies.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed. There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses. Small or micro-businesses would face the same cost to file a claim for breach of contract by the Commission or any Finance Agency or to file a protest of a contract solicitation or award under the proposed rules as they would face now under formal or informal policies or procedures of the Commission or any Finance Agency. In fact, publication of formal rules governing such claims and protests will probably reduce the time and effort such businesses would incur to initiate a claim or protest because the process will be clearly set out in readily available rules.

To be considered, comments on the proposed new sections must be submitted no later than 5:00 p.m. on October 4, 2010.

Comments should be addressed to the Executive Director, Texas Finance Commission, c/o Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Comments may also be submitted by email to laurie.hobbs@occc.state.tx.us.

SUBCHAPTER A. NEGOTIATION AND MEDIATION

7 TAC §§10.1 - 10.21

New §§10.1 - 10.21 are proposed under Government Code, Chapter 2260, which requires in §2260.052(c) that each unit of state government with rulemaking authority develop rules to govern the negotiation and mediation of a claim for breach of contract and permits each unit to voluntarily adopt a model rule provided through the coordinated efforts of the State Office of Administrative Hearings and the Office of the Attorney General. Proposed §§10.1 - 10.21 follow the published model rule of the Office of the Attorney General.

Government Code, Chapter 2260 is affected by the proposed new sections.

§10.1. Purpose and Application.

This subchapter governs the negotiation and mediation of a claim of breach of contract asserted by a contractor against a Finance Unit of state government, under Government Code, Chapter 2260.

§10.2. Definitions.

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

(1) Chief administrative officer--The commissioner, executive director, president or other executive officer responsible for the day to day operations of a unit of state government, or that person's designee.

(2) Commission--The Finance Commission of Texas.

(3) Contract Protest Officer--The person or persons assigned by a Finance Unit to resolve disputes over the solicitation, evaluation, or award of a contract.

(4) Contractor--Independent contractor who has entered into a contract directly with a Finance Unit of state government. The term does not include:

(A) A contractor's subcontractor, officer, employee, agent, or other person furnishing goods or services to a contractor;

(B) An employee of a Finance Unit of state government; or

(C) A student at an institution of higher education.

(5) Day--A calendar day. If an act is required to occur on a day falling on a Saturday, Sunday, or holiday, the first working day which is not one of these days should be counted as the required day for purpose of this chapter.

(6) Finance Agency--The Texas Department of Banking, the Department of Savings and Mortgage Lending, or the Office of Consumer Credit Commissioner.

(7) Finance Unit of state government or Finance Unit--The Commission or any of the Finance Agencies.

(8) Interested parties--All vendors who have submitted bids, proposals or other expressions of interest for the provision of goods or services pursuant to a contract with a Finance Unit of state government.

(9) Parties--The contractor and Finance Unit of state government that have entered into a contract in connection with which a claim of breach of contract has been filed under this subchapter.

(10) Unit of state government--The state or an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the constitution or a statute of this state, including a university system or institution of higher education. The term does not include a county, municipality, court of a county or municipality, special purpose district, or other political subdivision of this state.

§10.3. Prerequisites to Suit.

The procedures contained in this subchapter are exclusive and required prerequisites to suit under the Civil Practice and Remedies Code, Chapter 107, and the Government Code, Chapter 2260.

§10.4. Sovereign Immunity.

This subchapter does not waive a Finance Unit of state government's sovereign immunity to suit or liability.

§10.5. Notice of Claim of Breach of Contract.

(a) A contractor asserting a claim of breach of contract under the Government Code, Chapter 2260, shall file notice of the claim as provided by this section.

(b) The notice of claim shall:

(1) be in writing and signed by the contractor or the contractor's authorized representative;

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the officer of the Finance Unit of state government designated in the contract to receive a notice of claim of breach of contract under the Government Code, Chapter 2260; if no person is designated in the contract, the notice shall be delivered to the Finance Unit's chief administrative officer; and

(3) state in detail:

(A) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(B) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and

(C) the legal theory of recovery, i.e., breach of contract, including the relationship between the alleged breach and the damages claimed.

(c) The notice of claim shall be delivered no later than 180 calendar days after the date of the event that the contractor asserts as the basis of the claim.

§10.6. Agency Counterclaim.

(a) A Finance Unit of state government asserting a counterclaim under the Government Code, Chapter 2260, shall file notice of the counterclaim as provided by this section.

(b) The notice of counterclaim shall:

(1) be in writing;

(2) be delivered by hand, certified mail return receipt requested or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and

(3) state in detail:

(A) the nature of the counterclaim;

(B) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(C) the legal theory supporting the counterclaim.

(c) The notice of counterclaim shall be delivered to the contractor no later than 60 calendar days after the Finance Unit of state government's receipt of the contractor's notice of claim.

(d) Nothing in this subchapter precludes the Finance Unit of state government from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

§10.7. Duty to Negotiate.

The parties shall negotiate in accordance with the timetable set forth in §10.8 of this subchapter (relating to Timetable) to attempt to resolve all claims and counterclaims filed under this subchapter. No party is obligated to settle with the other party as a result of the negotiation.

§10.8. Timetable.

(a) Following receipt of a contractor's notice of claim, the chief administrative officer of the Finance Unit of state government or other designated representative shall review the contractor's claim and the Finance Unit's counterclaim, if any, and initiate negotiations with the contractor to attempt to resolve the claim and counterclaim.

(b) Subject to subsection (c) of this section, the parties shall begin negotiations no later than 120 calendar days following the date the Finance Unit of state government receives the contractor's notice of claim.

(c) The Finance Unit of state government may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:

(1) delivering written notice to the contractor that the commencement of negotiations will be delayed; and

(2) delivering written notice to the contractor when the Finance Unit of state government is ready to begin negotiations.

(d) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the applicable deadlines set forth in subsections (b) or (c) of this section, whichever is applicable.

(e) Subject to subsection (f) of this section, the parties shall complete the negotiations that are required by this subchapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the Finance Unit of state government receives the contractor's notice of claim.

(f) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the Finance Unit of state government receives the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party.

(g) The contractor may request a contested case hearing before the State Office of Administrative Hearings (SOAH) pursuant to §10.13 of this title (relating to Request for Contested Case Hearing) after the 270th day after the Finance Unit of state government receives the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.

(h) The parties may agree to mediate the dispute at any time before the 120th day after the Finance Unit of state government receives the contractor's notice of claim and before the expiration of any extension agreed to by the parties pursuant to subsection (f) of this section. The mediation shall be governed by §§10.14 - 10.21 of this subchapter.

(i) Nothing in this section is intended to prevent the parties from commencing negotiations earlier than the deadlines established in subsections (b) and (c) of this section, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

§10.9. Conduct of Negotiation.

(a) Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim. A negotiation under this subchapter may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties. The parties may conduct negotiations with the assistance of one or more neutral third parties. The parties may choose to mediate their dispute in accordance with §§10.14 - 10.21 of this subchapter.

(b) To facilitate meaningful evaluation and negotiation of the claims and any counterclaims, the parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.

§10.10. Settlement Approval Procedures.

The parties' settlement approval procedures shall be disclosed prior to, or at the beginning of negotiations. To the extent possible, the parties shall select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement and who can credibly recommend approval of an agreement.

§10.11. Settlement Agreement.

(a) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.

(b) To be enforceable, a settlement agreement must be in writing and signed by representatives of the contractor and the Finance Unit of state government who have authority to bind each respective party.

(c) A partial settlement does not waive a contractor's rights under the Government Code, Chapter 2260, as to the parts of the claim that are not resolved.

§10.12. Costs of Negotiation.

Unless the parties agree otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs or fees for attorneys, consultants and experts.

§10.13. Request for Contested Case Hearing.

(a) If a claim of breach of contract is not resolved in its entirety through negotiation or mediation in accordance with this subchapter on or before the 270th day after the Finance Unit of state government receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §10.8(f) of this subchapter (relating to Timetable), the contractor may file a request with the Finance Unit of state government for a contested case hearing before SOAH.

(b) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the chief administrative officer of the Finance Unit of state government within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to §10.8(f) of this subchapter.

(c) The Finance Unit of state government shall forward the contractor's request for a contested case hearing to SOAH within a reasonable period of time, not to exceed thirty days, after receipt of the request.

(d) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the Finance Unit of state government if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

§10.14. Agreement to Mediate.

The parties may agree to mediate a claim through an impartial third party. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023. The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009. The parties may be assisted in the mediation by legal counsel or another individual.

§10.15. Qualifications and Immunity of the Mediator.

The mediator shall possess the qualifications required under the Civil Practice and Remedies Code, §154.052, be subject to the standards and duties prescribed by the Civil Practice and Remedies Code, §154.053 and have the qualified immunity prescribed by the Civil Practice and Remedies Code §154.055, if applicable.

§10.16. Confidentiality of Mediation and Final Settlement Agreement.

(a) A mediation conducted under this subchapter is confidential in accordance with the Government Code, §2009.054.

(b) The confidentiality of a final settlement agreement to which a Finance Unit of state government is a signatory that is reached as a result of the mediation is governed by the Public Information Act, Government Code, Chapter 552.

§10.17. Costs of Mediation.

Unless the parties agree otherwise in writing, each party shall be responsible for its own costs incurred in connection with a mediation, including without limitation, costs of document reproduction, fees for attorneys, consultants and experts, and the cost of the mediator shall be divided equally between the parties.

§10.18. Settlement Approval Procedures.

The parties' settlement approval procedures shall be disclosed by the parties prior to the mediation. To the extent possible, the parties shall select representatives who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§10.19. Initial Settlement Agreement.

Any settlement agreement reached during a mediation shall be signed by representatives of the contractor and the Finance Unit of state government, and shall describe any procedures that the parties must follow to obtain final and binding approval of the agreement.

§10.20. Final Settlement Agreement.

A final settlement agreement reached during or as a result of a mediation that resolves an entire claim or counterclaim, or any designated and severable portion of a claim or counterclaim, shall comply with §10.11 of this subchapter (relating to Settlement Agreement).

§10.21. Referral to State Office of Administrative Hearings.

If mediation does not resolve the claim to the satisfaction of the contractor, the contractor may request that the claim be referred to SOAH in accordance with §10.13 of this subchapter (relating to Request for Contested Case Hearing.)

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004893
Leslie L. Pettijohn
Executive Director
Finance Commission of Texas
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-6222

♦ ♦ ♦

SUBCHAPTER B. CONTRACT PROTESTS

7 TAC §10.30

New §10.30 is proposed under Government Code, §2155.076(a) which requires each state agency by rule to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues which are consistent with the rules of the Texas Comptroller of Public Accounts. Section 2155.076(a) also requires the rules to include standards for maintaining documentation about the purchasing process to be used in the event of a protest. Proposed new §10.30 is based on rules adopted by the Comptroller of Public Accounts for contract protests and subsection (h) includes the required standards for maintaining documentation.

Government Code, §2155.076 is affected by the proposed new section.

§10.30. Protests.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract by any Finance Unit of state government may formally protest to the Finance Unit. Such protests must be made in writing and received by the Chief Administrative Officer of the Finance Unit within 10 working days after the protesting party knows, or should have known, of the occurrence of the action that is protested. Formal protests must conform to the requirements of this section. The protesting party must mail or deliver copies of the protest to all other interested parties.

(b) In the event of a timely protest under this section, the Finance Unit of state government shall not proceed further with the solicitation or award of the contract unless the Chief Administrative Officer of such Finance Unit makes a written determination that the contract must be awarded without delay, to protect the best interests of the state.

(c) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision that the protesting party alleges has been violated;

(2) a specific description of each action by the Finance Unit of state government that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) a statement of any issues of law or fact that the protesting party contends must be resolved;

(5) a statement of the argument and authorities that the protesting party offers in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to all other identifiable interested parties.

(d) The Contract Protest Officer of the Finance Unit of state government may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal

to the Chief Administrative Officer of the Finance Unit. The Contract Protest Officer of the Finance Unit of state government may solicit written responses to the protest from other interested parties.

(e) If the protest is not resolved by mutual agreement, the Contract Protest Officer of the Finance Unit of state government shall issue a written determination that resolves the protest.

(1) If the Contract Protest Officer of the Finance Unit of state government determines that no violation of statutory or regulatory provisions has occurred, then the Contract Protest Officer shall inform the protesting party and other interested parties by letter that sets forth the reasons for the determination.

(2) If the Contract Protest Officer of the Finance Unit of state government determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has not been awarded, then the Contract Protest Officer of the Finance Unit shall inform the protesting party and other interested parties of that determination by letter that details the reasons for the determination and the appropriate remedy.

(3) If the Contract Protest Officer of the Finance Unit of state government determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has been awarded, then the Contract Protest Officer of the Finance Unit shall inform the protesting party and other interested parties of that determination by letter that details the reasons for the determination. This letter may include termination of the contract.

(f) The protesting party may appeal a determination of a protest by the Contract Protest Officer of the Finance Unit of state government to the Chief Administrative Officer of the Finance Unit. An appeal of the Contract Protest Officer's determination must be in writing and received in the office of the Chief Administrative Officer of the Finance Unit by not later than 10 working days after the date on which written notice of determination was sent. The scope of the appeal shall be limited to review of the Contract Protest Officer's determination. The protesting party must mail or deliver to all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(g) A written decision that the Chief Administrative Officer has issued shall be the final administrative action of the Finance Unit of state government.

(h) The Finance Unit of state government shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of the Finance Unit.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004894
Leslie L. Pettijohn
Executive Director
Finance Commission of Texas
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-6222

♦ ♦ ♦

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 11. MISCELLANEOUS SUBCHAPTER A. GENERAL

7 TAC §11.37

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), proposes to amend §11.37, concerning providing information to customers about filing complaints. The amended rule is proposed to update Department contact information.

The amendment to §11.37 arises from a change in the internet domain name of the Department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the Department's email and web page addresses have changed from banking.state.tx.us to dob.texas.gov. As a result, the references in §11.37 to the Department's website and email address are now incorrect, and eventually will be inoperative. Though DIR and the Department have implemented the Department's domain name change, all old domain addresses will remain functional for an extended transitional period. However, eventually the old addresses will be disconnected. The proposed amendment would update the reference to the Department's website.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is an updated and accurate rule providing the public with corrected information for contacting the Department.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended section must be submitted no later than 5:00 p.m. on October 4, 2010. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment to §11.37 is proposed under Finance Code, §11.307, which requires the Commission to adopt rules specifying the manner in which banks, foreign banks, bank holding companies, and trust companies provide consumers with information on how to file complaints with the department.

Finance Code, §11.307 is affected by the proposed amendment.

§11.37. How Do I Provide Information to Consumers on How to File a Complaint?

(a) (No change.)

(b) How do I provide notice of how to file complaints?

(1) You must use the following notice in order to let your consumers know how to file complaints: The (your name) is (chartered, licensed, or registered) under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Department of Banking. Any consumer wishing to file a complaint against the (your name) should contact the Texas Department of Banking through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294 Telephone No.: (877) 276-5554 Fax No.: (512) 475-1313 E-mail: consumer.complaints@dob.texas.gov [~~consumer.complaints@banking.state.tx.us~~] Website: www.dob.texas.gov [~~www.banking.state.tx.us~~]

(2) - (5) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004846
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: October 15, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

CHAPTER 17. TRUST COMPANY REGULATION

SUBCHAPTER A. GENERAL

7 TAC §17.3

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), proposes to amend §17.3, concerning sale or lease agreements with an officer, director, principal shareholder, or affiliate of the trust company. The amended rule is proposed to correct references to Financial Accounting Statements issued by the Financial Accounting Standards Board.

The amendment to §17.3 arises from the codification of accounting standards by the Financial Accounting Standards Board (FASB). On June 29, 2009, the FASB issued Statement No. 168, which reorganized all accounting standards and guidance relating to Generally Accepted Accounting Principles (GAAP), in order to provide a single source of authoritative GAAP literature. As part of this reorganization, the FASB changed citation syntax to, and renumbered its Statements. As a result, the reference in §17.3 to FASB Statement Number 13 is now incorrect. The proposed amendment would update the reference to conform with the FASB's codification.

Robert Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is an updated and accurate rule.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended section must be submitted no later than 5:00 p.m. on October 4, 2010. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Finance Code, §181.003, which authorizes the Commission to adopt rules to accomplish the purposes of the Texas Trust Company Act.

Finance Code, §183.109 is affected by the proposed amendment.

§17.3. Sale or Lease Agreements With an Officer, Director, Principal Shareholder, or Affiliate.

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

(d) Application for approval. If a sale or lease agreement requires the written approval of the banking commissioner prior to consummating, renewing, or extending a sale or lease agreement, a written request for approval must be submitted to the banking commissioner at least 60 days prior to the proposed effective date of the sale or lease agreement and must include the following information:

(1) - (6) (No change.)

(7) in the case of a lease agreement, evidence demonstrating that the trust company will account for the lease in accordance with FASB ASC Topic 840, Leases [~~Financial Accounting Standards Board Statement Number 13~~]; and

(8) (No change.)

(e) - (f) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004847
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: October 15, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

CHAPTER 25. PREPAID FUNERAL CONTRACTS

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), proposes to amend §25.2 and §25.3, concerning contract forms for sale of prepaid funeral benefits; and §25.41, concerning providing information to prepaid funeral contract customers about filing complaints. The amended rules are proposed to update Department contact information.

The proposed amendments arise from a change in the internet domain name of the Department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the Department's email and web page addresses have changed from banking.state.tx.us to dob.texas.gov. As a result, the references in Chapter 25 to the Department's website and email address are now incorrect, and eventually will be inoperative. Though DIR and the Department have implemented the Department's domain name change, all old domain addresses will remain functional for an extended transitional period. However, eventually the old addresses will be disconnected. The proposed amendments would update the references to the Department's website.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Ms. Newberg also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is updated and accurate rules providing the public with corrected information for contacting the Department.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended sections must be submitted no later than 5:00 p.m. on October 4, 2010. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

SUBCHAPTER A. CONTRACT FORMS

7 TAC §25.2, §25.3

The amendments to §25.2 and §25.3 are proposed under Finance Code, §154.051, which authorizes the Commission to adopt rules to enforce and administer Finance Code, Chapter 154.

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

§25.2. Am I Required to Use the Model Contract and Model Waiver?

(a) Use of model contract and waiver. You may use the appropriate model contract or the model waiver described in this subsection except as provided in paragraph (2) of this subsection, but you are not required to do so if you obtain approval to use a non-model contract or waiver.

(1) The Department has adopted two model contracts, one for sale of trust-funded prepaid funeral benefits and one for sale of insurance-funded prepaid funeral benefits where the purchaser is also the policy owner, and a model waiver, in English and in Spanish, for your use. Each model contract or waiver meets all statutory requirements and the requirements of this subchapter with respect to the type of transaction it is designed to govern. You may acquire copies of model contracts and the model waiver by downloading them from the Department's web site or requesting them by mail. The Department's web site address is http://www.dob.texas.gov [~~http://www.banking.state.tx.us~~].

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

(b) (No change.)

(c) Non-model waivers. You may use a non-model waiver if it addresses substantially the same matters in substantially the same order as the model waiver, to promote comparability and consumer understanding. Your proposed non-model waiver form may contain additional provisions that are fair to consumers in light of the purpose of Finance Code, Chapter 154. You must submit a non-model waiver to the Department for approval in the manner required by §25.5 of this title. The model waiver in English appears as:
Figure: 7 TAC §25.2(c)
[~~Figure: 7 TAC §25.2(c)~~]

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

§25.3. What Requirements Apply to a Non-Model Contract or Waiver?

(a) - (j) (No change.)

(k) Inquiries and complaints notice. Your proposed prepaid funeral benefits contract must disclose how a purchaser, potential purchaser or consumer can make consumer inquiries and complaints to the Department as required by Finance Code, §11.307(a), and §25.41 of this title (relating to How Do I Provide Information to Consumers on How to File a Consumer Complaint), and to other specified state regulatory agencies with appropriate jurisdiction.

(1) This disclosure must appear exactly as set out in the relevant model contract, including the names and contact information for each regulatory agency, without modification, and will vary in context depending on whether the proposed contract is trust-funded or insurance-funded. The model disclosures for both trust-funded and insurance-funded contracts appear in:
Figure: 7 TAC §25.3(k)(1)
[~~Figure: 7 TAC §25.3(k)(1)~~]

(2) (No change.)

(l) - (m) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004848
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: October 15, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §25.41

The amendment to §25.41 is proposed under Finance Code, §11.307, which requires the Commission to adopt rules specifying the manner in which prepaid funeral benefits contract sell-

ers provide consumers with information on how to file complaints with the Department.

Finance Code, §11.307 is affected by the proposed amendment.

§25.41. How Do I Provide Information to Consumers on How to File a Complaint?

(a) (No change.)

(b) How do I provide notice of how to file complaints?

(1) You must use the following notice in order to let your consumers know how to file complaints: Inquiries should be directed as below. All complaints must be in writing. Concerning the Prepaid Contract: Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705; 1-877/276-5554 (toll free); www.dob.texas.gov [~~www.banking.state.tx.us~~].

(2) - (5) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004849
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: October 15, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §26.11

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), proposes to amend §26.11, concerning providing information to perpetual care cemetery customers about filing complaints. The amended rule is proposed to update Department contact information.

The amendment to §26.11 arises from a change in the internet domain name of the Department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the Department's email and web page addresses have changed from banking.state.tx.us to dob.texas.gov. As a result, the reference in §26.11 to www.banking.state.tx.us is now incorrect, and eventually will be inoperative. Though DIR and the Department have implemented the Department's domain name change, all old domain addresses will remain functional for an extended transitional period. However, eventually the old addresses will be disconnected. The proposed amendment would update the reference to the Department's website.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is an updated and accurate rule providing the public with corrected information for contacting the Department.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended section must be submitted no later than 5:00 p.m. on October 4, 2010. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment to §26.11 is proposed under Health and Safety Code, §712.008, which authorizes the Commission to adopt rules to enforce and administer Health and Safety Code, Chapter 712.

Health and Safety Code, §712.008(b) is affected by the proposed amendment.

§26.11. How Do I Provide Information to Consumers on How to File a Complaint?

(a) (No change.)

(b) How do I provide notice of how to file complaints?

(1) You must use the following notice in order to let your consumers know how to file complaints: Complaints concerning perpetual care cemeteries should be directed to: Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705; 1-877/276-5554 (toll free); www.dob.texas.gov [~~www.banking.state.tx.us~~].

(2) - (5) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004850
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: October 15, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

CHAPTER 31. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), proposes to amend §31.14, concerning contract requirements; and §31.73, concerning administrative investigation of complaints. The amended rules are proposed to update Department contact information.

The amendments arise from a change in the internet domain name of the Department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website,

www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the Department's email and web page addresses have changed from banking.state.tx.us to dob.texas.gov. As a result, the reference in §31.14 and §31.73 to the Department's website and email address are now incorrect, and eventually will be inoperative. Though DIR and the Department have implemented the Department's domain name change, all old domain addresses will remain functional for an extended transitional period. However, eventually the old addresses will be disconnected. The proposed amendments would update the reference to the Department's website.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Ms. Newberg also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is updated and accurate rules providing the public with corrected information for contacting the Department.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended sections must be submitted no later than 5:00 p.m. on October 4, 2010. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

SUBCHAPTER B. HOW DO I REGISTER MY AGENCY TO ENGAGE IN THE BUSINESS OF CHILD SUPPORT ENFORCEMENT?

7 TAC §31.14

The amendment to §31.14 is proposed under Finance Code §396.051, which requires the Commission to adopt rules for the enforcement and administration of Finance Code, Chapter 396, entitled Private Child Support Enforcement Agencies.

Finance Code, Chapter 396 is affected by the proposed amendment.

§31.14. What are the requirements for the contract for services with my agency's clients?

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

(e) Are there any other contractual requirements for clients who engage the services of my agency on or after January 1, 2002? A written contract with a client for the enforcement of child support executed on or after January 1, 2002 by your agency, or a foreign agency authorized to engage in business under Subchapter F of this chapter, must contain the following provision in substantially similar language in a font at least as large as the other provisions of the contract, but no smaller than 10-point with line spacing at least 120% of the point size: Direct your inquiries to the Texas Department of Banking. Complaints must be in writing. Texas Department of Banking, 2601 North Lamar, Austin, Texas 78705, 877-276-5554 (toll free), www.dob.texas.gov [~~www.banking.state.tx.us~~].

(f) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004851
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: October 15, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

SUBCHAPTER E. HOW DOES THE DEPARTMENT EXERCISE ITS ENFORCEMENT AUTHORITY?

7 TAC §31.73

The amendment to §31.73 is proposed under Finance Code, §11.307, which requires the Commission to adopt rules specifying the manner in which child support enforcement agencies provide consumers with information on how to file complaints with the Department.

Finance Code, §11.307 is affected by the proposed amendment.

§31.73. How does the department conduct the administrative investigation of complaint filed against my agency?

(a) How is a complaint filed against my agency? A person or a governmental entity may file a complaint against your agency for violation of Chapter 396 or this chapter in writing mailed, faxed, or e-mailed to the department at 2601 North Lamar Blvd., Austin, Texas 78705, (512) 475-1313, or consumer.complaint@dob.texas.gov [~~consumer.complaint@banking.state.tx.us~~].

(b) - (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 August 20, 2010.

TRD-201004852
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: October 15, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.51

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), proposes to amend §33.51, concerning providing information to MSB cus-

tomers about filing complaints. The amended rule is proposed to update Department contact information.

The amendment to §33.51 arises from a change in the internet domain name of the Department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the Department's email and web page addresses have changed from banking.state.tx.us to dob.texas.gov. As a result, the reference in §33.51 to www.banking.state.tx.us is now incorrect, and eventually will be inoperative. Though DIR and the Department have implemented the Department's domain name change, all old domain addresses will remain functional for an extended transitional period. However, eventually the old addresses will be disconnected. The proposed amendment would update the reference to the Department's website.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is an updated and accurate rule providing the public with corrected information for contacting the Department.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amended section must be submitted no later than 5:00 p.m. on October 4, 2010. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment to §33.51 is proposed under Finance Code, §151.101, which authorizes the Commission to adopt rules to administer and enforce Finance Code, Chapter 151, and under Finance Code, §11.307, which directs the Commission to adopt rules regarding consumer complaint notices.

Finance Code, Chapter 151 is affected by the proposed amendment.

§33.51. How do I Provide Information to My Customers about How to File a Complaint?

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

(d) What must the notice say?

(1) Effective September 1, 2010, you must use the following notice or a notice that substantially conforms to the language and form of the following notice with respect to your money transmission or currency exchange business: If you have a complaint, first contact the consumer assistance division of (Name of License Holder) at (License Holder consumer assistance telephone number), if you still have an unresolved complaint regarding the company's money transmission or currency exchange activity, please direct your complaint to: Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, 1-877-276-5554 (toll free), www.dob.texas.gov [~~www.banking.state.tx.us~~].

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

(e) - (h) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004853
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: October 15, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. CONSUMER LOANS

The Finance Commission of Texas (commission) proposes amendments, new rules, and repeals regarding 7 TAC Chapter 83, §§83.101, 83.102, 83.202 - 83.205, 83.301 - 83.311, 83.404 - 83.408, 83.501, 83.502, 83.504 - 83.505, 83.602, 83.604, 83.701 - 83.708, 83.751 - 83.754, 83.756, 83.757, 83.801 - 83.810, 83.812, 83.826 - 83.831, 83.833, 83.834, 83.836, 83.837, and 83.851 - 83.862, concerning Consumer Loans. The proposed changes affect rules contained in Subchapter A, concerning General Provisions; Subchapter B, concerning Authorized Activities; Subchapter C, concerning Application Procedures; Subchapter D, concerning License; Subchapter E, concerning Interest Charges on Loans; Subchapter F, concerning Alternate Charges for Consumer Loans; Subchapter G, concerning Interest and Other Charges on Secondary Mortgage Loans; Subchapter H, concerning Refunds for Precomputed Loans; Subchapter I, concerning Insurance; Subchapter J, concerning Duties and Authority of Authorized Lenders; and Subchapter K, Prohibitions on Authorized Lenders.

The majority of the rules in Chapter 83 are being amended. Due to the nature and extent of the changes required, two sections are being repealed and replaced with new rules in accordance with Texas Register recommendations. The sections proposed for repeal and replacement with new rules are §83.830, Files and Records Required (Subchapter G Mortgage Brokers), having a proposed new title: "Secondary Mortgage Loan Record Retention Requirement"; and §83.833, Correction of Errors or Violations. Aside from these two sections, any rules experiencing changes contained in 7 TAC Chapter 83 are being proposed with amendments. Any Chapter 83 rule not included in this proposal will be maintained in its current form.

In general, the purpose of the amendments, new rules, and repeals regarding 7 TAC Chapter 83 is to implement changes resulting from the commission's review of Chapter 83 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 83 was published in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3653). The agency circulated an early draft of these proposed changes to interested stakeholders and did not receive any informal precomments. The agency

also did not receive any comments on the notice of intention to review.

Most of the changes are technical in nature and relate to improvements in consistency, grammar, punctuation, capitalization, and formatting. Additional changes provide clarification, more precise legal citations, and improved internal regulation references. The individual purposes of the amendments to each section (or revised new rules and corresponding repeals) are provided in the following paragraphs. Specific explanation is included with regard to new substantive language, substantive changes in language, and significant formatting amendments. The remaining changes throughout all sections consist of minor technical revisions and will be summarized more generally.

The changes to the following sections involve technical corrections to improve grammar and punctuation, to increase consistency in formatting, and to provide more precise internal regulation references and legal citations: §83.101, Purpose and Scope; §83.102, Definitions; §83.202, Knowledge of Laws and Regulations Required; §83.203, Attempted Evasion of Applicability of Chapter; and §83.204, Multiple Licenses.

In the definition of "Authorized lender" contained in §83.102(5), the word "commissioner" has been replaced with the full name of the agency, "Office of Consumer Credit Commissioner" (later defined with the acronym: "OCCC"). Changes of this nature have been made throughout the rules in order to more appropriately refer to either the "OCCC" or "OCCC staff," as opposed to the "agency," the "commissioner," or the "commissioner's representative." The agency believes that references to the OCCC or OCCC staff taking certain actions or requiring certain items provides better clarity and a more plain language approach in regulations.

The title to §83.205 has been amended by adding the words "and Internet" after "Loans by Mail." This section currently contains subsection (d), which states: "a loan made, negotiated, arranged, or collected by or through the Internet is considered a 'loan by mail.'" The "Internet" reference in the title is intended to assist Internet lenders in locating this regulation with more ease. In addition, §83.205 includes revisions related to grammar and use of the term OCCC, as described in the preceding paragraph.

Section 83.301, which contains the licensing definitions, has experienced several minor revisions relating to grammar and punctuation. Two of these changes are recurring throughout the rules. First, the verb "shall" has been changed to "will" in the introductory paragraph and to "must" in paragraph (2)(E). Similar changes have been made to numerous rules in Chapter 83 by replacing "shall" with either "will" or "must," as appropriate, as the latter language is reflective of a more modern and plain language approach in regulations. Second, the hyphens have been removed from the phrases "privately held" and "publicly held," as these hyphens are deemed unnecessary by modern usage guides. This section also includes corrections to an internal reference and business terminology.

Section 83.302 regarding the filing of new applications has been revised and reorganized. For consistency, plural terms have been added to §83.302(1)(B), one of which is a corrected citation. The reorganization involves moving the provisions concerning Statement of Experience and Business Operation Plan to paragraph (1) "Required application information," and moving the Fingerprints language to paragraph (2), "Other required filings." The agency believes that the first two documents, which involve completing OCCC licensing forms about the background of the company and its principal parties, are more appropriately included with the application information. In contrast, the submission of fingerprints, a tangible item forwarded to law enforcement agencies, is more suitable for inclusion under other required filings. Updates have been made to §83.302(1)(J) to include the revised citations to the Texas Business and Commerce Code provisions concerning assumed name certificates, as relocated during the 2009 legislative session. Additionally, throughout §83.302, other technical changes have been made, as follows: language revised regarding fees filed with the application, title of licensing form updated, taglines clarified, internal references updated, business terminology corrected, and term OCCC used for consistency.

Section 83.303 concerning transfer applications has experienced revisions to help both applicants and agency staff streamline the application process. In particular, new subparagraphs (A) and (B) have been added to paragraph (1), designating information required of new licensees filing transfers and of existing licensees filing transfers. Similar language has been utilized in the agency's other regulated areas and serves to better explain exactly what is required of different types of applicants. Much of this language is already contained in the current rule, but has been relocated and reorganized in this proposal for clarity. As with §83.302, §83.303 also includes several other technical corrections to revise fee language, clarify taglines, improve punctuation and grammar, continue the use of OCCC, and correct internal references and terminology.

The changes to the following sections involve technical corrections: §83.304, Change in Form or Proportionate Ownership; §83.305, Amendments to Pending Application; §83.306, Reportable Actions After Application; §83.307, Processing of Application, and §83.308, Relocation. In particular, these revisions improve grammar and punctuation, use the term OCCC, provide parallel formatting, and revise internal regulation references and legal citations.

Section 83.307 regarding the processing of an application has experienced revisions in subsection (a) regarding initial review. The response timeline in §83.307(a) is listed in this proposal as "14 calendar days," as opposed to the current phrase, "10 working days." In most instances, these two timeframes are the same, but the use of calendar days maintains better consistency with the timelines in the agency's other regulated areas.

Section 83.309, relating to License Status includes technical amendments to improve clarity and grammar. Clarification has been added with regard to license expiration in §83.309(d) in order to better track the statutory provisions found in Texas Finance Code, §342.155.

The following sections contain technical corrections: §83.310, Fees; §83.311, Applications and Notices as Public Records; §83.404, Effect of Criminal History Information on Applicants and Licensees; §83.405, Crimes Directly Related to Fitness for License; Mitigating Factors; §83.406, Effect of Revocation, Suspension, or Surrender of License; §83.407, Application Process After Surrender or Revocation; §83.408, License Reissuance; §83.501, Maximum Interest Charge; §83.502, Treatment of Periods Less than a Full Month Before the First Installment Date; §83.504, Default Charges; §83.505, Deferment; and §83.602, Default Charges. Of note, the revisions remove unnecessary language, continue use of the term OCCC, revise internal regulation references, provide more precise legal citations, update examples, provide parallel formatting, and improve grammar, punctuation, and capitalization.

Subsection (e) of §83.604 regarding payday loans has experienced several revisions in order to improve clarity and formatting. Descriptive taglines have been added to all existing paragraphs, current paragraph (2) has been separated into two paragraphs, and the remaining paragraphs have been renumbered accordingly. Furthermore, proposed §83.604(e)(2) has been divided into subparagraphs (A) - (E), outlining the requirements of the written agreement. The details concerning the required notices are now included in proposed paragraph (3) in order to visually separate these two important issues. The word "bank" has been replaced with "depository institution" for better accuracy. Additionally, other changes throughout §83.604 involve revised internal references, improved grammar, and more precise legal citations.

The changes to the following sections involve technical corrections to revise internal regulation references, provide more precise legal citations, update examples, provide parallel formatting, and improve grammar, punctuation, and capitalization: §83.701, Maximum Interest Charge; §83.702, Treatment of Periods Less than a Full Month; §83.703, Default Charges; §83.704, Deferment; and §83.705, Amounts Authorized to Be Charged After Consummation.

Both §83.706, concerning Amounts Authorized to Be Collected on or Before Closing, and §83.707, concerning Other Fees, include specific points of clarification. First, in §83.706(a), the phrase "of the eight categories" has been deleted, as the statute no longer contains eight categories (currently nine). As opposed to merely replacing "eight" with "nine," this proposal deletes the number reference and states that the lender "may collect any one or more of the charges [in the statute]." Second, in subsection (c) of §83.706, the word "credit" has been deleted and replaced with "consumer" to be consistent with the defined term "consumer reporting agency" found in the Fair Credit Reporting Act.

In §83.707(b), additional examples of unauthorized fees have been added, as follows: "settlement or closing fees, tax certificates, [and] expedited payments . . . ." These unauthorized fees have been encountered often during the examination process. The agency believes that inclusion of these items in the rule will better inform licensees and address questions that may arise about these particular unauthorized fees. In addition, §83.706 and §83.707 contain revisions related to improvements in capitalization and grammar.

The following sections contain technical corrections: §83.708, Balloon Payments; §83.751, Scope; §83.753, Refund of Precomputed Interest for Regular Subchapter E Loans; and §83.754, Refund of Precomputed Interest for Subchapter G Loans. In particular, these amendments improve grammar and provide: more precise legal citations, more descriptive taglines, and more parallel formatting.

Section 83.756, concerning Refund of Precomputed Interest for Subchapter F Loans; Prepayment in Full Before the First Installment Due Date, includes an important clarification along with improvements in grammar. The clarification is contained in subsection (b), where the introductory phrase as proposed reads: "If the first installment due date is more than one month from the contract date but less than one month and 15 days from the contract date, ..." The latter phrase beginning with "but less than" has been added to clarify that the calculation cannot go beyond one month and 15 days, as that would be an irregular transaction governed by different rules.

The changes to the following sections involve technical corrections to improve grammar, punctuation, and clarity: §83.757, Refund of Precomputed Interest for Subchapter F Loans; Prepayment in Full After the First Installment Due Date and Before the Final Installment Due Date; and §83.801, Definitions.

Subsection (c) and its accompanying figure have been added to §83.802, regarding Authorized Property Insurance. Proposed §83.802(c) memorializes the agency's policy regarding licensees who offer or provide property insurance on a loan at a rate not approved by the Texas Department of Insurance. Over time, the agency had developed a range of acceptable rates that are now proposed in Figure §83.802(c). The agency believes having a published table of approved rates will allow licensees to choose whether they wish to charge a higher rate requiring commissioner approval, or charge the preapproved rates contained in the figure. In addition, this section includes minor changes relating to grammar and use of OCCC, as well as appropriate relettering of the subsections after the insertion of new subsection (c).

The following sections contain technical corrections: §83.803, Limitations on Property Insurance; §83.804, Claim Provisions for Property Insurance Other than Insurance Covering Motor Vehicles; §83.805, Authorized Credit Insurance, and §83.806, Provision of Policy or Certificate. Of note, the revisions improve grammar, correct capitalization, remove unnecessary language, and incorporate plain language.

Revisions to §83.807 and §83.808 provide clarification regarding insurance that may be offered by the lender. Collateral protection insurance is most commonly single-interest insurance; however, collateral protection can also include dual-interest insurance. The agency does not want to appear to limit what the lender could sell by regulation. In recognition of the lender's option for single- or dual-interest insurance, the title of §83.807 is proposed to read: "Collateral Protection Insurance," with the same change being made in the first line of that rule. Likewise, in §§83.808, 83.809, 83.810, 83.812, and 83.828, conforming changes have been made by replacing "single-interest" with "collateral protection." Section 83.808 also includes improvements in grammar.

Technical corrections have been made to the following sections: §83.809, Prepayment of Loan from Insurance Proceeds; §83.810, Evidence of Equal Insurance Coverage; and §83.812, Gap Waiver Agreement. In particular, these amendments improve grammar and punctuation, provide more accurate references to resources used for calculations, add clarifying language, provide consistency in formatting, and revise internal references.

Section 83.826, regarding Quotation of Net Pay-Offs has experienced clarifying revisions and been reorganized in order to group information regarding Chapter 342, Subchapter G loans into new subsection (b) and likewise provide a separate subsection for Chapter 342, Subchapter E and F loans (new §83.826(c)). The agency believes that this reorganization will enable lenders in each respective category to locate the relevant information in a more efficient manner. Additionally, regarding the reasonable response time for secondary mortgage loans under Subchapter G, language has been added after the current timeline of seven calendar days, stating: "unless federal law requires a shorter response time." This phrase is intended to avoid any potential conflict with federal provisions and interpretations relating to Regulation Z - Truth in Lending, 12 C.F.R. §226.36(c)(iii).

Reorganization has also occurred in §83.827, Return of Instruments to Borrower with the reordering if subsections (a) and (b). To better aid the reader, the definition of "Collected funds" is now contained in subsection (a), prior to its use in proposed §83.827(b). Aside from these formatting changes, §83.827 also includes minor changes to improve grammar.

The recordkeeping sections for Subchapter E and F lenders (§83.828) and Subchapter G lenders (§83.829) have both been revised with the following corresponding changes: improvements in grammar and clarity, revisions to achieve parallel formatting, and the addition of a sentence concerning federal law recordkeeping requirements prevailing in the case of a conflict with the rules.

In §83.828(12), the adverse action records provision has been revised in order to maintain consistency with regulations in other areas and to provide more clarity. Also in §83.828, changes have been made to include more precise legal citations and continue use of the term OCCC.

Proposed new §83.830 (repeal and replace) provides the record retention requirement for persons who engage in secondary mortgage loans subject to Chapter 342. Current §83.830 contains specific recordkeeping requirements for mortgage brokers. This term is being phased out and parties who engage in these loans are no longer required to hold separate licenses under Chapter 342. Thus, it is no longer necessary for the agency to have a detailed recordkeeping regulation for non-licensees; however, the statute continues to mandate the appropriate record retention requirement for secondary mortgage loans under Chapter 342 regardless of the licensing status of the originator. As a result, the detailed requirements are being repealed and replaced with a general statement that records must be maintained in accordance with Texas Finance Code, §342.558.

Section 83.831 concerning approval of electronic recordkeeping systems includes minor technical amendments to provide parallel formatting, improve grammar, and use the term OCCC.

Proposed new §83.833 (repeal and replace), regarding Correction of Errors or Violations has experienced several revisions in order to improve clarity and organization. Current §83.833 is relatively brief, whereas proposed §83.833 provides much greater detail and guidance to licensees as to how errors and violations may be corrected.

Section 83.834, regarding Unclaimed Funds has been revised with clarifying language added to subsections (b) and (d). In §83.834(b), the use of registered or certified mail has been clarified as a delivery method that may be required with respect to specific borrowers. Language has been added to the end of subsection (d) to allow for payment to another state or governmental entity under that entity's law, as appropriate. In addition, §83.834 also includes revisions related to punctuation, grammar, and consistency.

Section 83.836 has experienced revisions regarding the consistent formatting of numbers and the addition of "per examiner" to clarify the application of the hourly rate for follow-up examination fees.

In §83.837(c)(2), accent marks have been added to the Spanish translation of the disclosure required when automobile club memberships are offered in connection with a Chapter 342 loan. The actual wording of the translation has not changed, as the revisions involve providing more formal Spanish characters for systems able to produce them. Licensees using the current translation without the accent marks will be considered in compliance. Additionally, §83.837 includes technical corrections to improve grammar and capitalization.

The following sections contain technical corrections: §83.851, Duplication of Loans; §83.852, Loan Size, Duration, and Schedule of Installments: Limitation; §83.853, Misleading Advertising; §83.854, Conditional Offers of Credit; §83.855, Advertisements in Form of Negotiable Instruments; §83.856, Use of State Agency Name; §83.857, Full Disclosure Requirements--Other than Open-End or Revolving Loan Plans; §83.858, Full Disclosure Requirements--Open-End and Revolving Loan Plans; and §83.859, Collection Practices. Of note, the revisions provide more precise legal citations, incorporate plain language, continue use of the term OCCC, and improve grammar, punctuation, and capitalization.

Section 83.860, regarding Collection Contacts has experienced several revisions to clarify additional parties that may be contacted by a licensee and to clarify the application of the section. In particular, proposed subsection (b) states that licensees may also solicit payment from the "borrower's designee, trustee, insurance company paying a claim or a refund involving the debtor, any party having a lawful right or claim to any collateral, any person who may be or is legally obligated to pay all or a portion of the debt, or a guardian, executor, administrator, attorney, agency or representative of any of the foregoing." Similarly, §83.860(d) adds guardians, executors, administrators, or other parties authorized under the Gramm Leach Bliley Act or the Fair Credit Reporting Act to receive nonpublic personal information pertaining to a debt. In addition, new subsection (f) provides the applicability of particular subsections in situations involving pending court or arbitration proceedings or notices required by law or contract. Changes have also been made to improve grammar and legal citations.

The changes to the following sections involve technical corrections to improve grammar: §83.861, Simulated Legal Process or Documents Prohibited; and §83.862, Impersonation and Fictitious Names Prohibited.

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

Commissioner Pettijohn also has determined that for each year of the first five years the amendments, new rules, and repeals are in effect, the public benefit anticipated as a result of the changes from the previously enacted version of these rules will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. The general substance of these rules has already been in effect, as the majority of the amendments involve clarification and reorganization. Thus, there is no anticipated cost to persons who are required to comply with the amendments, new rules, and repeals as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments, new rules, and repeals as proposed.

Comments on the proposed amendments, new rules, and repeals 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 proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §83.101, §83.102

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.101. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to assist in the administration and enforcement of Texas Finance Code, Chapter 342.

(b) Scope.

(1) This chapter applies to all persons engaged in the business of making, transacting, or negotiating loans subject to Texas Finance Code, Chapter 342. As such, this chapter only applies to lenders and brokers in the business of making, transacting or negotiating loans that:

(A) contract for, charge, or receive interest in excess of 10% per year;

(B) are loans extended primarily for personal, family, or household use; and

(C) are either:

(i) unsecured or secured by a lien on real estate;

(ii) secured under a secondary mortgage loan; or

(iii) secured by personal property.

(2) This chapter applies to [~~includes~~] term loans extended primarily for personal, family, or household purposes.

(3) This chapter also applies to [~~includes~~] a loan broker who arranges, negotiates, or brokers loans for a lender that funds the loan. This chapter does not apply to any loans made under Texas Finance Code, Chapters 301 - 308 or Chapter 339, including [~~for example,~~] commercial and agricultural loans.

§83.102. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 342 have the same meanings as defined in Chapter 342. The following words and terms, when used in this chapter, will [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Acquisition charge--An interest charge authorized for making the cash advance under the authority of Texas Finance Code, §342.252 and §342.259.

(2) Add-on interest--A method for calculating precomputed interest in which the borrower agrees to pay the total of payments, which includes both interest and principal, as opposed to agreeing to pay the principal plus interest as it accrues at a certain rate. Add-on interest is calculated at the outset of a loan on the cash advance for the full term, as if the principal did not decline over the course of the loan. For example, a $1,000 loan with 12 monthly installments and an add-on interest amount of $8.00 per hundred per annum would have a total charge of interest of $80 and monthly payments of $90, yielding an annual percentage rate ("APR") of 14.45%.

(3) Amount financed [~~Financed~~]--The amount of money which is used, forborne, or detained and upon which interest is charged. The cash advance plus any other amounts that are financed by the creditor are included. Any points or other prepaid finance charges, excluding the administrative loan fee, that are not paid at closing and that are financed as part of the transaction are included in the amount financed. This definition is only applicable for the purposes of this chapter [~~subchapter~~] for computing earnings, deferments, maximum charges, and determining refunds of unearned interest. It is not intended to be synonymous [~~analogous~~] with the similar term that is used in the Truth in Lending Act (15 U.S.C. §§1601 - 1667f) [~~§1601, et seq.~~)].

(4) Authorized charge--Any charge authorized by applicable Texas law to be included in the credit transaction.

(5) Authorized lender--A person who has obtained a regulated loan license from the Office of Consumer Credit Commissioner [~~commissioner~~], or a bank, savings bank, savings and loan association, or credit union doing business under the laws of this state, another state, or the United States. Banks, savings banks, and savings and loan associations chartered in other states insured by the Federal Deposit Insurance Corporation, and credit unions chartered in other states insured through the National Credit Union Share Insurance Fund are included in this term. Separate entities that are subsidiaries or affiliates of licensees or authorized banks, savings banks, savings and loan associations, or credit unions are not authorized lenders unless they meet the required elements of the definition of an authorized lender in their own right.

(6) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(7) Date of consummation--The date of closing or execution of a loan contract.

(8) Default charge or late charge--The additional interest charge for late payment on a loan.

(9) Deferment charge--The payment of an additional interest charge to defer the payment date of a scheduled payment on a contract.

(10) Dual-interest coverage--Insurance that provides benefits to both the holder of a loan and the borrower in the event of a loss of the security covered by the policy. The policy contains a loss payable clause or endorsement that provides benefits that are payable at the discretion of the holder.

(11) Installment account handling charge ("IAHC") [~~(IAHC)~~]--An interest charge authorized for making a loan under Texas Finance Code, §342.252 and §342.259.

(12) Installment loan--Any type of closed-end loan with multiple scheduled payments.

(13) Interest-bearing loan--A loan in which the borrower agrees to pay the principal and interest that accrues at a certain periodic rate.

(14) Interpretation letter--A formal interpretation of Texas Finance Code, Title 4 made by the commissioner and approved by the Finance Commission [~~finance commission~~] under Texas Finance Code, §14.108.

(15) Licensee--Any person who has been issued a regulated loan license pursuant to Texas Finance Code, Chapter 342. Another name for a "regulated loan license" is a "consumer loan license."

(16) Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, or the act of funding the loan or transferring money from the lender to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(17) Negotiating a loan--The process of submitting and considering offers between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.

(18) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(19) Precomputed loan--A loan in which the borrower agrees to pay the total of payments that includes both principal and all anticipated interest through the full term of the loan. If a borrower prepays a precomputed loan, the borrower is entitled to a rebate of all unearned interest and unearned charges.

(20) Prepaid interest--Interest paid separately in cash or by check before or at consummation in a transaction, or withheld from the proceeds of the credit at any time. Some common terms such as points, discounts, and origination fees have been used to identify this charge.

(21) Principal--The capital sum of the debt, including any interest capitalized and added to the cash advance at the inception of the loan. Principal [~~This~~] is the amount of money which is used, forborne, or detained and upon which interest is charged. The principal amount does not include any interest accrued after the inception of the loan, such as default charges.

(22) Pro rata method--A formula for determining the amount of unearned interest or other charges, such as insurance, to be refunded following prepayment or acceleration by applying the amounts to equal unit periods. The formula for the pro rata method [~~This formula~~] assumes that interest or other charges are earned in direct proportion to the time that a loan has been outstanding.

(23) Rebate--A refund of all or part of a precomputed charge or interest.

(24) Regulated loan--A loan made under the authority of Texas Finance Code, Chapter 342.

(25) Renewal or refinance--A new loan contract that includes, in whole or in part, the net balance of one or more existing loan contracts.

(26) Simple annual rate--The interest rate under the loan agreement expressed as a percentage rate per year employing the U.S. rule method.

(27) Sum of the monthly balances or sum of the periodic balances method--A [~~Another~~] formula for determining the amount of unearned interest or other charges to be refunded. The sum of the balances method [~~This~~] is a variant of the rule of 78s. This method [~~It~~] provides that the fraction of the contract interest to be rebated at any given time in the loan term is the sum of the monthly loan balances for the months remaining in the originally scheduled loan term divided by the sum of the monthly balances for all of the months in the scheduled loan term. For example, for a six-month [~~6-month~~] loan of $600 that [~~which~~] is scheduled to be repaid in $100 monthly installments, the rebate fraction after two months would be: 400 + 300 + 200 + 100 divided by 600 + 500 + 400 + 300 + 200 + 100 = 1000/2100 = 10/21 = 0.476 (rounded). For any loan that [~~which~~] is paid off in equal installments, the sum of the balances method and the rule of 78s will provide identical rebates. If, however, a loan schedule contains unequal payments, and especially where the debt is retired by a final balloon payment, the rebates under the two formulas will be different.

(28) Term loan--A loan made repayable in a single payment.

(29) Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents and the transfer of money by the lender to the borrower or to a third party on the borrower's behalf. Transacting a loan [~~This~~] also includes the act of arranging a loan.

(30) United States rule--Ruling of United States Supreme Court in Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839) that, in partial payments on a debt, each payment is applied first to interest and any remainder reduces the principal. Under this rule, accrued but unpaid interest cannot be added to the principal, and interest cannot be compounded.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004877
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §§83.202 - 83.205

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.202. Knowledge of Laws and Regulations Required.

Each officer, director, employee, and agent of a licensee must [~~shall~~] have a working knowledge of Texas Finance Code, Chapter 342, its implementing regulations, and other pertinent state and federal statutes and regulations that apply to the licensee's business.

§83.203. Attempted Evasion of Applicability of Chapter.

A "device, subterfuge, or pretense to evade the application" of this chapter, as used in Texas Finance Code, §342.051(b) refers to any transaction:

(1) that in form may appear on its face to be something other than a loan, but in substance meets the definition of a loan as defined in Texas Finance Code, §301.002(a)(10); and

(2) in which more than 10% annual interest, in substance, is being contracted for, charged, or received.

§83.204. Multiple Licenses.

(a) Definitions. The words "made," "negotiated," and "collected" as used in Texas Finance Code, §342.052(b) are to be construed as follows.

(1) Made or make [~~Make~~]--Loans are "made" by the office or offices where either the credit decision is made or the cash advance is disbursed.

(2) Negotiated or arranged [~~Arranged~~]; negotiate [~~Negotiate~~] or arrange [~~Arrange~~]--Loans are "negotiated" or "arranged" in the office or offices that received any information preliminary to a credit decision on a prospective borrower or received the executed application, agreement, or other necessary loan documentation.

(3) Collected or collect [~~Collect~~]--Loans are "collected" in the office or offices from which attempts are made to collect past-due payments from the borrowers under a loan. The mere receipt and accounting of payments does not constitute "collection."

(b) Application. Any office making, negotiating, arranging, or collecting loans must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices must be licensed. On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

§83.205. Loans by Mail and Internet.

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §342.053(b) are to be construed according to the definitions contained in §83.204(a) of this title (relating to Multiple Licenses).

(b) Application. Any office, wherever located, making, negotiating, arranging, or collecting loans by mail must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices involved in lending by mail must be licensed. On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

(c) Authorized lenders. The following entities with offices located outside of Texas may make loans by mail to Texas residents and are considered to meet the definition of authorized lender as contained in §83.102 of this title (relating to Definitions):

(1) a person who has obtained a regulated loan license from the OCCC [~~commissioner~~];

(2) a bank, savings bank, savings and loan association, or credit union doing business under the laws of this state, another state, or the United States;

(3) a bank, savings bank, or savings and loan association chartered in another state and insured by the Federal Deposit Insurance Corporation; and

(4) a credit union chartered in another state and insured through the National Credit Union Share Insurance Fund.

(d) Internet loans. For purposes of Texas Finance Code, §342.053(b), a loan made, negotiated, arranged, or collected by or through the Internet is considered a "loan by mail."

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004878
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §§83.301 - 83.311

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.301. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 342, have the same meanings as defined in Chapter 342. The following words and terms, when used in this chapter, will [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally, assets are available for use if they are readily convertible to cash within 10 business days.

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are [~~considered to be~~] principal parties:

(A) proprietors, including spouses with community property interest;

(B) general partners;

(C) officers of privately held [~~privately-held~~] corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 342;

(D) directors of privately held [~~privately-held~~] corporations;

(E) individuals associated with publicly held [~~publicly-held~~] corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) [~~(D)~~] of this paragraph [~~section~~] (as if the corporation were privately held [~~was privately-held~~]); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 342. One of the persons designated must [~~shall~~] be responsible for assembling and providing the information required on behalf of the applicant and must [~~shall~~] sign the application for the applicant;

(F) voting members of a limited liability company; [~~corporation; and~~]

(G) trustees and executors; and

(H) individuals designated as [~~a~~] principal parties [~~party~~] where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§83.302. Filing of New Application.

An application for issuance of a new regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the [~~The~~] application and the application must include the [~~appropriate fees and~~] the following:

(1) Required application information. All questions must be answered.

(A) Application for License.

(i) Location. A physical street address must be listed for the applicant's proposed lending address. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) Responsible person. The person responsible for the day-to-day operations of the applicant's proposed offices must be named.

(iii) Signature(s). Electronic signatures will be accepted in a manner approved by the commissioner.

(I) If the applicant is a proprietor, each owner must sign.

(II) If the applicant is a partnership, each general partner must sign.

(III) If the applicant is a corporation, an authorized officer must sign.

(IV) If the applicant is a limited liability company, an authorized member or manager must sign.

(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorships [~~Proprietorship~~]. The applicant must disclose who owns and who is responsible for operating the business. All community property interests [~~interest~~] must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(ii) General partnerships [~~partnership~~]. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists [~~includes~~] the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations [~~Organization~~] Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(iii) Limited partnerships [~~partnership~~]. Each partner, general and limited, must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists [~~includes~~] the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations [~~Organization~~] Code, §1.002, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list of all limited partners owning 5% or more of the partnership.

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(iv) Corporations [~~Corporation~~]. Each officer and director must be named. Each shareholder holding 5% or more of the voting stock must be named if the corporation is privately held [~~privately-held~~]. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(v) Limited liability companies [~~company~~]. Each "manager," "officer," and "member" owning 5% or more of the company, as those terms are defined in Texas Business Organizations [~~Organization~~] Code, §1.002, and each agent owning 5% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(vi) Trusts or estates [~~Trust or Estate~~]. Each trustee or executor, as appropriate, must be listed.

(C) Application Questionnaire. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(D) [~~Appointment of~~] Statutory Agent Disclosure [~~and Consent to Service~~]. The [~~appointment of~~] statutory agent disclosure [~~and consent to service~~] must be provided by each applicant. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Office of the Secretary of State [~~Texas Secretary of State~~]. If the statutory agent is not the same as the registered agent filed with the Office of the Secretary of State [~~Texas Secretary of~~

~~State~~], then the applicant must submit certified minutes appointing the new agent.

(E) Personal Affidavit. Each individual meeting the definition of "principal party" as defined in §83.301 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.

(F) Personal Questionnaire. Each individual meeting the definition of "principal party" as defined in §83.301 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(G) Employment History. Each individual meeting the definition of "principal party" as defined in §83.301 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, with no gaps, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(H) Statement of Experience. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(I) Business Operation Plan. Each applicant must provide a brief narrative to the application explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:

(i) the source of customers;

(ii) the purpose(s) of loans;

(iii) the size of loans;

(iv) the source of working capital for planned operations;

(v) whether the applicant will only be arranging or negotiating loans for another lender or financing entity;

(vi) if the applicant will only be arranging or negotiating loans for another lender or financing entity, the lender must also provide:

(I) a list of the lenders for whom the applicant will be arranging or negotiating loans;

(II) whether the loans will be collected at the location where the loans are made; and

(III) if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.

~~[(H) Fingerprints.]~~

~~*[(i)* For all persons meeting the definition of "principal party" as defined in §83.301 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the agency and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.]~~

~~*[(ii)* For limited partnerships, if the Disclosure of Owners and Principal Parties under subparagraph (B)(iii)(I) of this paragraph does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.]~~

~~*[(iii)* For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.]~~

~~*[(iv)* For individuals who have previously been licensed by the Office of Consumer Credit Commissioner and principal parties of entities currently licensed, fingerprints are not required.]~~

~~*[(v)* For individuals who have previously submitted fingerprints to another state agency (e.g. Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the Office of Consumer Credit Commissioner, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002, as amended.]~~

(J) [~~(I)~~] Financial Statement and Supporting Financial Information.

(i) All entity types [~~General information~~]. The financial statement must be dated no earlier than 60 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the Supporting Financial Information. All financial statements must be certified as true, correct, and complete.

(ii) Sole proprietorships. Sole proprietors must complete all sections of the Personal Financial Statement and the Supporting Financial Information, or provide a personal financial statement that contains all of the same information requested by the Personal Financial Statement and the Supporting Financial Information. The Personal Financial Statement and Supporting Financial Information must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the Supporting Financial Information must be submitted for the partnership itself and each general partner. All of the balance sheets and Supporting Financial Information documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required [~~by the commissioner~~] if the commissioner believes they are relevant. The financial information for the corporate [~~corporation~~] or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial

Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required [~~by the commissioner~~] if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(K) [~~(J)~~] Assumed Name Certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and [~~&~~] Commerce Code, Chapter 71 [~~§36.02(7)~~], an Assumed Name Certificate must be filed as provided in this subparagraph [~~subsection~~].

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and [~~&~~] Commerce Code, Chapter 71 [~~§36.02(7)~~], as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and [~~&~~] Commerce Code, Chapter 71 [~~§36.02(7)~~], as amended. Evidence of the filing bearing the filing stamp of the Office of the Secretary of State [~~Texas Secretary of State~~] must be submitted or, alternatively, a certified copy.

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §83.301 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the Disclosure of Owners and Principal Parties under paragraph (1)(B)(iii)(I) of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The OCCC may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are not required.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002, as amended.

(B) [~~(A)~~] Loan forms. The applicant must provide information regarding all loan forms it intends to use.

(i) Custom forms. If a custom loan form is to be prepared, a preliminary draft or proof that is complete as to format and content and which indicates the number and distribution of copies to be prepared for each transaction must be submitted.

(ii) Stock forms. If an applicant purchases or plans to purchase stock forms from a supplier, the applicant must include a statement that includes the supplier's name and address and a list identifying the forms to be used, including the revision date of the form, if any.

~~[(B) Statement of Experience. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.]~~

~~[(C) Business Operation Plan. Each applicant must provide a brief narrative to the application explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:]~~

~~*[(i)* the source of customers;]~~

~~*[(ii)* the purpose(s) of loans;]~~

~~*[(iii)* the size of loans;]~~

~~*[(iv)* the source of working capital for planned operations;]~~

~~*[(v)* whether the applicant will only be arranging or negotiating loans for another lender or financing entity;]~~

~~*[(vi)* if the applicant will only be arranging or negotiating loans for another lender or financing entity, the lender must also provide:]~~

~~*[(I)* a list of the lenders for whom the applicant will be arranging or negotiating loans;]~~

~~*[(II)* whether the loans will be collected at the location where the loans are made; or]~~

~~*[(III)* if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.]~~

(C) [~~(D)~~] Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Office of the Secretary of State [~~Texas Secretary of State~~].

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the certificate of formation or articles of incorporation, with [~~articles of incorporation and~~] any amendments;

(II) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(III) a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Office of the Secretary of State [~~Texas Secretary of State~~]:

(-a-) a copy of the minutes of corporate meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the corporation identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly held [~~Publicly-held~~] corporations. In addition to the items required for corporations, a publicly held [~~publicly-held~~] corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(III) a copy of the minutes of company [~~corporate~~] meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Office of the Secretary of State [~~Texas Secretary of State~~]:

(-a-) a copy of the minutes of company [~~corporate~~] meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the company [~~corporation~~] identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(v) Trusts. A copy of the relevant portions of the instrument that created the trust addressing management of the trust and operations of the applicant must be filed with the application.

(vi) Estates. A copy of the instrument establishing the estate must be filed with the application.

(vii) Foreign entities. In addition to the items required by this section [~~chapter~~], a foreign entity must provide:

(I) a certificate of authority to do business in Texas, if applicable; and

(II) a statement of where records of Texas loan transactions will be kept. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment fee or agree to make all the records available for examination in Texas.

(D) [~~(E)~~] Bond. The commissioner may require a bond under Texas Finance Code, §342.102, when the commissioner finds that this would serve the public interest. When a bond is required, the commissioner will [~~shall~~] give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location including the Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement as provided in paragraph (1)(J) [~~(1)(I)~~] of this section. The responsible person at the new location must file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed. Other information required by this section need not be filed if the information on file with the OCCC [~~agency~~] is current and valid.

§83.303. Transfer of License.

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §83.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(1) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(2) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(3) any change in ownership of a licensed limited partnership interest:

(A) in which a limited partner owning 10% or more relinquishes that owner's entire interest;

(B) in which a new limited partner obtains an ownership interest of 10% or more;

(C) in which a general partner relinquishes that owner's entire interest; or

(D) in which a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(4) any change in ownership of a licensed corporation:

(A) in which a new stockholder obtains 10% or more of the outstanding voting stock in a privately held [~~privately-held~~] corporation;

(B) in which an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held [~~privately-held~~] corporation;

(C) any purchase or acquisition of control of 51% or more of a company which is the parent or controlling stockholder of a licensed privately held [~~privately-held~~] corporation; or

(D) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held [~~publicly-held~~] corporation;

(5) any change in the membership interest of a licensed limited liability company:

(A) in which a new member obtains an ownership interest of 10% or more;

(B) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(C) in which a purchase or acquisition of control of 51% or more of any company that [~~which~~] is the parent or controlling member of a licensed limited liability company occurs;

(6) any acquisition of a license by gift, devise, or descent; and

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of subsection (a)(1) - (6) [~~(5)~~] of this section, and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) Approval of transfer. No regulated loan license may be sold, transferred, or assigned without written approval of the commissioner.

(c) Filing requirements. An application for transfer of a regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the rules and instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the transfer application, and the [~~The~~] application for transfer must [~~shall~~] include the [~~appropriate fees and~~] the following:

(1) Required application information. [~~The information contained in the following must be submitted: Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, Appointment of Statutory Agent and Consent to Service, Personal Affidavit, Personal Questionnaire, Employment History, Fingerprints, and Financial Statement and Supporting Financial Information. The instructions in §83.302 of this title (relating to Filing of New Application) are applicable to these filings.~~]

(A) New licensees filing transfers. The information required for new license applications under §83.302 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §83.302 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in subsection (c)(2) of this section must also be submitted.

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement, as provided in §83.302 of this title. The instructions in §83.302 of this title are applicable to these filings. The responsible person at the new location must file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed. Other information required by §83.302 of this title need not be filed if the information on file with the OCCC is current and valid. In addition, evidence of transfer of ownership as described in subsection (c)(2) of this section must also be submitted.

(2) Evidence of [~~the~~] transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application and should include one of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the stock purchase agreement or other evidence of acquisition if voting stock of a corporate licensee has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

[~~(3) Other required filings. All other required filings of new license applicants pursuant to §83.302 of this title must be filed and completed by any applicant for transfer of a license. If the applicant is currently licensed and acquiring another location, the applicant must provide the information that is unique to the new location including the Application for License, Application Questionnaire, and Disclosure of Owners and Principal Parties, evidence of the transfer of ownership, and a new Financial Statement as provided in §83.302(1)(I) of this title. The responsible person at the new location must file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed. Other information required by this section need not be filed if the information on file with the agency is current and valid.~~]

(d) Permission to operate. No business under the license may [~~shall~~] be conducted by any transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the transferee the authority to operate under the transferor's license pending approval of the transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC [~~agency~~] for the licensed business for any acts of the transferee in connection with the operation of the lending business. The permission to operate must be submitted before the transferee [~~seller~~] takes control of the licensed operation. The agreement must [~~shall~~] set a definite period of time for the transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC [~~agency~~] grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) Application filing deadline. Applications filed in connection with transfers of ownership may be filed in advance but must be filed no later than 10 calendar days following the actual transfer.

§83.304. Change in Form or Proportionate Ownership.

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from corporation to limited partnership), the licensee must advise the commissioner in writing of the change within 10 calendar days by filing the appropriate transfer application documents as provided in §83.303 of this title (relating to Transfer of License). In addition, the licensee must [~~shall~~] submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of conversion and partnership agreement) addressing the ownership and management of the new entity.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §83.303 of this title. A merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity requires a transfer application pursuant to §83.303 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual

amounts to 5% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership. This section does not apply to a publicly held [~~publicly-held~~] corporation that has filed with the OCCC [~~agency~~] the most recent 10K or 10Q filing of the licensee or the publicly held [~~publicly-held~~] parent corporation, although a transfer application may be required under §83.303 of this title [~~(relating to Transfer of License)~~].

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a transfer under §83.303 of this title.

§83.305. Amendments to Pending Application.

Upon request, each applicant must [~~shall~~] provide information supplemental to that contained in the applicant's original application documents.

§83.306. Reportable Actions After Application.

Any action, fact, or information that would require a materially different answer than that given in the original license application and that [~~which~~] relates to the qualifications for license, must be reported within 10 calendar days after the person has knowledge of the action, fact or information.

§83.307. Processing of Application.

(a) Initial review. A response to an application will ordinarily be made within 10 business [~~14 calendar~~] days of receipt stating that the application is complete and accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

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

(1) it conforms to the rules and published instructions;

(2) all fees have been paid; and

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

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

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will [~~shall~~] be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 9 [~~§9.1 et seq.~~] of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. If an application has been denied, the assessment fee will [~~shall~~] be refunded to the applicant. The investigation fee and the fingerprint processing fee in §83.310 of this title (relating to Fees) will [~~shall~~] be forfeited.

(f) Processing time.

(1) A license application will ordinarily be approved or denied within a maximum of 60 calendar days after the date of filing of a completed application.

(2) When a hearing is requested following an initial license application denial, the hearing will [~~shall~~] be held within 60 calendar days after a request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application will [~~shall~~] be made after receipt of the proposal for decision from the administrative law judge.

(3) Exceptions. More time may be taken where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time periods in paragraphs (1) and (2) of this subsection.

§83.308. Relocation.

(a) Filing requirements. A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be filed on the Amendment to Regulated Loan License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to debtors, and the applicable fee as outlined in §83.310 of this title (relating to Fees).

(b) Notice to debtors. Written notice of a relocation of an office, or of transactions as outlined in subsection (c) of this section, must be mailed to all debtors of record at least five calendar days prior to the date of relocation. Any licensee failing to give the required notice must [~~shall~~] waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices must [~~shall~~] identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

(c) Relocation of regulated transactions. If the licensee is only relocating or transferring regulated transactions from one licensed location to another licensed location, the licensee must comply with subsection (b) of this section and provide, if requested, a list of regulated transactions relocated or transferred. This list of relocated or transferred regulated transactions must [~~shall~~] include the loan number and the full name of the debtor.

§83.309. License Status.

(a) Inactivation of active license. A licensee may cease operating under a regulated loan license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be filed on the Amendment to Regulated Loan License or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for the [~~this~~] license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §83.310 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be filed on the Amendment to Regulated Loan License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §83.310 of this title.

(c) Voluntary surrender of license. Subject to §83.406(b) of this title (relating to Effect of Revocation, Suspension, or Surrender of License), a licensee may voluntarily surrender a license by providing

written notice of the cessation of operations, a request to surrender the license, and by submitting the license certificate. A voluntary surrender will result in cancellation of the license.

(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been [~~a fee is~~] paid by the due date for license renewal. A licensee that pays the annual assessment fees [~~fee~~] will automatically be renewed even though a new license may not be issued.

§83.310. Fees.

(a) New licenses.

(1) Investigation fees. A $200 nonrefundable [~~non-refundable~~] investigation fee is assessed each time an application for a new license is filed.

(2) Assessment fees. An assessment fee of $600 per active license and $250 per inactive license is assessed each time an application for a new license is filed. This assessment fee will be refunded if the application is not approved.

(b) License transfers. An applicant must pay a $200 non-refundable investigation fee for each license transfer.

(c) Fingerprint processing. A nonrefundable [~~non-refundable~~] fee as prescribed by the commissioner will be charged to recover the [~~to~~] costs of investigating each principal party's fingerprint record.

(d) License amendments. A fee of $25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license, changing the assumed name of the licensee, or relocating an office.

(e) License duplicates. The fee for a license duplicate is $10.

(f) Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §83.307(d) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each license consisting of:

(A) a fixed fee of $600; and

(B) a volume fee based upon the type of lending activity conducted and the volume of business [~~of~~] that consists of an amount that is the greater of:

(i) $0.03 per each $1,000 transacted for license holders whose regulated operations consist of negotiating or brokering transactions on behalf of others in accordance with the most recent annual report filing (Schedule E, Brokered Loans) required by Texas Finance Code, §342.559;

(ii) $0.03 per each $1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 342, Subchapter F, in accordance with the most recent annual report filing (Schedule D, Lines 2 and 3) required by Texas Finance Code, §342.559; or

(iii) $0.05 per each $1,000 made or acquired under Texas Finance Code, Chapter 342, except amounts made or acquired by license holders covered by clauses (i) or (ii) of this subparagraph, or Texas Finance Code, Chapter 346, in accordance with the most recent annual report filing (Schedule D, Lines 1, 4, 6 and 8) required by Texas Finance Code, §342.559.

(2) The annual assessment fee for an inactive license is $250.

(3) The maximum annual assessment fee for each licensed entity will not average more than $1,200 per active licensed location.

§83.311. Applications and Notices as Public Records.

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under [~~Texas~~] Government Code, §552.002. Under [~~Texas~~] Government Code, §441.190, §441.191 and §552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under [~~Texas~~] Government Code, §441.187. Under [~~Texas~~] Government Code, §441.191, the OCCC may not return any original documents associated with a regulated loan license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Public Information Act, [~~Texas~~] Government Code, Chapter 552.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004879
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER D. LICENSE

7 TAC §§83.404 - 83.408

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.404. Effect of Criminal History Information on Applicants and Licensees.

(a) Criminal history information. Upon submission of an application for a license, a principal party to an applicant for a license is investigated by the commissioner. In submitting an application for a license, a principal party to an applicant for a license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record

information obtained from law enforcement agencies or other criminal history information provided by the applicant or other sources to issue a denial or initiate an enforcement action. Criminal history information relates to the OCCC's [~~agency's~~] assessment of good moral character, and the information gathered is relevant to the licensing or enforcement action decision as described in subsections (b) - (d) of this section [~~below~~].

(b) Information on arrests, charges, indictments, and convictions. In responding to the information requests in the application, all arrests, charges, indictments, and convictions must [~~shall~~] be disclosed. The applicant must, to the extent possible, secure and provide to the commissioner reliable documents or testimony evidencing the information required to make a determination under subsection (d) of this section, including the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant must also furnish proof in such form as may be required by the commissioner that the principal party of the applicant [~~or licensee~~] has maintained a record of steady employment, has supported the principal party's dependents, and has otherwise maintained a record of good conduct. At a minimum, the principal party must furnish proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid. Failure to disclose arrests, charges, indictments, and convictions reflects negatively on an applicant's honesty and moral character.

(c) Factors in determining whether conviction relates to occupation of regulated lender. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the commissioner will [~~shall~~] consider the following factors, as specified in Texas Occupations Code, §53.022:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the principal party previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a license holder.

(d) Effect of criminal convictions [~~conviction~~] on applicant or licensee [~~for or holder of license~~].

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee has a principal party who has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 342. For purposes of this section, the crimes listed in subparagraphs (A) - (H) of this paragraph [~~below~~] are considered to be crimes involving moral character:

(A) Fraud, misrepresentation, deception, or forgery;

(B) Breach of trust or other fiduciary duty;

(C) Dishonesty or theft;

(D) Assault;

(E) Violation of a statute governing lending of this or another state;

(F) Failure to file a required report with a governmental body, or filing a false report;

(G) Attempt, preparation, or conspiracy to commit one of the preceding crimes; or

(H) Attempt, preparation, or conspiracy to evade Texas Finance Code, Chapter 342 and its provisions.

(2) Effect of other criminal convictions. The commissioner may deny an application for a license[~~,~~] or revoke an existing license, if a principal party of the [~~license~~] applicant or licensee [~~holder~~] has been convicted of a crime that directly relates to the duties and responsibilities of a regulated lender that [~~who~~] originates or obtains loans [~~written~~] under Texas Finance Code, Chapter 342. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §83.405 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

§83.405. Crimes Directly Related to Fitness for License; Mitigating Factors.

(a) Crimes directly related to fitness for license. Originating or obtaining loans made under Texas Finance Code, Chapter 342 involves or may involve making representations to borrowers regarding the terms of the loan, maintaining loan accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, crimes [~~a crime~~] involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, [~~a crime involving~~] failure to file a governmental report or filing a false report, or [~~a crime involving~~] the use or threat of force against another person are[~~, is a crime~~] directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a license holder, the commissioner will [~~shall~~] consider, in addition to the factors listed in §83.404 of this title (relating to Effect of Criminal History Information on Applicants and Licensees), the [~~following~~] factors listed in paragraphs (1) - (6) of this subsection, as specified in Texas Occupations Code, §53.023:

(1) the extent and nature of the principal party's past criminal activity;

(2) the age of the principal party at the time of the commission of the crime;

(3) the time elapsed since the principal party's last criminal activity;

(4) the conduct and work activity of the principal party prior to and following the criminal activity;

(5) the principal party's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(6) the principal party's current circumstances relating to the present fitness of the applicant or licensee [~~holding a license~~], evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the principal party;[~~,~~] the sheriff or chief of police in the community where the principal party resides;[~~,~~] and other persons in contact with the convicted principal party.

§83.406. Effect of Revocation, Suspension, or Surrender of License.

(a) Effect on existing contracts. Revocation, suspension, or surrender of a license does not affect a preexisting contract between a

lender and a borrower, except that no more than 10% interest may be charged or received by the lender following the revocation, suspension, or surrender of its license. Alternatively, a lender whose license is revoked or suspended may transfer or sell its accounts to an authorized lender, which [~~who~~] may continue to charge or receive the contracted rate of interest within the authority of Texas Finance Code, Chapter 342 [~~§342.001, et seq~~].

(b) Surrendering to avoid administrative action. A licensee may not surrender a license after an administrative action has been initiated without the written agreement of the OCCC [~~agency~~].

§83.407. Application Process After [~~after~~] Surrender or Revocation.

To obtain a license after surrender or revocation, the former licensee is required to file an application for a new license pursuant to the procedures set forth in §83.302 of this title (relating to Filing of New Application).

§83.408. License Reissuance.

In the event of reissuance of a license for any reason, the licensee must [~~shall~~] return to the OCCC [~~agency~~] the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the OCCC [~~agency~~], the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g., lost, destroyed).

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004880
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER E. INTEREST CHARGES ON LOANS

7 TAC §§83.501, 83.502, 83.504, 83.505

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.501. Maximum Interest Charge.

(a) Precomputed loans. An authorized lender may charge the add-on rates authorized by Texas Finance Code, §342.201(a) or the alternative simple interest rate authorized by Texas Finance Code, §342.201(d) or (e) as calculated by the scheduled installment earnings method, for precomputed loans that are either unsecured or secured by personal property. Prepaid interest in the form of points is not permitted, unless expressly authorized by statute (e.g., an administrative fee).

(b) Interest-bearing loans. An authorized lender may charge any rate of interest that does not exceed the maximum rate authorized by Texas Finance Code, §342.201(d) or (e) as calculated by the true daily earnings method or the scheduled installment earnings method, for an interest-bearing loan that is either unsecured or secured by personal property. Prepaid interest in the form of points is not permitted, unless expressly authorized by statute (e.g., an administrative loan fee).

(c) Method of calculation.

(1) An authorized lender making loans under Texas Finance Code, §342.201(a), (d), or (e) may calculate the rate and amount of interest by any method of calculation as long as the amount of interest charged does not exceed the maximum rate or amount of interest set forth in Texas Finance Code, §342.201(a), (d), or (e) calculated using the specified earnings methods of Texas Finance Code, §342.201.

(2) An authorized lender making a loan under Texas Finance Code, §342.201(e) may contract for, charge, and receive an amount of interest, calculated according to the scheduled installment earnings method or true daily earnings method, not exceeding the equivalent total of a:

(A) simple annual rate of 30% on that portion of the unpaid balance of the cash advance that is less than or equal to the amount computed under Texas Finance Code, Chapter 341, Subchapter C, using the reference base amount of $500;

(B) simple annual rate of 24% on that portion of the unpaid balance of the cash advance that is more than the amount computed for subparagraph (A) of this paragraph but less than or equal to an amount computed under Texas Finance Code, Chapter 341, Subchapter C, using the reference base amount of $1,050; and

(C) simple annual rate of 18% on that portion of the unpaid balance of the cash advance that is more than the amount computed for subparagraph (B) of this paragraph but less than or equal to an amount computed under Texas Finance Code, Chapter 341, Subchapter C, using the reference base amount of $2,500.

§83.502. Treatment of Periods Less than [~~Than~~] a Full Month Before the First Installment Date.

(a) For a precomputed loan using the earnings method specified under Texas Finance Code, §342.201(a), an authorized lender may consider:

(1) any period before the first installment date that includes a part of a month longer than 15 days as a full month for interest calculation purposes; and

(2) any period before the first installment date that includes a part of a month that is 15 days or less as additional odd days for interest calculation purposes. The amount of interest for the additional odd days of 15 days or less must be calculated under the true daily earnings method. This amount may be added to the first installment or, alternatively, it may be allocated among all of the installments.

(b) An authorized lender may use one of the methods listed in paragraphs (1) and (2) of this subsection [~~below,~~] in a regular transaction, when counting additional odd days in a first installment period, so long as the method utilized is consistently applied to all applicable loan transactions initiated by the authorized lender.

(1) Texas Credit Title method. Under this method, the odd days are determined by counting the number of days beyond one month from the date of the loan to the scheduled installment due date; or

(2) Regulation Z method. Under this method, the odd days should be determined in accordance with Regulation Z - Truth in Lending, 12 C.F.R. Part 226, Appendix J. The odd days are determined by first ascertaining the one-month anniversary date preceding the first

scheduled installment due date. After determining the one-month anniversary date preceding the first scheduled installment due date, the odd days are determined by counting the number of days between the date of the loan and the one-month anniversary date.

(c) An authorized lender may not charge more than the maximum effective rate authorized by Texas Finance Code, §342.201(a), (d), or (e) for calculating the interest charge for the additional odd days. An authorized lender may not charge more than the authorized lender contracted for in the loan.

§83.504. Default Charges.

(a) Precomputed loans. Additional interest for default may be charged on a precomputed loan [~~loans~~], whether regular or irregular, or on a precomputed loan contracted for on a scheduled installment earnings method, to the extent it is authorized by Texas Finance Code, §342.203 or §342.206.

(b) Interest-bearing loans. Additional interest for default may be charged on an interest-bearing Chapter 342, Subchapter E loan as authorized under Texas Finance Code, §342.203 or §342.206.

(c) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(d) Default period. A default charge may not be assessed until the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(e) Missed payment covered by insurance. When any payment or partial payment in default is later paid by some form of insurance, such as credit disability insurance, unemployment insurance, or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed loan under Texas Finance Code, §342.203 or §342.206 must comply with the prohibition on the pyramiding of late charges set forth in the Federal Trade Commission Credit Practices Rule at 16 C.F.R. §444.4 or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System [~~Board~~], as applicable.

(g) Default charge on final installment of multiple payment loan. A default charge is allowed on the final installment of a multiple installment loan.

(h) Default charge on single payment loan. A default charge under Texas Finance Code, §342.203(d) or §342.206(b) is not allowed on a single payment loan. After maturity interest may be contracted for, charged, and collected on a single payment loan.

§83.505. Deferment.

(a) Definition. A deferment means the payment of an additional interest charge to defer the payment date of a scheduled payment on a contract. A deferment charge prescribed by this section may only occur in loan transactions that employ either the precomputed or the scheduled installment earnings methods of calculation.

(b) Unilateral deferment. A deferment may be made solely by the lender if the full amount of any installment remains in default for one month or more after its due date. The note or similar loan agreement must contain a provision allowing the unilateral deferment. Only one unilateral deferment may be made during any one six-month period while the loan contract is in effect. Any deferment documented on the account record will be considered to be unilateral in the absence of proof or documentation of a mutual or bilateral deferment.

(c) Bilateral or mutual deferment. A borrower and a lender may mutually agree to defer any scheduled installment. There is no limit on the number of bilateral deferments that can be made during the time that a loan contract is in effect. Bilateral deferments must be agreed upon in writing.

(d) Deferment notice. Each deferment must be noted on the account record at the time the deferment is made. A written notice containing the conditions of the deferment must be furnished to the borrower. The deferment notice must [~~shall~~] include the name of the lender, the name of the borrower, the loan number, the date of the deferment, the installment or installments being deferred, the deferment period, the amount of the deferment charge, the balance on the account, and the date and amount of the next installment due. A signature of the borrower denotes the borrower's agreement to a bilateral deferment.

(e) Computation of deferment charge for regular transaction. Each deferment charge on a regular loan transaction must [~~shall~~] be computed in accordance with the method prescribed by the loan contract. If the loan contract does not provide for a deferment charge, then no deferment charge may be assessed or collected. A lender may employ any of the prescribed computational methods described in this subsection [~~herein~~] so long as the computational method employed is consistently utilized throughout the term of the loan. An authorized lender may calculate the deferment charge using the balance method or the date method.

(1) Balance method. The balance method is used to determine the difference between the refund of unearned interest as of the due date of the last entirely paid installment and the due date of the next succeeding installment.

(A) Calculation for deferment before first installment. The interest for the deferment may be no more than the difference between the refund that would be required for prepayment in full on the first installment due date, if it were one month from the date of the loan, and the total interest charged on the loan, exclusive of any charge for any additional odd days or an administrative fee. The deferment charge for the first installment is essentially the charge for the first month of interest.

(B) Calculation for deferment after first installment. The first step in determining the deferment charge using the balance method for any installment after the first installment is to determine the deferment period.

(i) "Deferment period." The deferment period is the period from the last entirely paid installment to the "next succeeding unpaid installment." The deferment period will constitute the deferment of the "first entirely unpaid installment."

(ii) Determination of [~~the~~] "last entirely paid installment." In order to determine the "last entirely paid installment," first the remaining precomputed balance must be computed. The determination of the balance will identify the last entirely paid installment. In determining the remaining precomputed balance, an authorized lender must adjust the amount of the remaining precomputed balance for any amounts relating to any minor payment schedule irregularities or any add-on insurance premiums or other permissible charges applied to the precomputed balance after the consummation of the loan. After determining the remaining precomputed balance, the remaining precomputed balance must be divided by the regular installment amount. This calculation will reveal the number of remaining installments to be paid. By determining the number of remaining installments to be paid, the due date of the last paid installment may be determined (this must be a wholly unpaid installment). Texas Finance Code, §342.204(a)(1) only permits a deferment charge to be assessed on an installment that is completely unpaid.

(iii) Determination of [~~the~~] "next succeeding unpaid installment." The due date of the next succeeding unpaid installment is the end of the "deferment period."

(iv) Calculation for [~~the~~] deferment charge. The calculation for the deferment charge is the scheduled interest charge for the "deferment period."

(v) Example of deferment calculation. The terms of a precomputed Texas Finance Code, §342.201(e) loan are as follows: Date of loan: 09/01/2009 [~~09/01/2001~~]; First installment due date: 10/01/2009 [~~10/01/2001~~]; Cash Advance: $2,356.21 [~~2,356.21~~]; Finance Charge (no administrative fee): $1,243.79; Total of Payments: $3,600 [~~$3,600.00~~]; Term: 36 months; Regular installment amount: $100; Refunding method: Scheduled installment earnings method; and Annual Percentage Rate: 30%. If an authorized lender agrees to a deferment roughly six months into the contract and the remaining precomputed balance is $3,095 [~~$3,095.00~~] (no adjustments are necessary), to determine the "last entirely paid installment," the authorized lender must divide the precomputed balance by the regular installment amount ($3,095 [~~$3,095.00~~] divided by $100 [~~$100.00~~] = 30.95). Because the entire amount of the installment must be unpaid, the result must be rounded to the next lowest whole number (in this case, 30)[~~,~~ 30]. For calculation purposes, there are 30 remaining installments and 6 installments have been made. In this case, the 7th scheduled installment is being deferred. The deferment charge is calculated by determining the scheduled interest charge for the deferment period, or[~~,~~] from the last entirely paid installment to the "first entirely unpaid installment" (the 6th entirely paid scheduled installment) to the "next succeeding unpaid installment" (7th scheduled installment). The "next succeeding unpaid installment" is determined by subtracting one unit period from the "last entirely paid installment" (30 - 1 = 29). The calculation of the deferment charge is the difference between the interest refund of the 6th entirely paid installment (36 - 30) and the 7th first entirely unpaid installment (36 - 29). This difference would be $53.28.

(2) Date method. The date method determines the deferment charge by computing the difference between the amount of the refund of unearned interest as if a full prepayment of the loan occurred as of the date of the deferment, and the amount of the refund of unearned interest for a full prepayment of the loan occurred one full month prior to the date of the deferment.

(f) No deferment when payment applied to account balance. When a payment has been applied to reduce an account balance, no deferment of any prior balance or installments may be made. This does not preclude the collection of a deferment fee previously assessed, but not collected.

(g) No deferment when default charge already collected. No installment may be deferred if a default charge has already been collected on the account or if a partial payment in any amount has been credited to any installment. If an amount equal to one whole installment has already been credited to an account, this entry cannot be altered in order to credit part of the installment to a deferment charge.

(h) Missed payment covered by insurance. When any payment or partial payment is deferred that is later paid by some form of insurance, such as credit disability insurance, unemployment insurance, or collateral protection insurance, any prior assessment of additional interest for deferment must be waived.

(i) Accounting of payment. If a payment is submitted from which a deferment charge is taken, the excess of the amount necessary to bring the account current must [~~shall~~] be applied to the remaining balance of the loan. However, any difference that exceeds $3 must [~~three dollars ($3.00) shall~~] be returned to the borrower upon the borrower's request.

(j) Noncompliance. Deferment fees not assessed or collected in accordance with the requirements of this section are subject to refund to the borrower. In the event deferment fees are refunded to the borrower, no rescheduling of the loan contract is permitted.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004881
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER F. ALTERNATE CHARGES FOR CONSUMER LOANS

7 TAC §83.602, §83.604

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.602. Default Charges.

(a) Precomputed loans. Additional interest for default may be charged on a Texas Finance Code, Chapter 342, Subchapter F precomputed loan to the extent it is authorized by Texas Finance Code, §342.257.

(b) Subchapter F loans less than $100. If the cash advance of the loan is less than $100, an authorized lender may assess, charge, and collect a default charge equal to 5% of the scheduled installment amount if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(c) Subchapter F loans equal to or greater than $100. If the cash advance of the loan is equal to or greater than $100, an authorized lender may contract for a default charge:

(1) that does not exceed 5% of the scheduled installment amount if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays; or

(2) that does not exceed 5% of the scheduled installment amount or $10, whichever is greater, if any part of the installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(d) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(e) Default period. A default charge may not be assessed until the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed loan under Texas Finance Code, §342.257 must comply with the prohibition on the pyramiding of late charges set forth in the Federal Trade Commission Credit Practices Rule at 16 C.F.R. §444.4 or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System [~~Board~~], as applicable.

(g) Default charge on final installment of multiple payment loan. A default charge is allowed on the final installment of a multiple installment loan.

(h) Default charge on single payment loan. A default charge under Texas Finance Code, §342.257 is not allowed on a single payment loan. After maturity interest may be contracted for, charged, and collected on a single payment loan.

§83.604. Payday Loans; Deferred Presentment Transactions.

(a) Definitions. For the purposes of this chapter, the following words and terms, when used in this chapter, will [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Check--A check, draft, share draft, or other instrument for the payment of money.

(2) Payday loan or deferred presentment transaction--

(A) A transaction in which:

(i) a cash advance in whole or part is made in exchange for a personal check or authorization to debit a deposit account;

(ii) the amount of the check or authorized debit equals the amount of the advance plus a fee; and

(iii) the person making the advance agrees that the check will not be cashed or deposited or the authorized debit will not be made until a designated future date.

(B) This type of transaction is often referred to as a "payday loan," "payday advance," or "deferred deposit loan."

(b) Authorization. A licensee may engage in a payday loan or deferred presentment transaction under this chapter and subject to the provisions of Texas Finance Code, Chapter 342, Subchapter F. A payday loan or deferred presentment transaction is a loan of money. The check given in the transaction may serve as security for the payment of the loan. A person who negotiates, arranges, or acts as an agent for an authorized lender in a payday loan or deferred presentment transaction that has an effective annual rate of greater than 10% is required to be licensed.

(c) Maximum charge. A licensee may charge an amount that does not exceed the rates authorized in Texas Finance Code, §§342.251 - 342.259. The chart in the following figure [~~Figure: 7 TAC §83.604(c)~~] provides examples of the maximum authorized rates for loans made under Texas Finance Code, Chapter 342, Subchapter F. Texas Finance Code, §342.254 which prohibits other charges applies to this section.

Figure: 7 TAC §83.604(c) (No change.)

(d) Minimum term. A licensee may engage in a payday loan or deferred presentment transaction with a term of not less than 7 days.

(e) Procedures.

(1) Check accepted. If a check is accepted, the licensee must require that the check be made payable to the actual name of the company printed on the license and must be dated the day the loan is made.

(2) Written agreement. The transaction must be documented by a written agreement signed by the borrower and the licensee. The agreement must contain:

(A) the name of the licensee;

(B) the transaction date;

(C) the amount of the check;

(D) a statement of the total amount charged, expressed both as a dollar amount and as an annual percentage rate (APR); and

(E) the earliest date on which the check may be deposited.

(3) Required notices. The agreement must also contain a notice of the name and address of the Office of Consumer Credit Commissioner and the telephone number of the consumer helpline. Additionally, the lender must [~~shall~~] provide a notice to the consumer that reads as follows: "This cash advance is not intended to meet long-term financial needs. This loan should only be used to meet immediate short-term cash needs. Renewing the loan rather than paying the debt in full when due will require the payment of additional charges."

(4) [~~(3)~~] Prepayment. The borrower must [~~shall~~] have a right to prepay the loan and redeem the check at any time prior to the due date. If the loan is prepaid in full, the lender must refund any unearned finance charges.

(5) [~~(4)~~] Check presentation to depository institution. A check may not be held for more than 31 days and then subsequently presented to the depository institution [~~bank~~] for payment.

(6) [~~(5)~~] Fee schedule notice required. The licensee must post a notice of the fee schedule for engaging in a payday or deferred presentment loan.

(f) Conditions. A lender may accept a check to secure payment of a payday loan if the lender complies with [~~the following~~] paragraphs (1) and (2) of this subsection.

(1) Duplicate and multiple loans. The provisions of Texas Finance Code, §342.501 and §83.851 of this title (relating to Duplication of Loans) apply to loans made under the authority of this section. In accordance with Texas Finance Code, §342.501, a lender and a borrower may renew a loan, but the loan must be converted from a single payment balloon loan to a declining balance installment note. Alternatively, the payday loan or deferred presentment transaction may be renewed without limitation to the number of renewals where the effect of the total amount of the interest charge would not exceed the total amount authorized by Texas Finance Code, §342.252 and §342.259 having due regard for the amount of the cash advance and the time the cash advance is outstanding. The result is that the acquisition charge may only be earned once in a month and the installment account handling charge may continue to be earned on a equivalent daily charge basis in accordance with the limitations of Texas Finance Code, Chapter 342, Subchapter F. In lieu of a renewal, a lender and a borrower may agree to extend the maturity date of the existing payday loan or deferred presentment transaction.

(2) Collection practices. A payday loan constitutes a credit relationship for all purposes, including collection. If a borrower defaults, including the return of the check to the licensee from a financial institution due to insufficient funds, closed account, or stop payment order, the licensee may pursue all legally available civil means to collect the debt. Collection practices must be in accordance with this chapter and with the Texas Debt Collection Practices Act, Texas Finance Code, Chapter 392 [~~§392.001 et seq~~].

(3) Fair lending. A lender must make a good faith effort to assess the borrower's ability to repay the payday loan or deferred presentment transaction under the loan terms.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004882
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER G. INTEREST AND OTHER CHARGES ON SECONDARY MORTGAGE LOANS

7 TAC §§83.701 - 83.708

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.701. Maximum Interest Charge.

(a) Precomputed secondary mortgage loans. In a precomputed secondary mortgage loan, an authorized lender may contract for, charge, or receive an amount of interest that does not exceed the applicable simple interest rate authorized by Texas Finance Code, Chapter 303, Subchapter A. Prepaid interest is not permitted unless expressly authorized by statute (e.g., an administrative fee).

(b) Interest-bearing loans. In an interest-bearing secondary mortgage loan, an authorized lender may contract for, charge, or receive any rate of interest that does not exceed the applicable amount authorized by Texas Finance Code, Chapter 303, Subchapter A, as calculated under the true daily earnings method or the scheduled installment earnings method. Prepaid interest in the form of points, such as origination or discount points, may be contracted for, charged, or received by an originating lender, so long as the total amount of interest contracted for, charged, or received, when spread over the full term of the loan as permitted by Texas Finance Code, §302.101 does not exceed the applicable interest limit in Texas Finance Code, Chapter 303, Subchapter A.

(c) Method of calculation. An authorized lender making loans under Texas Finance Code, §342.301(c) may calculate the rate and amount of interest by any method of calculation, as long as the amount of interest charged does not exceed the maximum rate or amount of interest set forth in Texas Finance Code, §342.301, calculated using the specified earnings methods contained in Texas Finance Code, §342.301.

§83.702. Treatment of Periods Less than [~~Than~~] a Full Month.

(a) To calculate a period of time less than a full month on a precomputed loan:

(1) any period before the first installment due date that includes a part of a month longer than 15 days may be treated as a full month for interest calculation purposes; and

(2) any period before the first installment due date that includes a part of the month that is 15 days or less may not be treated as a full month for interest calculation purposes. The amount of interest for the period of 15 days or less must be calculated under the true daily earnings method. This amount may be added to the first installment or, alternatively, it may be allocated among all of the installments.

(b) An authorized lender may use one of the methods listed below, in a regular transaction, when counting additional odd days in a first installment period, so long as the method utilized is consistently applied to all applicable loan transactions initiated by the authorized lender.

(1) Texas Credit Title method. Under this method, the odd days are determined by counting the number of days beyond one month from the date of the loan to the scheduled installment due date; or

(2) Regulation Z method. Under this method, the odd days should be determined in accordance with Regulation Z - Truth in Lending, 12 C.F.R. Part 226, Appendix J. The odd days are determined by first ascertaining the one-month anniversary date preceding the first scheduled installment due date. After determining the one-month anniversary date preceding the first scheduled installment due date, the odd days are determined by counting the number of days between the date of the loan and the one-month anniversary date.

(c) An authorized lender may not contract for or charge more than the maximum rate authorized by Texas Finance Code, Chapter 303, Subchapter A in calculating the interest charge for the additional odd days in the first installment period. An authorized lender may not charge more than the authorized lender contracted for in the loan.

§83.703. Default Charges.

(a) Precomputed loans. Additional interest for default may be charged on a precomputed secondary mortgage loan, whether regular or irregular, or on a secondary mortgage loan that employs the scheduled installment earnings method, to the extent it is authorized by Texas Finance Code, §342.302 or §342.305.

(b) Interest-bearing loans. Additional interest for default may be charged on an interest-bearing Texas Finance Code, Chapter 342, Subchapter G loan as authorized under Texas Finance Code, §342.302.

(c) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(d) Default period. A default charge may not be assessed until the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(e) Missed payment covered by insurance. If any payment or partial payment in default is later paid by some form of insurance, such as credit disability insurance or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed secondary mortgage loan under Texas Finance Code, §342.302 or §342.305 must comply with the prohibition on the pyramiding of late charges set forth in the Federal Trade Commission Credit Practices Rule at 16 C.F.R. §444.4 or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System [~~Board~~], as applicable.

§83.704. Deferment.

(a) Definition. A deferment means the payment of an additional interest charge to defer the payment date of a scheduled payment on a contract. A deferment charge prescribed by this section may occur in a loan transaction that employs either the precomputed or the scheduled installment earnings methods of calculation. A separate deferment charge is not applicable to a loan transaction that employs the true daily earnings method since an extension of time would be calculated on elapsed daily charges, and the parties may agree to modify the terms of the transaction as long as the modification conforms to the requirements of Texas Finance Code, Chapter 342, Subchapter G.

(b) Bilateral or mutual deferment. A borrower and a lender may mutually agree to defer any scheduled installment. There is no limit on the number of bilateral deferments that can be made during the time that a loan contract is in effect. Bilateral or mutual deferments must be agreed upon in writing.

(c) Deferment notice. Each deferment must be noted on the account record at the time the deferment is made. A written notice containing the conditions of the deferment must be furnished to the borrower. The deferment notice must [~~shall~~] include the name of the lender, the name of the borrower, the loan number, the date of the deferment, the installment or installments being deferred, the deferment period, the amount of the deferment charge, the balance on the account, and the date and amount of the next installment due. The signature of the borrower denotes the borrower's agreement to a bilateral deferment.

(d) Computation of deferment charge for regular transaction. Each deferment charge on a regular loan transaction must [~~shall~~] be computed in accordance with the method prescribed by the loan contract. If the loan contract does not provide for a deferment charge, then no deferment charge may be assessed or collected. A lender may employ any of the prescribed computational methods described in this subsection [~~herein~~] so long as the computational method employed is consistently utilized throughout the term of the loan. An authorized lender may calculate the deferment charge using the balance method or the date method.

(1) Balance method. The balance method is used to determine the difference between the refund of unearned interest as of the due date of the last entirely paid installment and the due date of the next succeeding installment.

(A) Calculation for deferment before first installment. The interest for the deferment may be no more than the difference between the refund that would be required for prepayment in full on the first installment due date, if it were one month from the date of the loan, and the total interest charged on the loan, exclusive of any charge for any additional odd days or an administrative fee. The deferment charge for the first installment is essentially the charge for the first month of interest.

(B) Calculation for deferment after first installment. The first step in determining the deferment charge using the balance method for any installment after the first installment is to determine the deferment period.

(i) "Deferment period." The deferment period is the period from the last entirely paid installment to the "next succeeding unpaid installment." The deferment period will constitute the deferment of the "first entirely unpaid installment."

(ii) Determination of [~~the~~] "last entirely paid installment." In order to determine the "last entirely paid installment," first the remaining precomputed balance must be computed. The determination of the balance will identify the last entirely paid installment. In determining the remaining precomputed balance, an authorized lender must adjust the amount of the remaining precomputed balance for any amounts relating to any minor payment schedule irregularities or any add-on insurance premiums or other permissible charges applied to the precomputed balance after the consummation of the loan. After determining the remaining precomputed balance, the remaining precomputed balance must be divided by the regular installment amount. This calculation will reveal the number of remaining installments to be paid. By determining the number of remaining installments to be paid, the due date of the last paid installment may be determined (this must be a wholly unpaid installment). Texas Finance Code, §342.204(a)(1) only permits a deferment charge to be assessed on an installment that is completely unpaid.

(iii) Determination of [~~the~~] "next succeeding unpaid installment." The due date of the next succeeding unpaid installment is the end of the "deferment period."

(iv) Calculation for [~~the~~] deferment charge. The calculation for the deferment charge is the scheduled interest charge for the "deferment period."

(v) Example of deferment calculation. The terms of a precomputed Texas Finance Code, §342.301 loan are as follows: Date of loan: 09/01/2009 [~~09/01/1997~~]; First payment due date: 10/01/2009 [~~10/01/1997~~]; Cash Advance: $2,766.48; Finance Charge: $833.52; Total of Payments: $3,600 [~~$3,600.00~~]; Term: 36 months; Monthly installment: $100; Refunding method: Sum of the periodic balances; and Annual Percentage Rate: 18%. If an authorized lender agrees to a deferment roughly six months into the contract and the remaining precomputed balance is $3,095 [~~$3,095.00~~] (no adjustments are necessary), to determine the "last entirely paid installment," the authorized lender must divide the precomputed balance by the regular installment amount ($3,095 [~~$3,095.00~~] divided by $100 [~~$100.00~~] = 30.95). Because the entire amount of the installment must be unpaid, the result must be rounded to the next lowest whole number (in this case, 30)[~~, 30~~]. For calculation purposes, there are 30 remaining installments and 6 installments have been made. In this case, the 7th scheduled installment is being deferred. The deferment charge is calculated by determining the scheduled interest charge for the deferment period, or[~~,~~] from the last entirely paid installment to the "first entirely unpaid installment" (the 6th entirely paid scheduled installment) to the "next succeeding unpaid installment" (7th scheduled installment). The "next succeeding unpaid installment" is determined by subtracting one unit period from the "last entirely paid installment" (30 - 1 = 29). The calculation of the deferment charge is the difference between the interest refund of the 6th entirely paid installment (36 - 30) and the 7th first entirely unpaid installment (36 - 29). This difference would be $37.54. A scheduled installment earnings refund method would yield a slightly different result of $36.69.

(2) Date method. The date method determines the deferment charge by taking the difference between the amount of the refund of unearned interest as if a full prepayment of the loan occurred as of the date of the deferment, and the amount of the refund of unearned interest for a full prepayment of the loan occurred one full month prior to the date of the deferment.

(e) No deferment when payment applied to account balance. If a payment has been applied to reduce an account balance, no deferment of any prior balance or installments may be made. This does not preclude the collection of a deferment fee previously assessed but not collected.

(f) No deferment when default charge already collected. No installment may be deferred if a default charge has already been collected on the account or if a partial payment in any amount has been credited to any installment. If an amount equal to one whole installment

has already been credited to an account, this entry cannot be altered in order to credit part of the installment to a deferment charge.

(g) Missed payment covered by insurance. When any payment or partial payment is deferred that is later paid by some form of insurance, such as credit disability insurance, unemployment insurance, or collateral protection insurance, any prior assessment of additional interest for deferment must be waived.

(h) Accounting of payment. If a payment is submitted from which a deferment charge is taken, the excess of the amount necessary to bring the account current must [~~shall~~] be applied to the remaining balance of the loan. However, any difference that exceeds $3 must [~~three dollars ($3.00) shall~~] be returned to the borrower upon the borrower's request.

(i) Noncompliance. Deferment fees not assessed or collected in accordance with the requirements of this section are subject to refund to the borrower. In the event deferment fees are refunded to the borrower, no rescheduling of the loan contract is permitted.

§83.705. Amounts Authorized to [~~To~~] Be Charged After Consummation.

(a) Generally. A secondary mortgage loan contract may provide for any one or more of the four listed categories of charges set forth in Texas Finance Code, §342.307. These charges may then be assessed and collected by an authorized lender after consummation of the loan if appropriately included in the contract.

(b) Check return fee. An authorized lender may contract for, assess, or collect the fee authorized by Texas Business and Commerce Code, §3.506, on a secondary mortgage loan.

§83.706. Amounts Authorized to [~~To~~] Be Collected on or Before Closing.

(a) Generally. On or before the closing of a secondary mortgage loan, an authorized lender may collect any one or more [~~of the eight categories~~] of the charges set forth in Texas Finance Code, §342.308(a).

(b) Administrative fee. An authorized lender may collect an administrative fee pursuant to Texas Finance Code, §342.308(a)(9) on interest-bearing and precomputed loans.

(1) To determine the maximum amount of the administrative fee, an authorized lender should ascertain the amount of the cash advance of the loan. If the cash advance is more than $1,000, then the authorized lender may contract for, charge, or receive $25. If the cash advance is $1,000 or less, then the authorized lender may contract for, charge, or receive $20.

(2) An administrative fee may not be contracted for, charged, or received by an authorized lender directly or indirectly on a renewal or modification of an existing obligation more than once in any 180-day period. The administrative fee may be contracted for, charged, or received in a renewal or modification if the authorized lender did not contract for, charge, or receive the administrative fee on any previous obligation within the 180-day period.

(3) Interest may not be assessed, charged, or received on an administrative fee if the assessment causes the total amount of interest to exceed the maximum amount authorized under Texas Finance Code, Chapter 342.

(4) An administrative fee is a prepaid interest charge and may be contracted for, charged, or received in addition to the contractual interest charge authorized by Texas Finance Code, §342.301(a).

(c) Cost of credit report. An authorized lender may collect the cost paid to a consumer [~~credit~~] reporting agency to obtain a credit report pursuant to Texas Finance Code, §342.308(a)(5), but may not charge an additional fee for reviewing or evaluating a credit report.

(d) Survey fees. A survey fee may be charged when a survey has been performed by a surveyor, who is registered or licensed by the Texas Board of Professional Land Surveying pursuant to Texas Occupations Code, Chapter 1071, and who is not a salaried employee of the lender.

(e) Flood zone determination fees. An authorized lender may collect a flood zone determination fee when a flood zone determination is required by a federal agency.

§83.707. Other Fees.

(a) Generally. Fees not otherwise permitted by §83.705 or §83.706 of this title (relating to Amounts Authorized to [~~To~~] Be Charged After Consummation and Amounts Authorized to [~~To~~] Be Collected on or Before Closing) may not be charged or collected in a secondary mortgage loan transaction.

(b) Examples of unauthorized fees. Fees not authorized by either §83.705 or §83.706 of this title include, but are not limited to, commitment fees, broker fees not covered by subsection (d) of this section, pay-off statement fees, prepayment penalties, fax fees, courier fees, settlement or closing fees, tax certificates, expedited payment fees, and escrow management fees.

(c) Escrow services. An authorized lender making a secondary mortgage loan may require a borrower to make payments into an escrow trust account for payment of anticipated tax and property insurance expenses. A fee may not be charged for managing an escrow trust account.

(d) Broker fees. An authorized lender may pay a broker fee in a secondary mortgage loan if the consideration paid by the borrower in the loan that [~~which~~] involves a broker does not exceed the consideration paid by the borrower in a loan that [~~which~~] does not involve a broker.

(1) Example 1: A prospective borrower is quoted a contract rate of 12% plus a 2% origination fee when he makes his inquiry directly to an authorized lender. On this same individual, a broker quotes a contract rate of 12% plus a 4% origination fee for a loan of the same amount from the same authorized lender. The charge for an additional 2% origination fee is an unauthorized charge.

(2) Example 2: A prospective borrower is quoted a finance charge of 12% plus a 2% origination fee when the borrower makes the inquiry directly to an authorized lender. On this same individual, a broker quotes a contract rate of 12% plus a 2% origination fee for a loan of the same amount from the same authorized lender. The loan is [~~was~~] then consummated with the authorized lender paying a 2% fee to the broker for originating the loan. Since the authorized lender has absorbed the expense of the fee, no unauthorized charge has been assessed, charged, or received.

(e) Seller's points. Seller's points are treated as interest. Seller's points are aggregated with other interest charges for the purposes of a usury calculation.

(f) Discount points. Discount points are treated as interest. Discount points are aggregated with other interest charges for the purposes of a usury calculation.

(g) Origination fees. Origination fees are treated as interest. Origination fees are aggregated with other interest charges for the purposes of a usury calculation.

§83.708. Balloon Payments.

Balloon payments are authorized in a secondary mortgage loan unless prohibited by other applicable law (for example, the high cost mortgage rules of Regulation Z - Truth in Lending, [~~Truth in Lending, Regulation Z,~~] 12 C.F.R. §226.32(d)(1), and Texas Finance Code, §343.202).

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004883
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER H. REFUNDS FOR PRECOMPUTED LOANS

7 TAC §§83.751 - 83.754, 83.756, 83.757

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.751. Scope.

(a) Scope. This subchapter applies to all precomputed loan transactions made pursuant to Texas Finance Code, Chapter 342, Subchapters E, F, and G. This subchapter is inapplicable to interest-bearing loans made under Texas Finance Code, Chapter 342.

(b) Refund methods for Chapter 342, Subchapter F and G loans. The chosen method of determining refunds must be contracted for in the loan agreement. An authorized lender may utilize one of the following methods of determining the amount of a refund:

(1) the sum of the periodic balances method;

(2) the installment earnings method; or

(3) the true daily earnings method.

(c) Refund method for Chapter 342, Subchapter E loans. An authorized lender may not use the sum of the period balances method for a Subchapter E loan.

§83.752. Specific Application to Subchapter E and G Loans.

(a) Interest subject to refund. Precomputed interest in Texas Finance Code, Chapter 342, Subchapter E and G loans is subject to refund.

(b) Interest not subject to refund.

(1) Administrative fees. Administrative fees authorized by Texas Finance Code, §342.201(f) and §342.308(c) are not subject to refund.

(2) Per diem interest. Per diem interest on odd days in the first installment period is not subject to being refunded if the per diem interest for the first installment period has been earned and collected during the first installment period.

(3) Refunds less than $1 [~~$1.00~~]. Refunds of unearned interest are not required when a partial prepayment is made or when the sum of interest to be refunded is less than $1 [~~$1.00~~].

§83.753. Refund of Precomputed Interest for Regular Subchapter E Loans.

(a) If prepayment in full is made by cash, renewal, or otherwise after the first installment due date, the authorized lender must [~~shall~~] refund or credit to the borrower the unearned interest by the scheduled installment earnings method authorized by §83.751 of this title (relating to Scope) and identified in the loan agreement as the chosen refund method. If prepayment in full or demand for payment in full occurs during an installment period, the lender may retain an interest charge for previous elapsed periods and the number of days beginning after the installment due date and ending on the date of the prepayment or demand in full.

(b) If prepayment is made in full before the first installment due date, an authorized lender may retain an interest charge for each elapsed day between the date of the loan and the date of prepayment. The interest charge may not exceed the amount of interest allowed under the true daily earnings method for the same time period. The authorized lender must [~~shall~~] refund or credit to the borrower the unearned interest.

(c) In calculating the amount of the refund of the unearned interest, an authorized lender must consider any installments that were deferred.

§83.754. Refund of Precomputed Interest for Subchapter G Loans.

(a) Regular transactions [~~Transactions~~].

(1) If prepayment in full is made by cash, renewal, or otherwise, the authorized lender must [~~shall~~] refund or credit to the borrower the unearned interest by the refund method authorized by §83.751 of this title (relating to Scope) and identified in the loan agreement as the chosen refund method. One day earned into a month will allow the lender to earn the interest applicable to the full month.

(2) If prepayment in full is made by cash, renewal, or otherwise, before the first installment due date, the authorized lender must [~~shall~~] compute the refund as provided by this paragraph.

(A) If the first installment due date is 15 days or less from the date of the loan, the lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date, 1/30th of the interest that could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date. All interest in excess of such amount must [~~shall~~] be refunded or credited to the borrower.

(B) If the first installment due date is 16 days or greater, but less than one month, from the date of the loan, the lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date, 1/30th of the interest which could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date.

(C) If the first installment due date is more than one month from the contract date, the lender may retain for each elapsed day between the date of the loan and prepayment, 1/30th of the interest which could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date. The daily charge is multiplied by the number of elapsed days up until the first installment due date.

(b) Irregular transactions or transactions with [~~a~~] term [~~of~~] greater than 60 months.

(1) If prepayment in full is made by cash, renewal, or otherwise, after the first installment due date, the authorized lender must [~~shall~~] refund or credit to the borrower the unearned interest by the refund method authorized by §83.751 of this title and identified in the loan agreement as the chosen refund method. The amount of interest which may be retained by the lender as earned must [~~shall~~] be determined by use of the scheduled installment earnings method as authorized by Texas Finance Code, §342.352. If prepayment in full or demand for payment in full occurs during an installment period, the lender may retain an interest charge for previous elapsed periods and the number of days beginning after the installment due date and ending on the date of the prepayment or demand in full.

(2) If prepayment is made in full before the first installment due date, an authorized lender may retain an interest charge for each elapsed day between the date of the loan and the date of prepayment. The interest charge may not exceed the amount of interest allowed under the true daily earnings method for the same time period.

(c) Consideration of deferment charges for interest refund calculations. To calculate the amount of the refund of unearned interest, an authorized lender must consider any installments that were deferred.

§83.756. Refund of Precomputed Interest for Subchapter F Loans; Prepayment in Full Before the First Installment Due Date.

(a) If the first installment due date is one month or less from the date of the loan, the authorized lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date, 1/30th of the installment account handling charge and acquisition charge that is subject to being refunded and[~~, that~~] could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date. All interest in excess of such amount must [~~shall~~] be refunded or credited to the borrower.

(b) If the first installment due date is more than one month from the contract date but less than one month and 15 days from the contract date, the authorized lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date, 1/30th of the interest that could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date up to a maximum of 30 days. All interest in excess of such amount must [~~shall~~] be refunded or credited to the borrower.

(c) To calculate the amount of the refund of unearned interest, an authorized lender must consider any installments that were deferred.

§83.757. Refund of Precomputed Interest for Subchapter F Loans; Prepayment in Full After the First Installment Due Date and Before the Final Installment Due Date.

(a) If prepayment in full is made by cash, renewal, or otherwise, the authorized lender must [~~shall~~] refund or credit to the borrower the unearned installment account handling charge and acquisition charge subject to refund by the refund method authorized by §83.751(b) of this title (relating to Scope) and identified in the loan agreement as the chosen refund method. One day earned into a month will allow the lender to earn the interest applicable to the full month.

(b) To calculate the amount of the refund of unearned interest, an authorized lender must consider any installments that were deferred.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004884

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER I. INSURANCE

7 TAC §§83.801 - 83.810, 83.812

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.801. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342, have the meanings as defined in Chapter 342. The following words and terms will[~~, shall~~] have the following meanings unless the context clearly indicates otherwise.

(1) Personal property insurance--Coverage to insure tangible personal property offered as security for a loan made under Chapter 342.

(2) Property insurance--Coverage to insure either an interest in real estate or tangible personal property offered as security for a loan made under Chapter 342.

(3) Single-interest insurance--A form of property insurance that protects only the lender's interest in the property.

(4) Credit insurance--Includes credit life insurance, credit accident and health insurance, and involuntary unemployment insurance.

(5) Total personal property loss--The loss of all items of personal property listed as security for a loan and insured by a particular insurance policy.

(6) Partial personal property loss--Any loss other than a total personal property loss.

(7) Gap waiver agreement--An agreement that eliminates or reduces the deficiency when the proceeds from the borrower's insurance policy do not cover the unpaid net balance after the vehicle has suffered a total loss or constructive total loss. The unpaid net balance on the loan does not include:

(A) delinquent payments (any outstanding payment that is more than 10 days past due);

(B) late charges;

(C) unearned interest;

(D) unearned insurance premiums;

(E) fees added after the date of the loan; or

(F) any portion of the borrower's basic comprehensive and collision policy deductible that exceeds $1,000.

(8) Constructive total loss--A loss where the cost to repair or replace the motor vehicle covered under the gap waiver agreement would exceed an amount equal to the actual cash value of the motor

vehicle minus any salvage value. The actual cash value will be determined as of the date of loss. The actual cash value will be based on the "retail value" in the National Automobile Dealers Association (NADA) or an equivalent [~~or its equivalent,~~] official used car guide. The licensee will consider the mileage, condition, and optional equipment of the motor vehicle when using the NADA or an equivalent[~~, or its equivalent,~~] official used car guide.

§83.802. Authorized Property Insurance.

(a) Property insurance, other than insurance covering a motor vehicle, written in connection with a loan made under Texas Finance Code, Chapter 342 must be written at rates not in excess of the rates fixed or approved by the Texas Department of Insurance if a rate structure has been fixed or approved for that particular type of coverage.

(b) If property insurance, other than insurance covering a motor vehicle, requested or required on a loan is sold or obtained by a licensee at a rate that is not fixed or approved by the Texas Department of Insurance, the licensee must first obtain prior acknowledgment from the commissioner that the coverage and the rate bear a reasonable relationship to:

(1) the amount, term, and conditions of the loan;

(2) the value of the collateral; and

(3) the existing hazards or risk of loss, damage, or destruction.

(c) A licensee who offers or provides property insurance, other than insurance covering a motor vehicle, requested or required on a loan sold or obtained by a licensee at a rate that is not fixed or approved by the Texas Department of Insurance, does not have to comply with the terms of subsection (b) of this section if the charges are equal to or less than the rates established by the following figure.
Figure: 7 TAC §83.802(c)

(d) [~~(c)~~] Insurance, other than insurance covering a motor vehicle, written at rates not fixed or approved by the Texas Department of Insurance, is subject to cancellation or adjustment if the insurance is not otherwise approved by the commissioner.

(e) [~~(d)~~] If a licensee is seeking authority from the commissioner under subsection (b) of this section for a rate not fixed or approved by the Texas Department of Insurance, a copy of the relevant policy that is to be issued must [~~shall~~] be filed with the OCCC [~~Office of Consumer Credit Commissioner~~], together with any evidence that is probative on the factors listed in subsection (b) of this section.

(f) [~~(e)~~] Property insurance written in connection with a Texas Finance Code, Chapter 342 loan must be provided by a company authorized to do business in this state.

§83.803. Limitations on Property Insurance.

(a) Personal property insurance, other than insurance covering a motor vehicle, must not be written in an amount in excess of the total related note unless prior to writing the insurance, the complete policy of insurance, the proposed rates, and the proposed conditions have been approved by the commissioner.

(b) Property insurance must not be written for more than the value of the item or items insured.

(c) Motor vehicle insurance written in accordance with applicable law, the regulations promulgated by the Texas Department of Insurance, and the rating procedures established by the Texas Department of Insurance, is presumed to satisfy the requirements set forth in Texas Finance Code, Chapter 342, Subchapter I.

(d) Each licensee must [~~shall~~] substantiate that the amount of personal property insurance, other than coverage on a motor vehicle, is reasonable in relation to the value of the item or items insured. The value must [~~shall~~] be established in writing by the borrower and the licensee on each insured item and each value must [~~shall~~] be reasonable in relation to the actual replacement cost of the item. A valuation that has been established on goods to be insured may not be increased unless it can be shown there has been a substantial change in the nature of the items insured or the value of these items.

§83.804. Claim Provisions for Property Insurance Other than [~~Than~~] Insurance Covering Motor Vehicles.

(a) Personal property insurance, other than insurance [~~property~~] covering motor vehicles, written on a loan subject to Texas Finance Code, Chapter 342, should provide a procedure for determining and adjusting the value of insured items in the event of a loss. If a licensee does not utilize a formula submitted to and approved by the commissioner for adjusting the value of the items insured and if a loss occurs, the value initially stated is presumed to be the actual replacement cost of each insured item throughout the life of the policy.

(b) Personal property insurance may be written in an amount that is less than the value of the loan collateral at rates not fixed or approved by the Texas Department of Insurance. Personal property insurance may not be written unless it provides for payment of a sum not less than the claims ratio multiplied by the amount of the loss. The claims ratio is calculated by dividing the amount of insurance by the total value of the secured collateral covered by the insurance policy, rounded to the fourth digit to the right of the decimal point. For example, the terms of a transaction are as follows: the original total of payments in an installment loan is $3,000; the term is 2 1/2 years with monthly installment payments of $100; property insurance is purchased to insure three items of collateral for up to $3,000: a piano worth $2,500, a computer worth $1,500, and a television worth $500; and the piano is then stolen and reported to the insurer by the borrower. The claims ratio is calculated by dividing the value of the insurance written, $3,000, by the total value of the collateral covered by the policy, $4,500. Applying the claims ratio of 2/3 or .6667 to the amount of the loss, $2,500, leads to the conclusion that no less than $1,666.75 should be paid under the applicable property insurance policy. A licensee may only write a policy of property insurance that would provide for a payment of not less than $1,666.75 under the [~~aforementioned~~] facts provided in this example.

§83.805. Authorized Credit Insurance.

(a) Credit insurance written in connection with a Texas Finance Code, Chapter 342 loan must [~~shall~~] be decreasing term insurance.

(b) Credit life insurance and credit accident and health insurance must [~~shall~~] 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.

(c) Involuntary unemployment insurance must [~~shall~~] 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.

§83.806. Provision of Policy or Certificate.

If a Texas Finance Code, Chapter 342 loan provides for the purchase of insurance by the borrower from the lender, the lender must [~~shall~~] furnish to the borrower, within 30 days of the date of the loan, a properly executed policy or certificate of insurance. The policy or certificate of insurance must [~~shall~~] clearly set forth:

(1) the amount of the premium;

(2) the kind of insurance provided;

(3) the coverage of the insurance; and

(4) all terms, including options, limitations, restrictions and conditions of the insurance that has been purchased.

§83.807. Collateral Protection [~~Single-Interest~~] Insurance.
If a lender arranges for collateral protection [~~single-interest~~] insurance and assesses a charge for the insurance to the borrower, the lender must comply with the provisions of Texas Finance Code, Chapter 307.

§83.808. Termination and Refund.

(a) Upon discharge of an indebtedness by prepayment, renewal, or refinancing, any insurance, other than nonfiling insurance, written under the authority of Texas Finance Code, Chapter 342, Subchapter I, must [~~shall~~] be automatically terminated. At the option of the borrower, dual-interest motor vehicle insurance may be retained without cancellation. If a policy of insurance is terminated prior to scheduled maturity, a credit of the unearned premium must [~~shall~~] be applied to the borrower's account or a refund of the unearned premium must [~~shall~~] be paid by the lender to the borrower.

(b) Upon termination of a personal property insurance policy prior to the scheduled maturity of a loan, other than collateral protection [~~single-interest~~] insurance, the licensee must [~~shall~~] provide the borrower a refund or credit calculated in accordance with the policy approved by the commissioner. The policy must [~~shall~~] provide for a pro rata method of making refunds. The pro rata method of making refunds involves computing a factor to apply to the total premium to determine the unearned portion. The factor is determined by dividing the term remaining on the loan by the total loan term.

(c) Upon termination of a collateral protection [~~single-interest~~] insurance policy prior to the scheduled maturity of a loan, the lender must [~~shall~~] provide the borrower a refund or credit calculated in accordance with the insurance policy approved by the Texas Department of Insurance.

(d) Upon termination of a credit life or credit accident and health insurance policy prior to the scheduled maturity of a loan, the lender must [~~shall~~] provide the borrower a refund or credit calculated in compliance with Texas Insurance Code, Chapter 1153 and regulations issued by the Texas Department of Insurance under the authority of that chapter.

(e) Upon termination of a credit involuntary unemployment insurance policy prior to the scheduled maturity of a loan, the lender must [~~shall~~] provide the borrower a refund or credit calculated in accordance with the insurance policy approved by the Texas Department of Insurance.

§83.809. Prepayment of Loan from Insurance Proceeds.

(a) Personal property insurance. If a loan is prepaid in full from the proceeds of a personal property insurance policy following a personal property loss, the refund should be computed as follows:

(1) Total personal property loss, other than motor vehicle.

(A) An interest refund must [~~shall~~] be computed as of the date the settlement check is received by the licensee or 45 days from the date of loss, whichever occurs first.

(B) A credit insurance premium refund and collateral protection [~~single-interest~~] insurance premium refund must [~~shall~~] be computed as of the date the settlement check is received by the licensee.

(C) A personal property insurance premium refund, other than an insurance premium refund on a motor vehicle, must [~~shall~~] be computed as of the day following the date of loss. In the event the borrower has requested cancellation, any dual-interest motor vehicle insurance premium refund must [~~shall~~] be computed as prescribed by the Automobile Rules and Rating Manual [~~Texas Department of Insurance manual rules and rates~~].

(2) Partial personal property loss, other than motor vehicle.

(A) An interest refund must [~~shall~~] be computed as of the date the settlement check is received by the licensee or 45 days from the date of loss, whichever occurs first.

(B) A credit insurance premium refund and collateral protection [~~single-interest~~] insurance premium refund must [~~shall~~] be computed as of the date the settlement check is received by the licensee.

(C) A personal property insurance premium refund, other than an insurance premium refund on a motor vehicle, must [~~shall~~] be computed as of the date the settlement check is received by the licensee. A dual-interest motor vehicle insurance premium refund must [~~shall~~] be computed as prescribed by the Automobile Rules and Rating Manual [~~Texas Department of Insurance manual rules and rates~~].

(3) Total or partial motor vehicle insurance loss.

(A) An interest refund must [~~shall~~] be computed as of the date the settlement check is received or 45 days from the date of loss, whichever occurs first.

(B) A credit insurance premium refund must [~~shall~~] be computed as of the date the settlement check is received by the licensee.

(C) A personal property insurance premium refund must [~~shall~~] be computed as of the date the settlement check is received by the licensee. A motor vehicle insurance premium refund must [~~shall~~] be computed as prescribed by Automobile Rules and Rating Manual [~~Texas Department of Insurance manual rules and rates~~].

(b) Credit life insurance. If a loan is prepaid in full or in part by the proceeds of a credit life insurance claim, the refund should be computed as follows:

(1) Complete prepayment. An interest refund, credit accident and health insurance premium refund, credit involuntary unemployment insurance premium refund, collateral protection [~~single-interest~~] insurance premium refund, and personal property insurance premium refund must [~~shall~~] be computed as of the date of death. A dual-interest motor vehicle insurance premium refund must [~~shall~~] be computed as prescribed by the Automobile Rules and Rating Manual [~~Texas Department of Insurance manual rules and rates~~] in the event cancellation is requested by the proper representative of the estate.

(2) Partial prepayment. If a loan is prepaid in part by the proceeds of a credit life insurance claim following the death of the primary borrower, any other credit insurance associated with the primary borrower, such as credit accident and health insurance and credit involuntary unemployment insurance, must [~~shall~~] be canceled. The refunds of the unearned credit insurance premiums must [~~shall~~] be computed as of the date of death.

(c) Credit accident and health insurance. If an insurance carrier has classified a disability as permanent and elected to prepay a loan in full, the interest refund, credit life insurance premium refund, credit involuntary unemployment insurance premium refund, or personal property insurance premium refund must [~~shall~~] be computed as of the day the settlement check is received by the licensee. If cancellation is requested by the borrower, any dual-interest motor vehicle insurance premium refund must [~~shall~~] be computed as prescribed by the Automobile Rules and Rating Manual [~~Texas Department of Insurance manual rules and rates~~].

§83.810. Evidence of Equal Insurance Coverage.

If a borrower provides a lender with evidence of property insurance coverage that names the lender as a loss payee and that is equivalent to insurance purchased already through the lender, the lender must

promptly cancel any equivalent property insurance or collateral protection [single-interest] insurance. The refund of any unearned insurance premium must [shall] be applied to the balance of the loan or refunded to the borrower.

§83.812. Gap Waiver Agreement.

(a) Disclosure required by Texas Finance Code, §342.4021(d).

(1) Disclosure. A lender must provide the borrower with the gap waiver agreement disclosure before presenting the borrower with the terms of the gap waiver agreement. The disclosure must not be in the loan agreement and must state that the borrower is not required to purchase the gap waiver agreement in order to obtain the loan. A lender may request that the borrower authenticate the gap waiver agreement disclosure acknowledging the borrower's [applicant's] timely receipt of the disclosure. A licensee may rely upon verifiable procedure to show that the gap waiver agreement disclosure was provided to a borrower [an applicant].

(2) Multiple applicants. In the case of multiple applicants, it is only necessary for the licensee to deliver the gap waiver agreement disclosure to one applicant.

(b) Authorized gap waiver agreement provisions. The gap waiver agreement may include a provision that:

(1) limits the calculation of the unpaid net balance;

(2) limits the scope of the gap waiver agreement to loans that [which] require the borrower to make a balloon payment between 24 and 48 months or to loans that [which] are repayable in 48 months or more;

(3) excludes loss or damage as a result of:

(A) an act occurring prior to the date of the loan;

(B) any dishonest, fraudulent, criminal, or illegal act resulting in a felony conviction of the borrower;

(C) a mechanical or electrical breakdown or failure of the motor vehicle;

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

(E) confiscation; and

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

(4) requires the borrower to notify the licensee of any potential loss under the gap waiver agreement; or

(5) requests the borrower to provide or complete the following documents:

(A) a gap waiver agreement claim form;

(B) proof of loss and settlement check from the borrower's basic 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;

(C) verification of the borrower's primary insurance deductible; and

(D) a copy of the police report, if any, filed in connection with the total loss of [to] the motor vehicle.

(c) Certificate of coverage. If a borrower purchases a gap waiver agreement, the licensee must provide the borrower, within a reasonable amount of time not to exceed 10 days from the date of the loan, a certificate or similar form that clearly sets forth:

(1) the name of the borrower, and the name, address, and telephone number of the place where claims are administered;

(2) the coverage amount and term of the gap waiver agreement;

(3) the cost of the gap waiver agreement; and

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

(d) Premium or rate for gap waiver agreement. A licensee may charge a reasonable gap waiver agreement fee that does not exceed the rates contained in the following figure [Figure: 7 TAC §83.812(d)]. The amount of the fee is based upon the amount financed. The fee for the gap waiver 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.

Figure: 7 TAC §83.812(d) (No change.)

(e) Refund of unearned gap waiver agreement fee.

(1) Refunding method. Upon termination of a gap waiver agreement prior to the scheduled maturity date of a loan, the licensee must [shall] provide the borrower a refund or credit calculated using the pro rata method. The refund must be given upon prepayment of the loan or if the lender demands payment in full of the unpaid balance. The pro rata method of making refunds involves computing a factor to apply to the total premium to determine the unearned portion. The factor is determined by dividing the term remaining on the loan by the total loan term.

(2) Rounding of unearned insurance premium. The refund credit for the gap waiver agreement can be rounded to the nearest whole dollar.

(3) Refund credit less than $1 [$1.00] not required. A refund credit is not required if the amount of the refund credit is less than $1 [$1.00].

(4) Flat cancellation within 60 days. If the borrower cancels the gap waiver agreement within 60 days from the date of the loan, the licensee will refund the entire gap waiver agreement fee. A borrower may not cancel the gap waiver agreement and then receive any benefits under the agreement.

(f) Prompt payment of claims. A licensee must comply with the payment terms of the gap waiver agreement within 60 days of receiving a completed gap waiver agreement claim form. If the licensee has all of the information that a borrower would provide in the completion of a gap waiver agreement claim form, the licensee must comply with the payment terms of the gap waiver agreement within 60 days of receipt of all of the information.

(g) Calculation of settlement amount. The calculation of the settlement amount will be calculated under one of the following methods:

(1) Scheduled installment earnings method. If the loan uses the scheduled installment earnings method, the licensee will calculate the settlement amount by adding the remaining original scheduled installments together and then subtracting any refunds due as of the date of total loss or constructive total loss; or

(2) True daily earnings method. If the loan uses the true daily earnings method, the licensee will calculate the settlement amount by determining the scheduled principal balance due as of the date of total loss or constructive total loss.

(h) Prepayment of loan by gap waiver agreement. If the gap waiver agreement is triggered by the total loss or the constructive total

loss of the motor vehicle, all refunds should be calculated as of the date of loss.

(1) Insurance refunds. Examples of refunds include credit life premium, credit accident and health insurance premium, credit involuntary unemployment insurance premium, collateral protection [~~single-interest~~] insurance premium, and personal property insurance premium.

(2) Interest refunds [~~refund~~]. If the loan uses the scheduled installment earnings method, the interest refund should be calculated as of the date of loss. If the loan uses the true daily earnings method, the licensee should not earn any interest after the date of loss.

(i) Prohibited practices. A licensee cannot offer a gap waiver agreement if:

(1) the loan is unsecured, secured by personal property other than a motor vehicle, or secured by real property;

(2) the interest charge on the loan is calculated under Texas Finance Code, §342.201(a) and (e);

(3) the loan is already protected by gap insurance;

(4) the licensee has not provided the disclosure required by Texas Finance Code, §342.4021(d);

(5) the purchase of the gap waiver agreement is required for the borrower to obtain the extension of credit;

(6) the original term of the loan is less than 48 months, unless the loan contracts for a balloon payment; and

(7) the agreement includes any exclusions or limitations other than those listed in this section.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004885
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER J. DUTIES AND AUTHORITY OF AUTHORIZED LENDERS

7 TAC §§83.826 - 83.831, 83.833, 83.834, 83.836, 83.837

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

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.826. Quotation of Net Pay-Offs.

(a) Generally. If a borrower, spouse of a borrower, or a co-obligor inquires about the net amount necessary to pay the borrower's indebtedness in full, a lender must [~~shall~~] provide the requested information to the person making the inquiry free of charge within a reasonable time. A lender must [~~shall~~] provide this information even if at the time the inquiry is made, the account is delinquent.

(b) Chapter 342, Subchapter G loans. On a net pay-off inquiry relating to a secondary mortgage loan under Texas Finance Code, Chapter 342, Subchapter G, a lender must [~~shall~~] provide the quote in writing. On a secondary mortgage loan made under Subchapter G, a reasonable time in which to respond to an inquiry for a net pay-off is seven calendar days, unless federal law requires a shorter response time.

(c) [~~(b)~~]Chapter 342, Subchapter E and F loans. In the case of a loan made under Texas Finance Code, Chapter 342, Subchapter E or F, a reasonable time in which to respond to an inquiry for a net pay-off is [~~shall be~~] two [~~(2)~~] business days. [~~On a secondary mortgage loan made under Subchapter G, a reasonable time in which to respond to an inquiry for a net pay-off shall be seven (7) calendar days.~~]

§83.827. Return of Instruments to Borrower.

(a) Definition. "Collected funds" means cash or any other form of payment that is or has become final. For example, an electronic funds transfer that is actually received by the authorized lender from the borrower's financial institution would be deemed to be collected funds.

(b) [~~(a)~~] Procedure. Upon discharge of an indebtedness by payment, renewal, or refinancing, a lender must [~~shall~~] return an original or true and correct copy of the instrument creating the indebtedness marked "PAID" or, in lieu of a marked original or copy, provide a discharge and release of all obligations under the loan to satisfy the requirements of Texas Finance Code, §342.454. In addition, if a loan has been paid off, a lender must [~~shall~~] give the borrower, in a recordable form, a release of the lien, including a lien on a motor vehicle title or on real estate, or must [~~shall~~] provide documentation of [~~for~~] the release to the borrower, at the option of the lender whose loan has been paid, a copy of an endorsement, with or without recourse, representation or warranty, and assignment of the lien to a lender that is refinancing the loan. A lender must [~~shall~~] comply with the requirements of this section within a reasonable time not to exceed 30 days after receipt of collected funds by the lender. An authorized lender must discharge or release a lien on a motor vehicle not later than the 10th day after the date of receipt of the collected funds by the lender pursuant to Texas Transportation Code, §501.115.

[~~(b) "Collected funds" means cash or any other form of payment that is, or has become, final. For example, an electronic funds transfer that is actually received by the authorized lender from the borrower's financial institution would be deemed to be collected funds.~~]

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

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

(1) Loan register. Each licensee must maintain a loan register, containing the information required by subparagraphs (A) - (D) of this paragraph, for each Texas Finance Code, Chapter 342, Subchapter E and F loan made by the licensee. The loan register can be maintained either as a paper or an electronic record. If the loan register is maintained as an electronic record, the licensee must be able to

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

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

(B) Last name [~~Surname~~] of borrower;

(C) Total of payments (amount of loan); and

(D) Loan number. Loans may be numbered in ascending sequence as made or may bear an account number permanently assigned to one borrower with a numerical suffix reflecting the number of loans to the borrower. A permanent account number may be used in an automated system for each series of loans to a borrower; however, a consecutive suffix number must be assigned to each loan in the series to distinguish it from the others.

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

(3) Borrower's account record (including payment and collection contact history). A separate paper or electronic record must be maintained for the account of each borrower. The paper or electronic borrower's account record must be readily available by reference to either a name or loan number. The borrower's account record must contain at least the following information on each loan:

(A) Loan number as recorded on loan register;

(B) Loan schedule and terms itemized to show:

(i) date of loan;

(ii) number of installments;

(iii) due date of installments;

(iv) amount of each installment; and

(v) maturity date;

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

(D) Names and addresses of co-borrowers or other obligors, if any;

(E) Type or brief description of security; if none, so indicate;

(F) Total of payments (amount of loan);

(G) Amount financed (cash advance);

(H) Total interest charges itemized to show:

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

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

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

(i) credit life insurance;

(ii) credit accident and health (disability) insurance;

(iii) personal property insurance;

(iv) collateral protection physical damage insurance (single-interest or dual-interest coverage);

(v) nonfiling insurance;

(vi) involuntary unemployment insurance;

(vii) gap waiver agreements; and

(viii) automobile club services memberships authorized by Texas Finance Code, §342.457;

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

(K) Amount of personal property insurance when the coverage amount of insurance is not equal to the amount of the total of payments (amount of loan);

(L) Individual payment entries itemized to show:

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

(ii) amounts received for application to principal and interest; and

(iii) amounts received for default, deferment, or other authorized charges;

(M) Refunds of unearned interest, insurance charges, gap waiver agreements, and authorized ancillary products, if any. A licensee is responsible for substantiating final entries and that refunds were paid to the borrower. Refund amounts must be itemized to show:

(i) interest refunded;

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

(iii) dual motor vehicle physical damage insurance when borrower requests cancellation of the policy;

(iv) gap waiver agreements; and

(v) automobile club services memberships;

(N) Collection contact history. A licensee must make a written or an electronic record of each and every contact made by a

licensee with the borrower or any other person. The written or electronic record must also include every contact made by the borrower with the licensee. The written record must include the date, method of contact, contacted party, person initiating the contact, and a summary of the contact; and

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

(4) Transfer records [~~record~~]. A licensee must maintain [~~a~~] transfer records [~~record~~], whether paper or electronic, when any Texas Finance Code, Chapter 342 loan accounts made by or acquired by the licensee are transferred from its licensed location. The records [~~record~~] must show the name of the borrower, the account number, the date of transfer, and the location to which the accounts are transferred.

(5) General business and accounting records. General business and accounting records concerning the financial transactions of the loan business must be maintained. The business and accounting records must include receipts, documents, canceled checks, or other records for each disbursement made at the borrower's direction or request on his behalf or for his benefit, including repossession, foreclosure, or legal fees applied to the borrower's account.

(6) Official fees records [~~fee record~~] (Subchapter E loans only).

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

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

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

(D) Disbursement procedures.

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

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

(E) Continuing notices of security interest. Continuation of liens will be dependent upon conformity with the following:

(i) If a licensee desires to continue a notice of security interest on which a maturity date was not initially established on the financing statement, a continuation statement must be filed no later than 60 days after the maturity date and no sooner than six [~~(6)~~] months prior to the maturity date. A licensee may exercise one of the following options when "continuing" a lien:

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

(II) The filing fee may be collected directly from the borrower within the period for filing prescribed by Texas Business and Commerce Code, [~~Uniform Commercial Code,~~] §9.515; or

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

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

(ii) A record [~~Record~~] of fees collected under this section must be maintained as prescribed in subparagraph (A) or (B) of this paragraph.

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

(8) Record of loans in litigation and repossession.

(A) An index of each repossession as it occurs and each legal action by or against the licensee as it is initiated must be recorded. The index must show the borrower's name, account number, and date of action. If accounts have been transferred, it must be noted in this index as well as on the record of transferred accounts as prescribed in paragraph (4) of this section.

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

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

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

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

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

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

(vi) When the licensee, acting as a secured party, takes possession of the collateral and disposes of it at a public or private sale as provided under Texas Business and Commerce Code, Chapter 9, [~~the Uniform Commercial Code,~~] and the sale is not a judicial sale, the file must include written evidence substantiating the commercial reasonableness of all aspects of the sale of the collateral, and of its preparation for sale, if any. These documents should include copies of any invoices or receipts, condition reports indicating the condition of the collateral, notice of intended disposition sent to the borrower and any other obligor or the waiver of the notice signed after default by the borrower and other obligors, and evidence of fair sale of the collateral. One means of providing evidence of fair sale or the commercial reasonableness of sale is the taking of not less than three bona fide bids. Bids must disclose the names and addresses of the bidders;

(vii) Name and address of the purchaser of the repossessed collateral; and

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

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

(A) Life insurance claims. The register pertaining to life insurance claims must show the name of the borrower, the account number, and the date of death.

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

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

(D) Involuntary unemployment insurance claims. The register pertaining to involuntary unemployment insurance claims must show the name of the borrower, the account number, and the date of the initial filing of the claim.

(E) Collateral protection [~~Single-interest~~] insurance claims. The register pertaining to collateral protection [~~single-interest~~] insurance claims must show the name of the borrower, the account number, the amount of the insurance written on the motor vehicle, the amount of the settlement, and a notation as to the basis of the settlement (actual cash value, repair, or the remaining outstanding balance).

(10) Loan records and documents file.

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

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

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

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

(iv) financing statements;

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

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

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

(viii) supplemental insurance records;

(ix) supplemental gap waiver agreement records;

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

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

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

(i) Life insurance claims. The supplemental insurance records for life insurance claims must [~~shall~~] include the death certificate or other written records relating to the death of the borrower; proof of loss or claim form that discloses the amount of indebtedness at the time of death; check copies or electronic payment receipts that reflect the gross amount of the claim paid, including the amount of insurance benefits paid 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) Accident and health insurance claims. The supplemental insurance records for accident and health insurance claims must [~~shall~~] include any written records relating to the disability, including statements from the physician, employer, and borrower; the proof of loss or claim form filed by the borrower; and copies of the checks or electronic payment receipts reflecting disability payments paid by the insurance carrier.

(iii) Personal property insurance claims. The supplemental insurance records for personal property insurance claims must [~~shall~~] include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered item; the proof of loss or claim form filed by the borrower; copies

of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the personal property insurance claim. In the case of property insurance claims, these supplemental insurance records must clearly indicate whether the amount of the settlement on each individual item is based on the replacement value or based on the cost of repair.

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

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

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

(i) the gap waiver agreement claim form;

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

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

(iv) if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss 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 "Driver's Accident Report" (Form ST-2) filed in connection with the total loss of the motor vehicle; and

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

(11) Advertising records [~~record~~].

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

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

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

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

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

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

Each licensee must maintain records with respect to each loan made under Texas Finance Code, Chapter 342, Subchapter G and each home equity loan made under Texas Constitution, Article XVI, Section 50, and make those records available for examination. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, [~~or~~] optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. 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. The records required by this section must be retained and made available for inspection in the same manner as that specified in §83.828(14) of this title (relating to Files and Records Required (Subchapter E and F Lenders)).

(1) Required records. A licensee must maintain the following items in a substantially similar form to the respective provisions of §83.828 of this title, as follows:

(A) A loan register;

(B) Transfer records [~~A transfer record~~];

(C) General business and accounting [~~account~~] records;

(D) A record of daily transactions;

(E) Insurance loss registers;

(F) Advertising records [~~An advertising record~~];

(G) Adverse action records [~~An adverse action record~~]; and

(H) An official correspondence file.

(2) Record of individual borrower's account. A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(A) Loan number as recorded on loan register;

(B) Loan schedule and terms itemized to show:

(i) date of loan;

(ii) number of installments;

(iii) due date of installments;

(iv) amount of each installment; and

(v) maturity date;

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

(D) Names and addresses of co-borrowers, if any;

(E) Legal description of real property;

(F) Principal amount;

(G) Total interest charges, including the scheduled base finance charge, the administrative fee, points, and odd days interest on the first installment period;

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

(i) credit life insurance;

(ii) credit accident and health (disability) insurance; and

(iii) personal property insurance;

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

(J) Individual payment entries itemized to show:

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

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

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

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

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

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

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

(3) Official fees records [~~fee record~~].

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

(B) Disbursement procedures.

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

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

(4) Record of loans in litigation and foreclosure.

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

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

(5) Loan records and documents.

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

(B) Supplemental insurance records. Each licensee must maintain in the borrower's file supplemental records supporting the settlement or denials of claims reported in the registers. If the reason for the denial of a life insurance or an accident and health

insurance claim is based upon the medical records of the borrower, supplemental records supporting the denial of the claim must be forwarded to the commissioner upon request. A licensee must maintain supplemental insurance records in a form substantially similar to §83.828(10)(B)(i) - (iii) of this title.

§83.830. Secondary Mortgage Loan Record Retention Requirement.

Any person who engages in secondary mortgage loans subject to Chapter 342 must maintain records of the secondary mortgage loans in accordance with Texas Finance Code, §342.558.

§83.831. Approval of Electronic Recordkeeping Systems and Optical Imaging Systems.

(a) Generally. Records and accounting systems maintained in whole or in part by electronic systems must contain the equivalent information as required in §83.828 and §83.829 of this title (relating to Files and Records Required (Subchapter E and F Lenders) and Files and Records Required (Subchapter G Lenders)). An approved software system must be used unless a manual system that complies with §83.828 and §83.829 of this title is used or a licensee is using a proprietary electronic software system that is not sold or distributed to other licensees. A licensee must provide documentation of the system to the commissioner that explains how the required information is maintained within the system.

(b) Approval documentation.

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

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

(B) operating manuals;

(C) instructions;

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

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

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

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

(d) Optical imaging systems. Records may be retained and stored using optical image storage media, provided the following requirements are satisfied:

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

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

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

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

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

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

§83.833. Correction of Errors or Violations.

(a) Any amount due a borrower because of a correction of an error or a violation may be credited to an amount due under the promissory note or to the next payment or payments on the existing account of the borrower. If the credit is applied to payments not yet due, the licensee must notify the borrower in writing of the date and amount of the next payment due after this credit has been given.

(b) In lieu of crediting an existing account, a refund may be made directly to the borrower by cash, check, money order, or other negotiable instrument. The licensee must maintain sufficient records that the refund was made.

(1) Cash refunds. If the refund is made directly to the borrower in cash, the licensee must obtain a signed or authenticated acknowledgment from the borrower. The signed or authenticated acknowledgment must contain the following information:

(A) the borrower's full name;

(B) the borrower's account number (the account number upon which the refund was made);

(C) the amount of the refund; and

(D) a statement that the borrower received the refund in cash and that the licensee has not instructed or required the retail buyer to repay the cash refund.

(2) Refunds made by check, money order, or other negotiable instrument. If the refund is made directly to the retail buyer by check, money order, or other negotiable instrument, the licensee must, at a minimum, mail the refund to the last known address of the retail buyer by first-class mail. The licensee must maintain a complete paper or electronic copy of the check, money order, or other negotiable instrument. The licensee must also maintain sufficient information that could be used to determine whether the check, money order, or other negotiable instrument was successfully negotiated.

(c) If the error correction or adjustment to an account is related to an improper charge or proceeds improperly held by the licensee on which interest has been precomputed (regular transaction using the sum of the periodic balances method or scheduled installment earnings method), the licensee may alternatively credit the final maturing installment or installments of the promissory note. In addition to the error correction or adjustment, a licensee must also deduct from the precomputed balance the proportionate amount of interest originally charged on the amount being credited.

(d) If the licensee applies the refund to an existing account of the licensee, the licensee may be required to refund the amount

due a borrower plus the amount of accrued interest on the correction or adjustment amount or a proportionate amount of interest originally charged on the amount being credited. If more than half of the precomputed time balance (regular transaction using the sum of the periodic balances method or scheduled installment earnings method) has been paid before applying the credit to the account, the licensee may be required to refund the proportionate amount of interest originally charged on the amount being credited.

(e) If the error correction or adjustment is made to an account where the interest charge is earned using the true daily earnings method, the licensee must refund or credit to the account the amount due to the borrower for the error correction or adjustment in addition to the amount of accrued interest on the correction or adjustment amount.

(f) The commissioner may make adjustments or exceptions to the requirements under this section for unusual situations or when necessary to achieve an appropriate, practical, and workable result.

(g) If the licensee corrects a violation of law in compliance with any instructions on any examination report, that correction will satisfy the requirements of this section with respect to the violation being corrected. Documentation must be maintained regarding all corrections made under this section.

§83.834. Unclaimed Funds.

(a) Escheat suspense account. The licensee must transfer any amounts due a borrower not paid within one year, i.e., unclaimed funds, to an escheat suspense account. The transfer must be noted on the account record of the borrower.

(b) Required information. Evidence of a bona fide attempt to pay a refund to a borrower must be kept in the records of the borrower. [~~The minimum acceptable evidence of a bona fide attempt must be a registered or certified letter sent to the last known address of the borrower.~~] The licensee must place with the records of the borrower any information received by the licensee that indicates the borrower has died leaving no will or heirs, or has left the community and the borrower's whereabouts are unknown. If deemed necessary with respect to a specific borrower, a licensee may be required to send the unclaimed funds by registered or certified mail to the last known address of the borrower.

(c) Use of unclaimed funds [~~monies~~]. Use of unclaimed funds within the business until such time as paid to the borrower, to the estate of the borrower, or to the State of Texas is not prohibited; however, funds transferred to an escheat suspense account must not be commingled with the funds of the business.

(d) Escheat to state. At the end of three [~~(3)~~] years, the unclaimed funds must be paid to the State of Texas Comptroller of Public Accounts, Treasury Division, as required by Texas Property Code, §72.101, or must be paid to the appropriate state or other governmental entity under the time period provided by the other state's or entity's applicable law.

(e) Record retention [~~Retention~~]. The records of the escheat suspense account must be retained for a period of 10 years.

§83.836. Follow-Up Examination Fees.

If a follow-up examination visit is required within nine [~~(9)~~] months after a written deficiency report has been given as a result of a failure to comply with Texas Finance Code, Chapter 342, this chapter, or the special instruction section of the examination report, an examination fee at the hourly rate of $100 per examiner may be assessed.

§83.837. Disclosure when [~~When~~] Automobile Club Membership Offered in Connection with Loan.

(a) If an automobile club membership is offered in connection with a loan under Texas Finance Code, Chapter 342, Subchapter E, the disclosure contained in subsection (c) of this section is sufficient to satisfy the requirements of Texas Finance Code, §342.457 if printed in a size equal to at least 10-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous.

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

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

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

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

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

(1) the enrollment agreement;

(2) the loan contract; or

(3) a separate document.

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

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004886
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

7 TAC §83.830, §83.833

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of Consumer Credit Commissioner or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

These repeals are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally,

Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposed repeals are contained in Texas Finance Code, Chapter 342.

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

§83.333. Correction of Errors or Violations.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004887
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER K. PROHIBITIONS ON AUTHORIZED LENDERS

7 TAC §§83.851 - 83.862

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.851. Duplication of Loans.

(a) A licensee may have more than one loan contract under Texas Finance Code, Chapter 342 with the same borrower at the same time; however, in such an event the total interest charges assessed on the several cash advances must [~~shall~~] not exceed the total interest charges that could be legally imposed on one cash advance of an amount equal to the total of the several separate cash advances. The commissioner may require refunds of interest charges in excess of that which could be legally charged under Chapter 342. The commissioner will [~~shall~~] prescribe the method of determining any excess charges.

(b) Married applicants, who under the authority of Regulation B, 12 C.F.R §202.11(c), voluntarily apply for and maintain separate accounts, and who have the ability to repay the obligation, will not violate the prohibition on duplicate loans.

(c) No loan may be made by a licensee in one office to any borrower or to the spouse of the borrower when the borrower or spouse has a loan in another office operated by the same entity, affiliate, parent, subsidiary, or an entity under the same ownership, management, or control, whether partial or complete, when the total interest charges of the separate loans exceed the total interest charges that could be legally imposed on one cash advance. If loans are granted that violate this section, the rates must [~~shall~~] be adjusted to rates applicable to a single loan of equivalent amounts.

§83.852. Loan Size, Duration, and Schedule of Installments: Limitation.

When making or negotiating a loan under Texas Finance Code, Chapter 342, licensees must [~~shall~~] consider, in determining the size, duration, and schedule of installments of a loan, the financial ability of the borrower to repay the loan. The lender should evaluate whether the borrower should be reasonably able to repay the loan in cash in the time and means provided in the loan contract and repay all other known obligations concurrently.

§83.853. Misleading Advertising.

(a) A [~~No~~] licensee may not [~~shall~~] advertise that loans will be made at any other place other than that named on its license, except for Texas Finance Code, Chapter 342, Subchapter G loans, which may be closed at a title company or an attorney's office. Every advertisement must [~~shall~~] state or clearly indicate the identity of the licensee, and in such a manner as to prevent confusion with the name of any other unrelated licensee.

(b) A [~~No~~] licensee may not [~~shall~~] use blind loan advertisements that [~~which~~] give only telephone numbers or addresses.

(c) In determining whether any particular advertising matter violates Texas Finance Code, §341.403, the general arrangement of copy and statements or representations made will [~~shall~~] be considered to determine if the inference or impression may reasonably be drawn that the statements or representations are inaccurate, deceptive, or misleading.

(d) It will [~~shall~~] be considered misleading:

(1) to use phrases such as "lowest costs," "lowest rates," "quickest service," "easy payments," or "repayment in easy installments";

(2) to advertise "new reduced rates" or "a new type of service" or any similar comparative expression, unless the statement is in fact accurate with respect to the business of the licensee advertised and unless the advertisement clearly indicates that the new plan refers specifically to a change in the particular licensee's plan of operation, and which change must be of more than minor importance with respect to the business of the licensee. Any such advertisement must [~~shall~~] not be used for a period longer than 60 days after the plan has been put into effect;

(3) to make any statement or representation with reference to the ease of procuring a loan, the speed with which it may be effected, the freedom from credit inquiries addressed to particular sources of information, or to any other implied differentiation in policy or loan service, unless the licensee will [~~shall~~] comply with the representation made;

(4) to advertise offers to borrowers on loans in general or on particular classes or types of loans during a certain limited time, unless in general practice, the licensee actually makes a reasonable number of the loans within the limited time and upon the basis of the offer; or

(5) for any licensee other than a lawfully chartered banking institution to use the word "bank," or any derivative, in any advertisement wherein its use might mislead the public to believe that the licensee is an authorized banking institution or is conducting a banking business.

§83.854. Conditional Offers of Credit.

(a) A [~~No~~] licensee may not [~~shall~~] solicit business by means of a "pre-approved," "approved," or any similar expression unless the statement or offer is unconditional. The term "unconditional" means not limited in any way.

(b) Subsection (a) of this section does not apply to a firm offer of credit, as that term is defined in 15 U.S.C. §1681a [~~15 U.S.C~~

§1681a], that a creditor extends to a consumer following the procedures prescribed in 15 U.S.C. §1681b and §1681m [15 U.S.C §1681b and §1681m].

(c) A [No] licensee may not [shall] require the purchase of any goods, services, or intangibles from any person or firm as a condition to the granting or extending of credit, except as specifically authorized by the Texas Credit Title. This prohibition is not applicable to insurance premium financing or similar transactions wherein the loan is made solely for the purpose of financing the purchase. This section must [shall] not be construed so as to prohibit the conduct of another business by a licensee as is authorized by Texas Finance Code, §342.560.

§83.855. Advertisements in Form of Negotiable Instruments.

A [No] licensee may not [shall] advertise, display, or distribute mailing pieces that [which] have a similarity or resemblance to a blank counter check;[,] postal or express money order;[,] U.S. currency, cash, exchange certificate, or any negotiable instrument whatsoever;[,] or any federal, state, or local government warrant. A [No] licensee may not [shall] use an envelope that [which] in any way indicates or implies that it is from federal, state, or local government.

§83.856. Use of State Agency Name.

It will [shall] be permissible for a licensee of the OCCC [Office of Consumer Credit Commissioner] to publicly display or advertise the following or a substantially similar statement: "This office is licensed and examined by the Office of Consumer Credit Commissioner of the State of Texas."

§83.857. Full Disclosure Requirements--Other than [Than] Open-End or Revolving Loan Plans.

(a) If rates or charges are stated in advertising, they must [shall] be expressed in terms of an "annual percentage rate" (simple annual interest rate). Any advertisement that states the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, must [shall] also state:

(1) the amount of the loan expressed as "amount financed" (cash advance);

(2) the number, amount, and due dates or periods of payments scheduled to repay the indebtedness if the credit is extended;

(3) the rate of the finance charge; and

(4) the sum of the payments expressed as "total of payments" (amount of loan).

(b) The information required by this section must [shall] be clearly shown in such a manner as not to be deceiving or misleading.

(c) If any licensee advertises that the first installment on a loan may be extended beyond one month from the loan date, the licensee must also clearly state whether a charge is to be made for the extension.

(d) For purposes of this section, compliance by an authorized lender with the federal Truth in Lending Act and its implementing regulations [promulgated thereunder] relating to closed-end transactions will [shall] constitute compliance with Texas Finance Code, §342.505.

§83.858. Full Disclosure Requirements--Open-End and Revolving Loan Plans.

(a) Any advertisement of an open-end or revolving loan plan that [which] states any of the specific terms of that plan, must [shall] also clearly and conspicuously set forth the following items:

(1) the time period, if any, within which any credit extended may be repaid without incurring a finance charge;

(2) the method of determining the balance upon which a finance charge will be imposed;

(3) the method of determining the amount of the finance charge;

(4) the method by which any charge for insurance, if any, is to be calculated; and

(5) when periodic rates may be used to compute the finance charge, with the periodic rates expressed as annual percentage rates.

(b) For purposes of this section, compliance by an authorized lender with the federal Truth in Lending Act and its implementing regulations [promulgated thereunder] relating to open-end credit transactions will [shall] constitute compliance with the Texas Credit Title.

§83.859. Collection Practices.

(a) In attempting to collect money due on a loan or to take possession of any property securing a loan, a licensee or the licensee's agent must [shall] not use any means other than appeals to reason or lawful remedies authorized under the laws of this state. The licensee is also bound by the remedies prescribed in any instrument securing the loan.

(b) A licensee or the licensee's agent must [shall] not use any physical force or violence against any person or use any physical force or violence against any property.

§83.860. Collection Contacts.

(a) A licensee or the licensee's agent must [shall] have the right to contact any person in order to secure information concerning a borrower, unless any person other than the borrower, the borrower's spouse, a member of the borrower's household, a co-borrower, endorser, surety, or guarantor of the obligation, objects to any contact by a licensee or the licensee's agent. Upon receipt of the objection, the licensee or agent, must [shall] cease and desist from any further deliberate communication [contact] with the person objecting relative to the specific borrower and account in question.

(b) A licensee or the licensee's agent must [shall] not solicit the payment of all or any part of any debt subject to Texas Finance Code, Chapter 342 [this title] from any person other than the borrower, a co-borrower, endorser, surety, or guarantor of the obligation, borrower's designee, trustee, insurance company paying a claim or a refund involving the debtor, any party having a lawful right or claim to any collateral, any person who may be or is legally obligated to pay all or a portion of the debt, or a guardian, executor, administrator, attorney, agent, or representative of any of the foregoing.

(c) Without the prior written consent of the borrower given directly to the licensee or the express permission of a court of competent jurisdiction, a licensee may not communicate with a borrower in connection with the collection of a loan at any unusual time or place. In the absence of any knowledge to the contrary, a licensee can assume that the convenient time for communicating with a borrower is after 8:00 a.m. and before 9:00 p.m., local time at the borrower's location.

(d) A licensee may not communicate with a borrower in connection with the collection of a loan at the borrower's place of employment if the licensee has received written notification from the borrower or the borrower's employer to cease communications with the borrower while at the place of employment. This restriction may be overridden by court order.

(e) Without the prior written consent of the borrower given directly to the licensee or the express permission of a court of competent jurisdiction, a licensee may not communicate nonpublic personal [any]

information pertaining to a debt or obligation unless the person receiving the information is the borrower, the borrower's attorney, a consumer reporting agency, another creditor, or the attorney of the creditor, a guardian, executor, or administrator, or any party that may lawfully receive the information under the Gramm Leach Bliley Act, 15 U.S.C. §§6801 - 6809, and its implementing regulations, or the Fair Credit Reporting Act, 15 U.S.C. §§1681 - 1681x, and its implementing regulations, or other law or regulation. Unless notified pursuant to subsection (a) of this section, this prohibition does not apply to a licensee seeking information about the location of the borrower.

(f) Subsections (a) - (e) of this section do not apply to a communication or contact directly relating to a pending court or arbitration proceeding. Subsections (a), (b), (d), and (e) of this section do not apply to providing a notice required by law or contract.

§83.861. Simulated Legal Process or Documents Prohibited.

In attempting to collect money due on a loan or to take possession of any property securing a loan, a licensee or the licensee's agent must [~~shall~~] not use any simulated legal process, simulated legal document, or legal form designed to suggest that legal proceedings have been commenced or completed when in fact they have not.

§83.862. Impersonation and Fictitious Names Prohibited.

In attempting to collect money due on a loan, to take possession of any property securing a loan, or to secure information concerning a loan, a licensee or the licensee's agent may [~~shall~~] not impersonate or attempt to impersonate any law enforcement officer or other agent of federal, state, or local governments, and [~~nor shall~~] a licensee or a licensee's agent may not use any fictitious name unless the name used is an established or recognized trade name of the licensee.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004888
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES
SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

7 TAC §84.301, §84.308

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.301, concerning Definitions, and to §84.308, concerning Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle, offered in connection with motor vehicle retail installment sales contracts.

With the enactment of Senate Bill 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. During 2009, the agency engaged in a dialogue with interested stakeholders to develop §84.308. Throughout this rule development process, the agency discovered that the debt cancellation products authorized by Senate Bill 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.

From the information gathered by the agency, it became apparent that two sets of circumstances required separate treatment under §84.308. With this approach, the agency sought to accommodate different market segments offering debt cancellation agreements while maintaining appropriate consumer protections. Current §84.308 is divided into two distinct situations where debt cancellation agreements may be offered involving total loss or theft. Fees and other terms were adjusted accordingly to accommodate these two situations as included in the rule adopted by the commission.

Section 84.308 became effective in March 2010. Upon gaining practical experience with the application of §84.308 to actual debt cancellation agreements being offered across the state, the agency was contacted by industry members regarding potential revisions to enhance the use of these new products in Texas. During the resulting discussions with the industry, three main areas of amendment emerged: (1) clarification regarding certain terms that may be included where insurance coverage is part of the retail buyer's responsibility to the holder; (2) an increase in the rates that may be offered where the holder bears complete responsibility for canceling the debt; and (3) the addition of a third situation applicable to used cars priced at $15,000 or less, where the retail seller does not assign the contract (except related finance company) and bears complete responsibility for canceling the debt.

Note that throughout this preamble, the three different types of situations where debt cancellation agreements may be offered involving total loss or theft as currently included in or proposed for addition to §84.308 will be referred to as follows: (1) the "first model" is where insurance coverage is part of the retail buyer's responsibility to the holder; (2) the "second model" is where the holder bears complete responsibility for canceling the debt; and (3) the proposed new "third model" is applicable to used ordinary vehicles with a cash price of $15,000 or less in which the retail seller does not assign the contract to any party other than a related finance company, and in which the retail seller bears complete responsibility for canceling the debt after total loss or theft whether the retail buyer elects to obtain property insurance.

In general, the purpose of the amendments to §84.301 and §84.308 is to implement changes in three areas to address industry concerns and enhance the effectiveness of debt cancellation agreements offered in connection with motor vehicle retail installment sales contracts in Texas. The specific purposes of each amendment are described in greater detail in the following paragraphs.

The purpose of the amendments to §84.301 is to provide clarification to terms used within current §84.308 and to make conforming changes to support the proposed revisions to §84.308. The definition of "Primary Insurance Carrier" has been inserted as new subsection (e) in order to clarify the use of this term in §84.308(h)(1)(C) with regard to calculation of the amount to be cancelled under a debt cancellation agreement where insurance coverage is part of the retail buyer's responsibility to the holder. Additionally, the remaining subsections of §84.301 have been relettered accordingly.

Also in §84.301, paragraph (3) is proposed for addition to subsection (g) in order to provide a definition of total loss or theft applicable to the new third model for debt cancellation agreements.

The purpose of the amendments to §84.308 is to clarify certain terms that may be included as part of debt cancellation agreements under the first model, to increase the rates offered under the second model, and to add the third model. Conforming changes have been made in the introductory statements of subsection (c), referencing the three paragraphs accompanying the three models, as opposed to the current two.

Regarding the three main areas of change in §84.308, first, the agency encountered certain common issues during the review process of debt cancellation provisions submitted by the industry. Thus, in §84.308(c)(1), subparagraphs (K) and (L) have been added to give clarification to providers drafting debt cancellation agreements. These provisions allow the inclusion of statements that the original term of a debt cancellation agreement may be limited to 84 months (subparagraph (K)) and that the retail buyer may be required to obtain primary physical damage insurance with a deductible that does not exceed $1,000 (subparagraph (L)). Conforming changes have been added to §84.308(h)(1) with respect to calculations involving an unauthorized deductible over $1,000. In addition, new subparagraph (M) has been added to §84.308(c)(1) to include a statement advising the retail buyer to contact a tax advisor as to possible tax consequences relating to the purchase of this product. Corresponding language regarding potential tax consequences has been also added to §84.308(c)(2) and (c)(3). The remaining subparagraphs in paragraphs (1), (2), and (3) of subsection (c) have been appropriately relettered.

Second, the current rate structure of the second model limited its availability across the state. Interested stakeholders contacted the agency and requested an increase in the rate structure to increase the availability of the second model. The agency continued its dialogue with stakeholders in order to determine the appropriate rates to maintain reasonableness yet provide a certain level of profitability for providers. Therefore, the fees for the second model are proposed at approximately twice the current levels, as follows: for 0-12 months, a rate of 10.00 (rate per $100 or percentage of amount financed); for 13-35 months, a rate of 12.00; and for 36 months or more, a rate of 14.00. Additionally, unnecessary language has been removed and other technical corrections have been made to §84.308(c)(2)(B) regarding the second model.

And third, the proposed new third model would apply only on used cars priced at $15,000 or less, and in which the retail seller does not assign the contract to any party other than a related finance company. As stated earlier, in the third model, the retail seller bears complete responsibility for canceling the debt after total loss or theft whether the retail buyer elects to obtain property insurance. The unusual circumstances of this third situation for debt cancellation agreements for total loss or theft dictated further separate treatment under the rule, apart from the two models already in place. The agency worked with stakeholders to develop this proposal, which incorporates certain changes as requested by stakeholders. In fact, the agency received express support for the proposed fees in Figure §84.308(e)(3).

The addition of the third model is reflected in proposed §84.308(c)(3), (e)(3), and (h)(3). Overall, the third model includes the applicable provisions from the existing two models but has been modified to provide greater flexibility under the unusual circumstances under which the product is offered. Subsection (c)(3) outlines the provisions that are authorized to be included in a debt cancellation agreement under the third model. Section 84.308(e)(3) and its accompanying figure explain the allowable fees that can be charged for debt cancellation agreements as well as the financing of those fees under the third model. Subsection (h)(3) delineates the allowable methods of calculating the amount to be cancelled under a debt cancellation agreement following the third model.

Leslie L. Pettijohn, Consumer Credit Commissioner, 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.

For each year of the first five years the amendments 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 third model further implements the "reasonable" standard in the statute, retail sellers will have more confidence in offering debt cancellation agreements and more ability to offer them to different market segments.

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 more than cover the costs associated with creating and maintaining the agreements. Thus, because the fees are estimated to be greater than the costs of the debt cancellation agreements, persons who are required to comply with the proposal are expected to either experience a neutral cost, or more likely, a financial gain as a result of the proposed amendments. There will be no effect on individuals required to comply with the amendments 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 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 are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. The amendments 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.

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

§84.301. Definitions.

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

(e) Primary Insurance Carrier--The retail buyer's physical damage insurance company or a liability insurance policy of a person that has caused a total loss to the motor vehicle.

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

(g) [~~(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 of total loss 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.

(3) Debt cancellation agreement for total loss or theft of used ordinary vehicle with a cash price of $15,000 or less in which the retail seller does not assign the retail installment sales contract to any party other than a related finance company as defined by Texas Tax Code, §152.0475(a), and in which the retail seller bears complete responsibility for canceling the debt after total loss or theft whether the retail buyer elects to obtain property insurance. Under §84.308(e)(3) 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)(3) of this title, theft means the motor vehicle subject to the debt cancellation agreement is stolen and deemed to be not recoverable.

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

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

(c) Authorized debt cancellation agreement for total loss or theft of an ordinary vehicle provisions. A debt cancellation agreement under this section may only contain provisions or exclusions from either paragraph (1), [~~or~~] (2), or (3) of this subsection, language to implement any of the provisions or exclusions of either paragraph (1), [~~or~~] (2), or (3) of this subsection, and language to identify and obligate the parties to the debt cancellation agreement under Texas law if that language does not conflict with this subsection.

(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 must:

(A) permit the exclusion of loss or damage only 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;

(B) contain 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;

(C) contain 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;

(vi) any additional documentation approved in writing by the commissioner;

(D) contain a statement that notwithstanding the collection of the documents under subparagraph (C) of this paragraph, upon reasonable advance notice, the holder may inspect the retail buyer's vehicle to determine pre-damage and mileage condition upon a total loss of the vehicle;

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

(G) contain a statement explaining the calculation of the amount canceled 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) contain 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) contain a statement that a partial loss of the motor vehicle is not subject to relief under the debt cancellation agreement;

(J) contain a statement that upon request of the commissioner, the administrator will make its records relating to the creation, processing, and resolution of the debt cancellation agreement available to the commissioner;

(K) contain a statement that the original term of a debt cancellation agreement can be limited to 84 months from the inception of the retail installment sales contract;

(L) contain a statement that requires the retail buyer to obtain primary physical damage insurance with a deductible that does not exceed $1,000;

(M) contain a statement that the retail buyer should consider contacting a tax advisor regarding possible tax consequences; and

(N) [~~(K)~~] contain, at the election of the drafter, contract provisions pertaining to the following issues, so long as the provisions comply with state and federal law and implementing regulations:

(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;

(iv) any contract provision approved in writing by the commissioner.

(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 must:

(A) contain 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) permit the exclusion of loss or damage only 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;~~]

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

(xv) [~~(xvi)~~] any exclusion or limitation approved in writing by the commissioner;

(C) contain 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) contain a statement that requests the retail buyer to provide or complete a 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 and provide those documents to the holder;

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

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

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

(K) contain a statement that upon request of the commissioner, the administrator will make its records relating to the creation, processing, and resolution of the debt cancellation agreement available to the commissioner;

(L) contain a statement that the retail buyer should consider contacting a tax advisor regarding possible tax consequences; and

(M) [~~(L)~~] contain, at the election of the drafter, contract provisions pertaining to the following issues, so long as the provisions comply with state and federal law and implementing regulations:

(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;

(iv) any contract provision approved in writing by the commissioner.

(3) Debt cancellation agreement for total loss or theft of used ordinary vehicle with a cash price of $15,000 or less in which the retail seller does not assign the retail installment sales contract to any party other than a related finance company as defined by Texas Tax Code, §152.0475(a), and in which the retail seller bears complete responsibility for canceling the debt after total loss or theft whether the retail buyer elects to obtain property insurance, must:

(A) contain a statement that:

(i) if the retail buyer does not have property insurance for the motor vehicle that is in force and effect at the time of the total loss or theft of the motor vehicle, the retail seller will cancel the amount currently owed by the retail buyer on the date of total loss or theft of the motor vehicle; or

(ii) if the retail buyer has property insurance for the motor vehicle that is in force and effect at the time of the total loss or theft of the motor vehicle or the motor vehicle is involved in a total loss involving another responsible party's liability insurance policy, the retail seller will apply any settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured motorist policy or other parties' liability insurance policy to the retail buyer's account and cancel the remaining balance;

(B) permit the exclusion of loss or damage only as a result of one or more of the following:

(i) an act occurring after the original maturity date or date of retail seller'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 loss occurring outside the continental United States of America, Alaska, or Hawaii (retail seller may opt to cover losses in Canada);

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

(C) contain a statement that the retail buyer is required to notify the retail seller 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) contain a statement that requests the retail buyer to provide or complete some or all of the following documents and provide those documents to the retail seller:

(i) a debt cancellation request form;

(ii) if property insurance is in force and effect, 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) a copy of the police report, if any, filed in connection with the total loss or theft of the motor vehicle;

(iv) a copy of the damage estimate;

(v) any additional documentation approved in writing by the commissioner;

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

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

(G) contain a statement explaining the calculation of the amount canceled under the debt cancellation agreement for total loss or theft of an ordinary vehicle that is in accordance with subsection (h)(3) of this section;

(H) contain a statement that the retail seller may be named as loss payee on any insurance policy covering the motor vehicle, but may only receive proceeds from an insurance policy on the motor vehicle in the event of a total loss or theft;

(I) contain a statement that the retail seller may not require property insurance on the motor vehicle;

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

(K) contain a statement that a partial loss of the motor vehicle is not subject to relief under the debt cancellation agreement, but may be subject to relief from property insurance voluntarily purchased by the retail buyer;

(L) contain a statement that upon request of the commissioner, the administrator will make its records relating to the creation, processing, and resolution of the debt cancellation agreement available to the commissioner;

(M) contain a statement that the retail buyer should consider contacting a tax advisor regarding possible tax consequences; and

(N) contain, at the election of the drafter, contract provisions pertaining to the following issues, so long as the provisions comply with state and federal law and implementing regulations:

(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;

(iv) any contract provision approved in writing by the commissioner.

(d) (No change.)

(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) (No change.)

(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)
[~~Figure: 7 TAC §84.308(e)(2)~~]

(3) Debt cancellation agreement for total loss or theft of used ordinary vehicle with a cash price of $15,000 or less in which the retail seller does not assign the retail installment sales contract to any party other than a related finance company as defined by Texas Tax Code, §152.0475(a), and in which the retail seller bears complete responsibility for canceling the debt after total loss or theft whether the retail buyer elects to obtain property insurance. 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)(3) of this section.
Figure: 7 TAC §84.308(e)(3)

(f) - (g) (No change.)

(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 canceled 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 canceled by:

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

(ii) subtracting the total loss payment made by the primary insurance carrier, or if the primary insurance has lapsed, the retail value of the motor vehicle as of the date of loss determined by an established retail value guide; [~~and~~]

(iii) subtracting any refunds received by the holder as of the date of total loss or theft in accordance with subsection (i) of this section; and [~~.~~]

(iv) subtracting, if the debt cancellation agreement contains the provision under subsection (c)(1)(L) of this section, the amount of any deductible amount that exceeds $1,000.

(B) If the retail installment sales contract uses the true daily earnings method and is payable in monthly installments, the holder or administrator will calculate the amount to be canceled by:

(i) computing the originally scheduled principal balance due as of the date of total loss or theft;

(ii) adding the amount of accrued time price differential from the date of the last originally scheduled installment imme-

diately preceding the total loss or theft, for a period not to exceed 46 days;

(iii) subtracting the total loss payment made by the primary insurance carrier, or if the primary insurance has lapsed, the retail value of the motor vehicle as of the date of loss determined by an established retail value guide; [~~and~~]

(iv) subtracting any refunds received by the holder as of the date of total loss or theft; and [~~.~~]

(v) subtracting, if the debt cancellation agreement contains the provision under subsection (c)(1)(L) of this section, the amount of any deductible amount that exceeds $1,000.

(C) The total loss payment made by the primary insurance carrier to the holder is presumed to be correct in connection with the amount owed under the retail buyer's insurance policy in the event of total loss or theft. If the holder or administrator has verifiable knowledge that the total loss payment by the primary insurance carrier is inadequate under the insurance policy, the holder or administrator may dispute the amount paid by the primary insurance carrier. The holder or administrator must contact the primary insurance carrier in writing to object to the amount paid under the primary insurance policy. If the primary insurance carrier has not reasonably tendered additional funds within 30 days of the written notice, the holder or administrator may, but is not required to, deduct an amount, in lieu of the amount shown under subparagraph (A)(ii) or (B)(iii) of this paragraph, equal to the retail value of the motor vehicle as of date of loss determined by an established retail value guide. Any disputes arising from this section are subject to review by the commissioner.

(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 canceled under the debt cancellation agreement for total loss or theft of an ordinary vehicle.

(3) Debt cancellation agreement for total loss or theft of used ordinary vehicle with a cash price of $15,000 or less in which the retail seller does not assign the retail installment sales contract to any party other than a related finance company as defined by Texas Tax Code, §152.0475(a), and in which the retail seller bears complete responsibility for canceling the debt after total loss or theft whether the retail buyer elects to obtain property insurance.

(A) If the retail buyer did not have property insurance at the time of the total loss or theft of the motor vehicle or the total loss of the vehicle was not covered by another responsible party's liability insurance policy, the amount to be canceled will be the amount currently owed by the retail buyer as of the date of total loss or theft of the motor vehicle.

(B) If the retail buyer had property insurance at the time of the total loss or theft of the motor vehicle or the total loss of the vehicle was covered by another responsible party's liability insurance policy, the retail seller or related finance company will calculate the amount to be canceled by determining:

(i) the current balance owed by the retail buyer as of the date of total loss or theft of the motor vehicle;

(ii) subtracting the total loss payment made by the primary insurance carrier or other responsible party's liability insurance carrier; and

(iii) subtracting any refunds received by the retail seller or related finance company as of the date of total loss or theft of the motor vehicle.

(i) - (k) (No change.)

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004889
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 2. INDEPENDENT ORGANIZATIONS

16 TAC §§25.361 - 25.363

The Public Utility Commission of Texas (commission) proposes amendments to §25.361, relating to the Electric Reliability Council of Texas, §25.362, relating to Electric Reliability Council of Texas governance, and §25.363, relating to Electric Reliability Council of Texas fees and other rates. The proposed amendments will make the Electric Reliability Council of Texas more accountable to the commission and introduce additional controls over the budget and fees of this organization. These rules are competition rules subject to judicial review as specified in PURA §39.001(e). Project Number 38338 is assigned to this proceeding.

Jess Totten, Competitive Markets Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Totten has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be greater accountability and cost control with respect to the Electric Reliability Council of Texas (ERCOT), which plays a critical role in the efficient operation of the electricity grid in most of Texas. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as

proposed. There may be economic costs to persons who are required to comply with the proposed sections. These costs implementing management, governance, and budgeting changes by ERCOT, but the rules are also anticipated to require ERCOT to exercise greater scrutiny over its costs and seek and implement operational improvements. Accordingly, it is believed that the benefits accruing from implementation of the proposed sections will outweigh these costs.

Mr. Totten has also determined that for each year of the first five years the proposed sections 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 Wednesday, November 3, 2010. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 38338. In addition to the comments on the proposed rules and the costs of the rules, if adopted, the commission invites comments on the following question:

The Texas Sunset Commission has recommended a change in the way the ERCOT administrative fee is set, so that the fee would be designed to collect the amount of the approved budget, rather than the amount generated by a fixed fee. Would it be appropriate for the commission to adopt such a change in connection with the adoption of the rules proposed in this Order?

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.151, which grants the commission the authority to adopt and enforce rules relating to the reliability of the regional electric network and accounting for the production and delivery of electricity among market participants, provides that an independent organization is directly responsible and accountable to the commission, provides that the commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that it adequately performs its functions and duties, require an independent organization to provide reports and information relating to the independent organization's performance of its functions and relating to the organization's revenues, expenses, and other financial matters. In addition, this sections permits the commission to prescribe a system of accounts for an independent organization; conduct audits of an independent organization relating to the performance of its functions or its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit; inspect an independent organization's facilities, records, and accounts; assess administrative penalties against an independent organization. This sections also authorizes the commission to approve and charge a reasonable and competitively neutral rate to cover the independent organization's costs. This sections directs the commission to investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and permits it to require an independent organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or the effectiveness or efficiency of the organization.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.151.

§25.361. Electric Reliability Council of Texas (ERCOT).

(a) Applicability. This section applies to the Electric Reliability Council of Texas (ERCOT). It also applies to transmission service providers (TSPs) and transmission service customers, as defined in §25.5 of this title (relating to Definitions), with respect to interactions with ERCOT. For the purpose of this section and §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance) an ERCOT rule is a protocol, operating guide, market guide, or other procedures that constitutes a statement of general policy and that has an impact on the governance of the organization or on reliability, settlement, customer registration, or access to the transmission system in the ERCOT region.

(b) Functions [~~Purpose~~]. ERCOT shall perform the functions of an independent organization under the Public Utility Regulatory Act (PURA) §39.151 to ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms; ensure the reliability and adequacy of the regional electrical network; ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region. ERCOT shall: [~~In addition, ERCOT may, on the introduction of customer choice in the ERCOT power region, acquire generation-related ancillary services on a nondiscriminatory basis on behalf of entities selling electricity at retail in accordance with PURA §35.004(e).~~]

[~~(c) Functions. ERCOT shall operate an integrated electronic transmission information network and carry out the other functions prescribed by this section. ERCOT shall:~~]

(1) administer, on a daily basis, the operational and market functions of the ERCOT system, including acquiring ancillary services, scheduling [~~of~~] resources and loads, and managing transmission congestion [~~management~~], as set forth in this title, commission orders, and the ERCOT rules [~~protocols~~];

(2) administer settlement and billing for services provided by ERCOT, including assessing creditworthiness of market participants and establishing and enforcing reasonable security requirements in relation to their responsibilities in ERCOT-operated markets;

(3) serve as the single point of contact for the initiation of transmission transactions;

(4) maintain the reliability and security of the ERCOT region's electrical network, including the instantaneous balancing of ER-

COT generation and load and monitoring the adequacy of resources to meet demand;

(5) provide for [~~direct the curtailment and redispatch of ERCOT generation and transmission transactions on a~~] non-discriminatory access to the transmission system [~~basis~~], consistent with this title, commission orders, and ERCOT rules [~~protocols~~];

(6) accept and supervise the processing of all requests for interconnection to the ERCOT transmission system from owners of new generating facilities;

(7) coordinate and schedule planned transmission facility outages;

(8) perform system screening security studies, with the assistance of affected TSPs;

(9) plan the ERCOT transmission system, in accordance with [~~subsection (f) of~~] this section;

(10) administer procedures for the registration of market participants;

(11) [~~develop,~~] manage[~~,~~] and operate the customer registration system;

(12) administer the renewable energy program, unless the commission designates a different person to administer the program;

(13) monitor generation planned outages;

(14) disseminate information relating to market operations, market prices, and the availability of services, in accordance with this title, commission orders, and the ERCOT rules [~~protocols~~];

(15) operate an electronic transmission information network; and [~~submit an annual report to the commission identifying existing and potential transmission and distribution constraints and system needs within ERCOT, with emphasis on critical transmission projects, alternatives for meeting system needs, and recommendations for meeting system needs, pursuant to PURA §39.155 (relating to Commission Assessment of Market Power); and~~]

(16) perform any additional duties required under this title, commission orders, and [~~the~~] ERCOT rules [~~protocols~~].

(c) [~~(d)~~] Commercial functions. ERCOT shall dispatch generation facilities [~~only~~] in accordance with the provisions of this title, commission orders and the ERCOT rules [~~protocols. This responsibility includes authority to redispatch generation resources, in accordance with §25.200 of this title (relating to Load Shedding, Curtailments, and Redispatch) and the ERCOT protocols, and to determine and purchase the amount of ancillary services required to maintain and ensure the reliability of the network.~~] All commercial functions required to ensure reliability and adequacy of the transmission network are to be conducted in accordance with the ERCOT rules [~~protocols~~].

(d) [~~(e)~~] Liability. ERCOT shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities.

(e) [~~(f)~~] Planning. ERCOT shall conduct transmission system planning and exercise comprehensive authority over the planning of bulk transmission projects that affect the transfer capability of the ERCOT transmission system. ERCOT shall supervise and coordinate the other planning activities of TSPs.

(1) ERCOT shall evaluate and make a recommendation to the commission as to the need for any transmission facility over which it has comprehensive transmission planning authority.

(2) A TSP shall coordinate its transmission planning efforts with those of other TSPs, insofar as its transmission plans affect other TSPs.

(3) ERCOT shall submit to the commission any revisions or additions to the planning guidelines and procedures prior to adoption. ERCOT may seek input from the commission as to the content and implementation of its guidelines and procedures as it deems necessary.

(f) [~~(g)~~] Information and coordination. Transmission service providers and transmission service customers shall provide such information as may be required by ERCOT to carry out the functions prescribed by this title, commission orders, [~~section~~] and the ERCOT rules [~~protocols~~]. ERCOT shall maintain the confidentiality of competitively sensitive information and other protected information, as specified in §25.362 of this title. Providers of transmission and ancillary services shall also maintain the confidentiality of competitively sensitive information entrusted to them by ERCOT or a transmission service customer.

(g) [~~(h)~~] Interconnection standards. [~~In performing its functions related to the reliability and security of the ERCOT electrical network,~~] ERCOT may prescribe reliability and security standards for the interconnection of generating facilities that use the ERCOT transmission network. Such standards shall not adversely affect or impede manufacturing or other internal process operations associated with such generating facilities, except to the minimum extent necessary to assure reliability of the ERCOT transmission network.

(h) [~~(i)~~] ERCOT administrative fee. ERCOT shall charge an administrative fee, and [~~for transmission service in accordance with ERCOT protocols. Changes in~~] the [~~fee or application of new~~] fees it charges are subject to commission approval, in accordance with this title.

(i) [~~(j)~~] Reports. Each TSP and transmission service customer in the ERCOT region shall on an annual basis provide to ERCOT historical information concerning peak loads and resources connected to the TSP's system. [~~ERCOT shall periodically file with the commission reports concerning its governance, operations and budget, the reliability region of the ERCOT electrical network, and ERCOT's transmission planning efforts, including a list of any transmission projects that it recommends.~~]

(j) [~~(k)~~] Anti-trust laws. The existence of ERCOT is not intended to affect the application of any state or federal anti-trust laws.

(k) [~~(l)~~] Decertification. ERCOT shall be subject to decertification as an independent organization in accordance with §25.364 of this title (relating to Decertification of an Independent Organization).

§25.362. Electric Reliability Council of Texas (ERCOT) Governance.

(a) Purpose. This section provides standards for the governance [~~operation~~] of an independent organization within the ERCOT region.

(b) (No change.)

(c) Adoption of rules by ERCOT and commission review. ERCOT shall adopt and comply with procedures concerning the adoption and revision of ERCOT rules. [~~protocols and procedures that constitute statements of general policy and that have an impact on the governance~~

of the organization or on reliability, settlement, customer registration, or access to the transmission system.]

(1) The procedures shall provide for advance notice to interested persons, an opportunity to file written comments or participate in public discussions, and, in the case of new ERCOT rules [protocols] or revisions to ERCOT rules [protocols], an evaluation by ERCOT of the costs and benefits to the organization and the operation of electricity markets.

(2) ERCOT staff, the independent market monitor, and the commission's reliability monitor may comment on any proposed change in ERCOT rules that affects the operation and competitiveness of markets operated by ERCOT or reliability of the electric network in ERCOT. [The commission shall process requests for review of ERCOT protocols, procedures, and decisions in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct).]

(3) If the findings of a commission-mandated audit of ERCOT operations or governance indicate the need for a change in operating practices or procedures or governance rules, ERCOT shall develop and submit to the commission a plan for implementing the changes. ERCOT shall implement the plan, as approved by the commission.

(4) The commission may review a provision of ERCOT's articles of incorporation or by-laws, or a new or amended ERCOT rule on the application of an interested person, including commission staff and the Office of Public Utility Counsel.

(5) If the commission concludes that ERCOT's articles of incorporation or by-laws, or a new or amended ERCOT rule is not consistent with law or not conducive to the efficient and effective management of the organization, reliable operation of the electrical network, or efficient operation of energy markets, it may order ERCOT to modify any of these documents. If the commission orders a modification of any of these documents, it may establish a date by which such modifications must be completed.

(6) The commission shall process requests for review of ERCOT rules and decisions in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct). A request for review under this subsection is not subject to the alternative dispute resolution requirements in §22.251(c) of this title, and the commission may, for good cause, waive the requirement that a complaint be filed within the time prescribed in §22.251(d) of this title.

(d) Access to meetings. ERCOT shall adopt and comply with procedures for providing access to its meetings to market participants and the general public. These procedures shall include provisions on advance notice of the time, place, and topics to be discussed during open and closed portions of the meetings, and making and retaining a record of the meetings. Records of meetings of the governing board [of directors] shall be retained permanently, and ERCOT shall establish reasonable retention periods, but not less than five years, for records of other meetings.

(e) Access to information. This subsection governs access to information held by ERCOT [and access to information held by the commission that it receives from ERCOT].

(1) ERCOT shall adopt and comply with procedures that allow persons to request and obtain access to records that ERCOT has or has access to relating to the governance and budget of the organization, market operation, reliability, settlement, customer registration, and access to the transmission system. ERCOT shall make these procedures publicly available. Information that is available for public disclosure pursuant to ERCOT procedures shall normally be provided within ten business days of the receipt of a request for the information. If a response requires more than ten business days, ERCOT will notify the requester of the expected delay and the anticipated date that the documents may be available. ERCOT's procedures regarding access to records shall be consistent with this title and commission orders [section].

(A) Information submitted to or collected by ERCOT pursuant to requirements of ERCOT rules [the protocols or operating guides] shall be protected from public disclosure only if it is designated as Protected Information pursuant to ERCOT rules, [the Protocols] except as otherwise provided in this subsection.

(B) On its own motion or the petition of an affected party, including commission staff, the commission may, after providing reasonable notice to affected parties and an opportunity to be heard, amend the definition of "Protected Information" or the designation of "Items Not Considered Protected Information" under the ERCOT rules [Protocols]. In considering such an amendment, the commission may review the specific information under consideration or a general description of such information.

(C) [The procedures adopted by] ERCOT [under this subsection] shall [include provisions for] promptly respond [responding] to a request from the commission, the [or] commission Executive Director or the Executive Director's designee [staff] for information that ERCOT collects, creates or maintains in order to provide the commission access to information that the commission, the commission Executive Director or the Executive Director's designee [or commission staff determines is necessary to assess market power and the development and operation of competitive wholesale and retail markets; to evaluate possible violations of laws, rules, protocols, or codes of conduct; or] to carry out the commission's responsibilities for oversight of ERCOT and the wholesale and retail markets.

(2) Commission employees, consultants, agents, and attorneys who have access to Protected Information pursuant to this section shall not disclose such information except as provided in [this subsection and in accordance with the provisions of] the Texas Public Information Act (TPIA).

[(A) If the commission receives from a member of the Texas Legislature a request for information that the commission has or has access to that is designated as "Protected Information" under the ERCOT Protocols, the commission shall provide the information to the requestor pursuant to the provisions of Texas Government Code Annotated §552.008. If permitted by the requesting member of the Texas Legislature the commission shall notify ERCOT, and, if applicable, the entity that provided the information to ERCOT, of the existence of the request, the identity of the requestor, and the substance of the request.]

[(B) If the commission receives a request for information that the commission has or has access to that has been designated as Protected Information under the Protocols the commission shall make a good faith effort to provide notice of the request to the affected market participant and ERCOT within three business days of receipt of the request. If the third-party provider of the information objects to the release of the information, the commission shall offer to facilitate an informal resolution between the requestor and the third party. If informal resolution of an information request is not possible, the commission will process the request in accordance with the TPIA.]

[(C) In the absence of a request for information, if the commission staff seeks to release information that the commission has or has access to that has been designated as Protected Information under the Protocols, the commission may determine the validity of the asserted claim of confidentiality through a contested-case proceeding. In a contested case proceeding conducted by the commission pursuant

to this subsection, the staff, the entity that provided the information to the commission, and ERCOT will have an opportunity to present information or comment to the commission on whether the information is subject to protection from disclosure under the TPIA.]

[(D) In connection with any challenge to the confidentiality of information under subparagraph (C) of this paragraph, any person who asserts a claim of confidentiality with respect to the information must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of such assertion.]

[(E) Except as otherwise provided in subparagraph (A) of this paragraph, if either the commission or the attorney general determines that the disclosure of information designated as Protected Information under the ERCOT Protocols is appropriate, the commission shall provide notice to the entity that provided the information and to ERCOT at least three business days prior to the disclosure of the Protected Information (or, in the case of a valid and enforceable order of a state or federal court of competent jurisdiction specifically requiring disclosure of Protected Information earlier than within three business days, prior to such disclosure).]

(f) (No change.)

(g) Qualifications and selection of members of the [for membership on] governing board. ERCOT shall establish and implement criteria for an individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.

(1) The qualification criteria shall include:

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

(C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; [and]

(D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board; and[.]

(E) The disqualification of any person to serve as a member of the governing board as a director that is not selected by a market sector under ERCOT's rules of governance if the person is employed or has within one year been employed by an entity in the electric sector that is eligible for membership in ERCOT in a market sector that has a representative on the governing board, other than a consumer sector.

(2) The procedures for removal of a member from service on the governing board shall include:

(A) (No change.)

(B) Procedures for the removal of an individual from the governing board if the individual or the organization that the individual represents no longer meets the criteria adopted under paragraph (1) of this subsection or violates a policy adopted under this section.

(3) The procedures adopted under paragraph (2) of this subsection shall:

(A) Permit any interested party to present information that relates to whether an individual or organization meets the criteria specified in paragraph (1) of this subsection or has violated a policy adopted under this section; and

(B) Specify how decisions concerning the qualification of an individual or whether an individual has violated a policy will be made.

(4) A decision concerning an individual or organization's qualification or an individual's removal from the governing board is subject to review by the commission.

(5) ERCOT shall notify the commissioners when a vacancy occurs for a member of the governing board who is not selected by a market sector under ERCOT's rules of governance. ERCOT shall provide information to the commissioners concerning the process for selecting a new member, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. The selection of a member of the governing board who is not selected by a market sector is subject to approval by the commission. A person who is selected may not serve as a member of the governing board until the commission approves the selection.

(6) A member of the governing board of ERCOT appointed after the effective date of this paragraph who has served as a director that is not selected by a market sector under ERCOT's rules of governance may not represent a market participant before the governing board of ERCOT, the ERCOT technical advisory committee, or any of its subcommittees or working groups, for a period of two years after the person ceases to serve as a director of ERCOT.

(h) Executive officers and managers. The appointment of the chief executive officer, chief operating officer, and vice presidents of ERCOT is subject to commission approval.

(i) [(h)] Required reports and other information. ERCOT shall file with the commission the reports and provide the information required by this subsection.

(1) Annual report. [Beginning with the 2002 calendar year,] ERCOT shall file an annual report and operations report with the commission, not later than 120 days after the end of the year. The annual report and operations report shall include:

(A) A summary of the findings of an [An] independent audit of ERCOT's financial statements for the report year;

(B) A schedule comparing actual revenues and costs to budgeted revenues and costs for the report year, [and] a schedule showing the variance between actual and budgeted revenues and costs, and a schedule showing the assets and liabilities (including level and types of debt);

(C) A summary of the findings of an [An] independent audit of ERCOT's market operation for the report year;

(D) The annual board-approved budget; [and]

(E) A summary of key market operations statistics, including prices and quantities of energy and capacity purchased in the markets operated by ERCOT; [Any other information the commission may deem necessary.]

(F) A summary of key reliability statistics;

(G) A summary of transmission planning and generation interconnection activities and the most recent report on capacity, demand and reserves; and

(H) Any other information the commission may deem necessary.

(2) Resources report. ERCOT shall submit a report to the commission no later than October 1 of each even-numbered year, identifying existing and potential transmission constraints and the need

for additional transmission, generation, or demand response resources within the ERCOT region. The report shall include projections of changes in demand, the capability of generation, energy storage, and demand response resources, projected reserve margins alternatives for meeting system needs, and recommendations for meeting system needs.

(3) [~~(2)~~] Quarterly reports. ERCOT shall file quarterly reports no later than 45 days after the end of each quarter, which shall include:

(A) A summary of any material findings of any [~~All~~] internal audit reports that were produced during the reporting quarter;

(B) A report on performance measures, as prescribed by the commission;

(C) By account item as established in the fee-filing package prescribed by the commission under §22.252 of this title (relating to Procedures for Approval of ERCOT Fees and Rates) a report of:

(i) ERCOT fees and other rates, funds allocated, funds encumbered, and funds expended;

(ii) An explanation for expenditures deviating from the original funding allocation for the particular account item;

(iii) For the report covering the fourth quarter of ERCOT's fiscal year, a detailed explanation of how unexpended funds will be expended in the subsequent year; and

(D) Any other information the commission may deem necessary.

(4) [~~(3)~~] Emergency reports. If ERCOT management becomes aware of any event or situation that could reasonably be anticipated to adversely affect the reliability of the regional electric network; the operation or competitiveness of the [~~accounting procedures applicable to ERCOT or the~~] ERCOT market; ERCOT's performance of activities related to the customer registration function; or the public's confidence in the ERCOT market or in ERCOT's performance of its duties, ERCOT management shall immediately notify the Executive Director of the commission, or the Executive Director's designee, by telephone. Additionally, ERCOT shall file a written report of the facts involved by the end of the following business day after becoming aware of such event or situation, unless the Executive Director specifies, in writing, that the report may be delayed. The Executive Director may not authorize a delay of more than 30 days for filing the required written report. For good cause, the commission may grant further delays in filing the required report. If it determines that additional reports are necessary, the commission may establish a schedule for the filing of additional reports after the initial written report by ERCOT. As a part of any additional written report, ERCOT may be required to fully explain the facts and to disclose any actions it has taken, or will take, in order to prevent a recurrence of the events that led to the need for filing an emergency report. [~~If ERCOT contends that any of the information contained in an emergency report is "Protected Information" under the ERCOT Protocols, or is otherwise subject to protection from disclosure under the TPIA, the report will be subject to the requirements of subsection (e) of this section.~~]

(j) [~~(i)~~] Compliance with rules or orders. ERCOT shall inform the commission with as much advance notice as is practical if ERCOT realizes that it will not be able to comply with PURA, any provision of this title, [~~the commission's substantive rules,~~] or a commission order. If ERCOT fails to comply with PURA, any provision of this title, [~~the commission's substantive rules,~~] or a commission order, the commission may, after notice and opportunity for hearing, adopt the measures specified in this subsection or such other measures as it determines are appropriate.

(1) The commission may require ERCOT to submit, for commission approval, a proposal that details the actions ERCOT will undertake to remedy the non-compliance.

(2) The commission may require ERCOT to begin submitting reports, in a form and at a frequency determined by the commission, that demonstrate ERCOT's current performance in the areas of non-compliance.

(3) The commission may require ERCOT to undergo an audit performed by an appropriate independent third party.

(4) The commission may assess administrative penalties under PURA Chapter 15, Subchapter B.

(5) The commission may suspend or revoke ERCOT's certification under PURA §39.151(c) or deny a request for change in the terms associated with such certification.

[~~(6) The imposition of one penalty under this section does not preclude the imposition of other penalties as appropriate for the instance of non-compliance or related instances of non-compliance.~~]

[~~(7) In assessing penalties, the commission shall consider the following factors:~~]

[~~(A) Any prior history of non-compliance;~~]

[~~(B) Any efforts to comply with and to enforce the commission's rules;~~]

[~~(C) The nature and degree of economic benefit or harm to any market participant or electric customer;~~]

[~~(D) The damages or potential damages resulting from the instance of non-compliance or related instances of non-compliance;~~]

[~~(E) The likelihood that the penalty will deter future non-compliance; and~~]

[~~(F) Such other factors deemed appropriate and material to the particular circumstances of the instance of non-compliance or related instances of non-compliance.~~]

[~~(8) The commission may initiate a compliance proceeding or other enforcement proceeding upon its own initiative or after a complaint has been filed with the commission that alleges that the ERCOT has failed to comply with PURA, the commission's substantive rules, or a commission order.~~]

(6) [~~(9)~~] Nothing in this section shall preclude any form of civil relief that may be available under federal or state law.

[~~(j) Priority of commission rules. This section supersedes any protocols or procedures adopted by ERCOT that conflict with the provisions of this section. The adoption of this section does not affect the validity of any rule or procedure adopted or any action taken by ERCOT prior to the adoption of this section.~~]

(k) Long-term operations plan. Annually, by December [~~October~~] 31st, ERCOT shall file with the commission a long-term operations plan. The commission may initiate a review of the plan, at its discretion. At a minimum, the long-term operations plan shall provide the following information:

(1) A description of ERCOT's roles and responsibilities within the electric market in Texas, including system reliability, operation of energy and capacity market and managing transmission congestion settlement of the wholesale market, transmission planning and in-

terconnection of new generating plants, [~~centralized control and power scheduling, centralized commercial functions,~~] and a description of how ERCOT's roles and responsibilities relate to the roles and responsibilities of the transmission and distribution utilities and retail electric providers and to the North American Electric Reliability Corporation and Texas Reliability Entity;

(2) (No change.)

(3) A description of major capital projects completed in the current budget year and those expected to be completed in the next budget year, including an explanation of why each project is needed to assist ERCOT in meeting its responsibilities or the benefits it would provide to market participants or consumers;

(4) - (5) (No change.)

(6) An evaluation of ERCOT's performance in meeting its responsibilities and system expectations, as set forth in PURA and this title [~~the commission rules~~], during the current budget year; and

(7) (No change.)

(l) Strategic plan. Annually, by December 31st, ERCOT shall file with the commission a strategic plan. The plan shall include a statement of the mission and vision of the organization, a summary of the industry environment in which it operates, a description of the major challenges it faces, and the key strategies it intends to employ to perform its functions and meet its challenges. The commission may initiate a review of the plan, at its discretion.

§25.363. ERCOT Budget and Fees [~~and Other Rates~~].

(a) Scope. This section applies to the budget and all fees and rates levied or charged by the Electric Reliability Council of Texas (ERCOT) in its role as an independent organization under the Public Utility Regulatory Act (PURA) §39.151. [~~Charges for wholesale market services acquired by ERCOT in accordance with its protocols are not governed by this section, but may be revised in accordance with §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance).~~]

(1) (No change.)

(2) ERCOT shall not implement [~~must seek and obtain commission approval of~~] any new or modified budget, rate or fee without commission approval [~~prior to implementing the new or modified rate or fee~~].

(3) ERCOT shall not incur expenses or capital outlays in any year that exceed the amounts approved by the commission, except in the case of an emergency that impairs its ability to conduct is functions.

(4) ERCOT shall not incur debt or defer principal repayments of debt without commission approval. ERCOT shall seek approval of any loan or agreement to provide a line of credit from a bank or other institution, the issuance of bonds or notes, any arrangements that would permit it to issue bonds or permit the issuance of bonds on its behalf at a later date, and any draw on a line of credit. This paragraph does not require approval of a contract to lease equipment or other property used in normal operations.

(5) ERCOT shall not hire employees, either by direct hiring or contract employment, in excess of any staffing limit prescribed by the commission.

(b) System of accounts and reporting. For the purpose of accounting and reporting to the commission, ERCOT shall maintain its books and records in accordance with Generally Accepted Accounting Principles. ERCOT shall establish a standard chart of accounts and employ it consistently from year to year. The standard chart of accounts shall be used for the purpose of reporting to the commission and shall be consistent with the fee-filing application approved by the commission and the long-term operations plan. The accounts shall show all revenues resulting from the various fees charged by ERCOT and reflect all expenses in a manner that allows the commission to determine the sources of the costs incurred for each major activity conducted by ERCOT [~~for which a separate fee is charged~~]. ERCOT may not change its chart of accounts to be any less detailed than that required in the fee-filing package without prior commission approval.

(c) Allowable expenses [~~for fees and rates~~]. Expensed and capital outlays in the budget [~~Fees and rates~~] shall be based upon ERCOT's expected cost of performing its required functions as described in PURA §39.151(a) and this title. [~~To determine the reasonable cost of performing its functions, ERCOT shall use a historical test year, except that ERCOT may use a future test year if ERCOT demonstrates that the scope of its activities and functions has been expanded by the commission or the market participants, resulting in higher future costs.~~] To determine whether [~~if~~] the costs are reasonable and necessary, the commission may consider the budget justification provided by ERCOT, [~~shall review ERCOT's costs for consistency compared to~~] the ERCOT long-term operations plan, [~~to~~] costs incurred by market participants and other independent system operators for similar activities, costs incurred in prior years, capital project identified in the budget, and to any other information and data considered appropriate by the commission.

(1) Only those expenses that are reasonable and necessary to carry out the functions described in PURA §39.151and this title, shall be included in allowable expenses.

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

(d) Commission review and action. The annual budget is subject to review by the commission. ERCOT shall file with the commission its board-approved budget, budget strategies, and staffing needs, with a justification for all expenses, capital outlays, additional debt, and staffing requirements. The budget shall be filed not later than 90 days prior to the date that the budget is expected to be implemented.

(1) The budget shall include categories of expenses, capital outlays, additional debt, and staffing needs in at least the following level of detail:

(A) Transmission system operation, including planning, scheduling, forecasting, and other transmission-related functions;

(B) Retail market operations, including registration and switching of retail customers, load profile administration, meter data management, and related activities;

(C) Operation and settlement of wholesale markets, including registering market participants, accepting bids and determining prices, settlement and billing, credit management, operating a market for congestion revenue rights, and related activities;

(D) Managing renewable energy credit trading, including registering and accrediting facilities, determining credit obligations, issuing and retiring credits, reporting, and related activities;

(E) Customer care, including training and other customer-related activities;

(F) Information technology activities; and

(G) Support and management functions, including executive management, strategic planning, administrative support, legal, finance, audit, human resources, facilities management, project management, risk management, and related activities.

(2) Expenses, capital outlays, and staffing needs shall be directly assigned to the categories listed in paragraph (1) of this subsection, to the extent that it is feasible to do so. Allocations or estimates may be used, to the extent that it is not feasible to directly assign expenses, capital outlays, and staffing needs.

(3) The commission may approve, reject or modify the budget, budget strategies, and staffing needs.

(4) The commission may approve the recovery of the amount of an approved budget though a fixed fee or fees or through a variable fee that is designed to recover the approved budget amount.

(5) The commission may adopt performance measures to assess ERCOT's fiscal and operating performance.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004897
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7223

♦ ♦ ♦

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.505

The Public Utility Commission of Texas (commission) proposes an amendment to §25.505, relating to Resource Adequacy in the Electric Reliability Council of Texas Power Region. The amendment will clarify the timing for release of transmission system information contained in the Electric Reliability Council of Texas (ERCOT) State Estimator Report. The amendment requires that in the nodal market design the ERCOT State Estimator Report be posted 14 days after the date for which the data was accumulated. Section 25.505 is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 38470 is assigned to this proceeding.

Section 25.505 was initially adopted in Project Number 31972 and subsequently amended in Project Number 33490. In both of these rulemaking proceedings, the commission considered the appropriate timeframe for the disclosure of disaggregated, or entity-specific, information. Market participants rely on all information available to them, including both aggregated and disaggregated information, to inform their daily market related decisions and their understanding of how the competitive market operates. However, the release of disaggregated information, and particularly the timing of the release, raises concerns that some parties may be able to gain an improper advantage from the information or that commercially sensitive information may be compromised. Section 25.505 currently provides different disclosure requirements for the zonal market and the nodal market, for aggregated and disaggregated information, and for certain price-setting bids. The State Estimator Report that was designed for use in the ERCOT Nodal Market contains data about the transmission system, including transmission line and transformer flows, voltages, and tap positions. It can be argued that early release of the State Estimator Report is necessary in order to understand events that occur in the market and to confirm that the market is operating as would be expected. On the other hand, it can be argued that the premature release of the State Estimator Report can be used to infer information that would otherwise be considered disaggregated (competitively-sensitive) information, such as bid curves, generator on-off status, and generator operating levels. To address these competing concerns, the amendment to §25.505 requires that the State Estimator Report be released 14 days after the day for which the information was accumulated. The commission understands that it is not feasible at this time to change the content of the State Estimator Report prior to the expected Nodal Go-Live date (December 1, 2010).

The commission invites comments and specific recommendation on the appropriate timing for release of the State Estimator Report. Please describe with examples where possible the benefits to your company and the competitive market, as well as the risks to your company and the market, of different possible release times.

Richard Greffe, Senior Market Economist, Competitive Markets Division, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Greffe has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be greater transparency of information concerning transmission system conditions in the ERCOT region of Texas. Greater transparency of information, including transmission line and transformer flows and voltages, will result in a more competitive wholesale electric market in ERCOT that will enable market participants to make decisions based on a more complete understanding of system conditions without creating opportunities to exercise market power or divulging information that is commercially sensitive.

Mr. Greffe has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the amendment. Therefore, no regulatory flexibility analysis is required. There may be small economic costs to ERCOT, who is required to comply with the amendment, and participants in the ERCOT wholesale market associated with minor modifications to data processing systems that exist or are currently under development. The costs are likely to vary from business to business, and they are difficult to ascertain; however, it is believed that the benefits accruing from implementation of the amendment section will outweigh these costs.

Mr. Greffe has also determined that for each year of the first five years the amendment is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (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 Monday, October 4, 2010. The request for a public hearing must be received within 20 days after publication.

Initial comments on the 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, within 20 days after publication. Sixteen copies of comments on

the amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 28 days after publication. Comments should be organized in a manner consistent with the organization of the amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 38470.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (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, §35.004, which requires that the commission ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive; §39.001, which establishes the legislative policy to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry; §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity, and gives the commission the authority to adopt and enforce rules to carry out these provisions; §39.151, which requires the commission to oversee and review the procedures established by an independent organization, directs market participants to comply with such procedures, and authorizes the commission to enforce such procedures; it also authorizes the commission to require an independent organization to provide reports and information relating to the independent organization's performance of its functions; and §39.157, which directs the commission to monitor market power associated with the generation, transmission, distribution, and sale of electricity and provides enforcement power to the commission to address any market power abuses.

Cross reference to statutes: Public Utility Regulatory Act §§14.002, 35.004, 39.001, 39.101, 39.151, and 39.157.

§25.505. Resource Adequacy in the Electric Reliability Council of Texas Power Region.

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

(f) Publication of resource and load information in ERCOT markets. To increase the transparency of the ERCOT-administered markets, ERCOT shall post at a publicly accessible location on its website, beginning no later than October 1, 2006, the information required pursuant to this subsection, unless a different date is specified by a paragraph of this subsection.

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

(3) The following information in entity-specific form, for each settlement interval, shall be posted as specified below.

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

(E) Notwithstanding the provisions of paragraph (3)(B) of this subsection, beginning 14 days after the start of operation of the market under a nodal market design, the State Estimator Report shall be posted 14 days after the day for which the data was accumulated. The State Estimator Report shall include, but not be limited to, transmission flows and voltages and transformer flows, voltages, and tap positions.

(g) - (h) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004844
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 936-7223

♦ ♦ ♦

TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.2, 228.35, 228.60

The State Board for Educator Certification (SBEC) proposes amendments to §§228.2, 228.35, and 228.60, relating to requirements for educator preparation programs. The rules establish minimum standards for educator preparation programs. The proposed amendments would clarify the requirements for educator preparation program coursework, training, internships, student teaching, clinical teaching, practicums, field-based experiences, and field supervision and would provide that the program requirements that were in effect on the date an educator candidate was admitted to a program would be the requirements applicable to that candidate.

Since the revisions to 19 TAC Chapter 228, Requirements for Educator Preparation Programs, became effective December 14, 2008, the Texas Education Agency (TEA) staff have received numerous questions and comments regarding the locations, other than Texas public schools, at which an educator preparation program candidate may complete the required field-based experiences, student teaching, clinical teaching, internship, and/or practicum. The SBEC rules currently codified in the TAC are unclear on this subject because the rules do not specify the process or criteria for TEA approval of schools for this purpose.

The proposed amendments to 19 TAC §§228.2, 228.35, and 228.60 would provide the process and criteria for an educator preparation program to seek TEA approval for the use of schools other than public schools accredited by the TEA as a site for the required candidate experience, would revise the definitions and requirements for the various required experiences, would revise the field supervision requirements, and would revise the implementation date of the provisions in Chapter 228. These proposed amendments reflect discussions held during the March 25, 2010, and June 21, 2010, stakeholder meetings. Following is a description of the recommended changes.

§228.2. Definitions

Language in 19 TAC §228.2(4), (9), (12), (16), and (17) would be amended to specify that field-based experiences, student teaching, clinical teaching, internship, and practicum may take place not only in a public school accredited by the TEA, but also in other schools approved by the TEA pursuant to procedures de-

scribed in new §228.35(d)(4). Language in §228.2(16) would be amended to update the definition of practicum to clarify that the term would apply only to a supervised assignment that is a requirement for a professional certificate, rather than as a general term that might also be applied to internships, student teaching, or clinical teaching.

The definition of "clock-hours" in 19 TAC §228.2(5) would be amended to clarify the relationship between clock-hours and university credit hours.

The definition of "field-based experiences" in 19 TAC §228.2(9) would be amended to add specificity by incorporating standards that were previously applicable only to field-based experiences provided through video or electronic transmission. The proposed amendments would also remove those standards from 19 TAC §228.35 that reference the use of video or electronic transmission for field-based experience requirements because they would be redundant.

§228.35. Preparation Program Coursework and/or Training

Language in 19 TAC §228.35 would be amended to align with the proposed amendments to the definitions in §228.2. The standards for use of technology to meet field-based experience requirements would be deleted throughout this section since the proposed new definition in §228.2(9) would apply them to all field-based experiences.

Section 228.35(a)(6) would be amended to provide that experience or professional training that is substituted for educator preparation program training and/or coursework requirements may not also be counted as part of internship, clinical teaching, student teaching, or practicum requirements.

Language in 19 TAC §228.35(d)(2)(C)(i) would be amended to eliminate the requirement that a Head Start program be affiliated with a public school, as long as it is affiliated with the federal Head Start program and approved by the TEA. Language would also be amended in §228.35(d)(2)(C)(ii) to clarify that an internship, clinical teaching, student teaching, or practicum experience must take place in an actual school setting.

Section 228.35(d) would be amended to add new paragraph (4) to provide that all Department of Defense Education Activity (DoDEA) schools, wherever located, and all schools accredited by the Texas Private School Accreditation Commission (TEPSAC) be approved as sites for field-based experiences, internship, clinical teaching, student teaching, or practicum experience. The rule would also specify the procedures and establish criteria for obtaining TEA or SBEC approval for other schools as sites for field-based experiences, internship, clinical teaching, student teaching, or practicum experience.

Language in 19 TAC §228.35(f) would be amended to clarify and distinguish the field observation requirements for clinical teaching, student teaching, and practicum experiences.

Section 228.35(g) would be added to clarify that coursework and training requirements are subject to the exemptions from field experiences and student teaching requirements granted by the TEC, §21.050(c).

§228.60. Implementation Date

Language would be amended in 19 TAC §228.60 to clarify that the provisions of 19 TAC Chapter 228 that apply to an educator preparation candidate are those that were in effect on the date the candidate was admitted to an educator preparation program.

Regarding procedural and reporting implications, an educator preparation program would follow the procedures established in proposed new 19 TAC §228.35(d)(4), which would include required elements to be submitted when requesting approval for schools as sites for field-based experiences, internship, clinical teaching, student teaching, or practicum experience. The proposed amendments would have no locally maintained paperwork requirements to school districts and educators.

Jerel Booker, associate commissioner for educator and student policy initiatives, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Booker has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be the development of clear, updated minimum educator preparation program requirements that would ensure educators are prepared to positively impact the performance of the diverse student population of this state. There are no additional costs to persons who are required to comply with the proposed amendments.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator and Student Policy Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, associate commissioner for educator and student policy initiatives, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

The amendments are proposed under the Texas Education Code (TEC), §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.044, which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.045(a), which authorizes the SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on the following information that is disaggregated with respect to sex and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter

28, Subchapter A; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.214, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and §21.051, which authorizes the SBEC to propose rules providing flexible options for persons for any field experience or internship required for certification.

The proposed amendments implement the TEC, §§21.031; 21.044; 21.045(a); 21.050(a) and (c); and 21.051.

§228.2. Definitions.

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

(2) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a baccalaureate degree.

(3) Candidate--A participant in an educator preparation program seeking certification.

(4) Clinical teaching--A 12-week full-day educator assignment through [~~teaching practicum in~~] an alternative certification program at a public school accredited by the Texas Education Agency (TEA) or other [~~a TEA-recognized private~~] school approved by the TEA for this purpose that may lead to completion of a standard certificate.

(5) Clock-hours--The actual number of hours of coursework or training provided; for purposes of calculating the training and coursework required by this chapter, one semester credit hour at an accredited university is equivalent to 15 clock-hours. Clock-hours of field-based experiences, student teaching, clinical teaching, internship, and practicum are actual hours spent in the required educational activities and experiences. [~~Fifteen clock-hours at an accredited university is equal to one semester credit hour.~~]

(6) Cooperating teacher--The campus-based mentor teacher for the student teacher or clinical teacher.

(7) Educator preparation program--An entity approved by the State Board for Educator Certification (SBEC) to recommend candidates in one or more educator certification fields.

(8) Entity--The legal entity that is approved to deliver an educator preparation program.

(9) Field-based experiences--Introductory experiences for a certification candidate involving interactive and reflective observation of Early Childhood-Grade 12 students, teachers, and faculty/staff members engaging in educational activities [~~Experiences in which the primary activity of a candidate for certification is the performance of professional educator activities while interacting with Early Childhood-Grade 12 students, teachers, and faculty/staff members~~] in a school setting. Field-based experiences must reflect: [~~that is part of regular classroom instruction. The professional activities include more than observation within a classroom. The interaction with students, teachers, and entity faculty/staff must be ongoing and relevant.~~]

(A) authentic school settings in a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose;

(B) instruction by content certified teachers;

(C) actual students in classrooms/instructional settings with identity proof provisions;

(D) content or grade level specific classrooms/instructional settings;

(E) variable time length of observation; and

(F) reflection of the observation.

(10) Field supervisor--A certified educator, hired by the educator preparation program, who preferably has advanced credentials, to observe candidates, monitor his or her performance, and provide constructive feedback to improve his or her professional performance.

(11) Head Start Program--The federal program established under the Head Start Act (42 United States Code, §9801 et seq.) and its subsequent amendments.

(12) Internship--A one academic year (or 180 school days) [~~one-year~~] supervised educator [~~professional~~] assignment at a public school accredited by the Texas Education Agency (TEA) [~~TEA~~] or other [~~a TEA-recognized private~~] school approved by the TEA for this purpose that may lead to completion of a standard certificate.

(13) Late hire--An individual who has not been accepted into an educator preparation program before June 15 and who is hired for a teaching assignment by a school after June 15 or after the school's academic year has begun.

(14) Mentor--For a classroom teacher, a certified educator assigned by the campus administrator who has completed mentor training; who guides, assists, and supports the beginning teacher in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining materials, district policies; and who reports the beginning teacher's progress to that teacher's educator preparation program.

(15) Pedagogy--The art and science of teaching, incorporating instructional methods that are developed from scientifically-based research.

(16) Practicum--A supervised professional educator assignment at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that is in a school setting in the particular field for which a professional certificate is sought such as superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher. [~~Practical work in a particular field; refers to student teaching, clinical teaching, internship, or practicum for a professional certificate that is in the school setting.~~]

(17) Student teaching--A 12-week full-day teaching experience through [~~practicum in~~] a program provided by an accredited university at a public school accredited by the Texas Education Agency (TEA) [~~TEA~~] or other [~~a TEA-recognized private~~] school approved by the TEA for this purpose that may lead to completion of a standard certificate.

(18) Teacher of record--An educator employed by a school district who teaches the majority of the instructional day in an academic instructional setting and is responsible for evaluating student achievement and assigning grades.

(19) Texas Education Agency staff--Staff of the TEA assigned by the commissioner of education to perform the SBEC's administrative functions and services.

(20) Texas Essential Knowledge and Skills (TEKS)--The Kindergarten-Grade 12 state curriculum in Texas adopted by the State Board of Education and used as the foundation of all state certification examinations.

§228.35. Preparation Program Coursework and/or Training.

(a) Coursework and/or Training for Candidates Seeking Initial Certification.

(1) An educator preparation program shall provide coursework and/or training to ensure the educator is effective in the classroom.

(2) Professional development should be sustained, intensive, and classroom focused.

(3) An educator preparation program shall provide each candidate with a minimum of 300 clock-hours of coursework and/or training that includes the following:

(A) a minimum of 30 clock-hours of field-based experience to be completed prior to student teaching, clinical teaching, or internship. Up to 15 clock-hours of field-based experience may be provided by use of electronic transmission, or other video or technology-based method;[~~. Use of technology must integrate the following:~~]

[~~*(i)* authentic classrooms in a public school accredited by the Texas Education Agency (TEA) or TEA-recognized private school;~~]

[~~*(ii)* instruction by content certified teachers;~~]

[~~*(iii)* actual students in classrooms with identity proof provisions;~~]

[~~*(iv)* content or grade level specific classrooms;~~]

[~~*(v)* variable time length of observation; and~~]

[~~*(vi)* reflection of the observation;~~]

(B) 80 clock-hours of coursework and/or training prior to student teaching, clinical teaching, or internship; and

(C) six clock-hours of explicit test preparation that is not embedded in other curriculum elements.

(4) All coursework and/or [~~and~~] training shall be completed prior to educator preparation program completion and standard certification.

(5) With appropriate documentation such as certificate of attendance, sign-in sheet, or other written school district verification, 50 clock-hours of training may be provided by a school district and/or campus that is an approved Texas Education Agency (TEA) [~~TEA~~] continuing professional education provider.

(6) Each educator preparation program must develop and implement specific criteria and procedures that allow candidates to substitute prior or ongoing experience and/or professional training for part of the educator preparation requirements, provided that the experience or training is not also counted as a part of the internship, clinical teaching, student teaching, or practicum requirements, and is directly related to the certificate being sought [~~for part of the educator preparation requirements~~].

(b) Coursework and/or Training for Professional Certification (i.e. superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher). An educator preparation program shall provide coursework and/or training to ensure that the educator is effective in the professional assignment. An educator preparation program shall provide a candidate with a minimum of 200 clock-hours of coursework and/or training that is directly aligned to the state standards for the applicable certification field.

(c) Late Hires. A late hire for a teaching position shall complete 30 clock-hours of field-based experience as well as 80 clock-hours of initial training within 90 school days of assignment. Up to 15 clock-hours of field-based experience may be provided by use of electronic transmission, or other video or technology-based method. [~~Use of technology must integrate the following:~~]

[~~(1) authentic classrooms in a public school accredited by the TEA or TEA-recognized private school;~~]

[~~(2) instruction by content certified teachers;~~]

[~~(3) actual students in classrooms with identity proof provisions;~~]

[~~(4) content or grade level specific classrooms;~~]

[~~(5) variable time length of observation; and~~]

[~~(6) reflection of the observation.~~]

(d) Educator Preparation Program Delivery. An educator preparation program [~~entity~~] shall provide evidence of on-going and relevant field-based experiences throughout the educator preparation program, as determined by the advisory committee as specified in §228.20 of this title (relating to Governance of Educator Preparation Programs), in a variety of educational settings with diverse student populations, including observation, modeling, and demonstration of effective practices to improve student learning.

(1) For initial certification, each educator preparation program shall provide field-based experiences [~~experience~~], as defined in §228.2 of this title (relating to Definitions), for a minimum of 30 clock-hours. The field-based experiences [~~experience~~] must be completed prior to assignment in an internship, student teaching, or clinical teaching[~~, or practicum~~]. Up to 15 clock-hours of field-based experience may be provided by use of electronic transmission, or other video or technology-based method. [~~Use of technology must integrate the following:~~]

[~~(A) authentic classrooms in a public school accredited by the TEA or TEA-recognized private school;~~]

[~~(B) instruction by content certified teachers;~~]

[~~(C) actual students in classrooms with identity proof provisions;~~]

[~~(D) content or grade level specific classrooms;~~]

[~~(E) variable time length of observation; and~~]

[~~(F) reflection of the observation.~~]

(2) For initial certification, each educator preparation program shall also provide one of the following:

(A) student teaching, as defined in §228.2 of this title, for a minimum of 12 weeks;

(B) clinical teaching, as defined in §228.2 of this title, for a minimum of 12 weeks; or

(C) internship, as defined in §228.2 of this title, for a minimum of one academic year (or 180 school days) for the assignment that matches the certification field for which the individual is accepted into the educator preparation program. The individual would

hold a probationary certificate and be classified as a "teacher" as reported on the campus Public Education Information Management System (PEIMS) data. An educator preparation program may permit an internship of up to 30 school days less than the minimum if due to maternity leave, military leave, illness, or late hire date.

(i) An internship, student teaching, or clinical teaching for an Early Childhood-Grade 4 and Early Childhood-Grade 6 candidate may be completed at a Head Start Program with the following stipulations:

~~*[(I)* the Head Start program is participating in either the School Readiness Integration (SRI) or the Texas Early Education Model (TEEM);]~~

(I) [~~(II)~~] a certified teacher is available as a trained mentor;

(II) [~~(III)~~] the Head Start program is affiliated with the federal Head Start program and approved [~~a public school accredited~~] by the TEA;

(III) [~~(IV)~~] the Head Start program teaches three and four-year-old students; and

(IV) [~~(V)~~] the state's pre-kindergarten curriculum guidelines are being implemented.

(ii) An internship, student teaching, [~~or~~] clinical teaching, or practicum experience must take place in an actual school setting rather than [~~may not be held in~~] a distance learning lab or virtual school setting.

(3) For candidates seeking professional certification as a superintendent, principal, school counselor, school librarian, or an educational diagnostician, each educator preparation program shall provide a practicum, as defined in §228.2 of this title, for a minimum of 160 clock-hours.

(4) Subject to all the requirements of this section, the TEA may approve a school that is not a public school accredited by the TEA as a site for field-based experience, internship, student teaching, clinical teaching, and/or practicum.

(A) All Department of Defense Education Activity (DoDEA) schools, wherever located, and all schools accredited by the Texas Private School Accreditation Commission (TEPSAC) are approved by the TEA for purposes of field-based experience, internship, student teaching, clinical teaching, and/or practicum.

(B) An educator preparation program may file an application with the TEA for approval, subject to periodic review, of a public school, a private school, or a school system located within any state or territory of the United States, as a site for field-based experience, or for video or other technology-based depiction of a school setting. The application shall be in a form developed by the TEA staff and shall include, at a minimum, evidence showing that the instructional standards of the school or school system align with those of the applicable Texas Essential Knowledge and Skills (TEKS) and State Board for Educator Certification (SBEC) certification standards. To prevent unnecessary duplication of such applications, the TEA shall maintain a list of the schools, school systems, videos, and other technology-based transmissions that have been approved by the TEA for field-based experience.

(C) An educator preparation program may file an application with the TEA for approval, subject to periodic review, of a public or private school located within any state or territory of the United States, as a site for an internship, student teaching, clinical teaching, and/or practicum required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum:

(i) the accreditation(s) held by the school;

(ii) a crosswalk comparison of the alignment of the instructional standards of the school with those of the applicable TEKS and SBEC certification standards;

(iii) the certification, credentials, and training of the field supervisor(s) who will supervise candidates in the school; and

(iv) the measures that will be taken by the educator preparation program to ensure that the candidate's experience will be equivalent to that of a candidate in a Texas public school accredited by the TEA.

(D) An educator preparation program may file an application with the SBEC for approval, subject to periodic review, of a public or private school located outside the United States, as a site for student teaching or clinical teaching required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum, the same elements required in subparagraph (C) of this paragraph for schools located within any state or territory of the United States, with the addition of a description of the on-site program personnel and program support that will be provided and a description of the school's recognition by the U.S. State Department Office of Overseas Schools.

(e) Campus Mentors and Cooperating Teachers. In order to support a new educator and to increase teacher retention, an educator preparation program shall collaborate with the campus administrator to assign each candidate a campus mentor during his or her internship or assign a cooperating teacher during the candidate's student teaching or clinical teaching experience. The educator preparation program is responsible for providing mentor and/or cooperating teacher training that relies on scientifically-based research, but the program may allow the training to be provided by a school district, if properly documented.

(f) On-Going Educator Preparation Program Support. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first three weeks of assignment. [~~The program must provide a minimum of two formal observations during the first semester and one formal observation during the second semester. Each observation must be at least 45 minutes in duration and must be conducted by the field supervisor. The first observation must occur within the first six weeks of assignment.~~] The field supervisor shall document instructional practices observed, provide written feedback through an interactive conference with the candidate, and provide a copy of the written feedback to the candidate's campus administrator. Informal observations and coaching shall be provided by the field supervisor as appropriate.

(1) Each observation must be at least 45 minutes in duration and must be conducted by the field supervisor.

(2) An educator preparation program must provide the first observation within the first six weeks of all assignments.

(3) For an internship, an educator preparation program must provide a minimum of two formal observations during the first semester and one formal observation during the second semester.

(4) For student teaching and clinical teaching, an educator preparation program must provide a minimum of three observations during the assignment, which is a minimum of 12 weeks.

(5) For a practicum, an educator preparation program must provide a minimum of three observations during the term of the practicum.

(g) Under the Texas Education Code, §21.050(c), a candidate may qualify for a partial exemption from the coursework and/or training requirements specified in this section.

§228.60. Implementation Date.

(a) The provisions of this [~~This~~] chapter that were in effect on the date [~~applies to~~] an educator preparation program candidate was [~~who is~~] admitted to an educator preparation program shall determine the program requirements applicable to that candidate [~~on or after January 1, 2009~~].

(b) All provisions in this chapter shall apply to §232.5 of this title (relating to Temporary Teacher Certificates) [~~upon the effective date of the rule actions adopted in this chapter~~], except that a certificate issued under §232.5 of this title shall require 380 total clock-hours of training.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004904

Jerel Booker

Associate Commissioner, Educator and Student Policy Initiatives, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: October 3, 2010

For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 247. EDUCATORS' CODE OF ETHICS

19 TAC §247.1, §247.2

The State Board for Educator Certification (SBEC) proposes amendments to §247.1 and §247.2, relating to the educators' code of ethics standards. The rules establish the purpose and scope of the educators' code of ethics and standard practices for Texas educators.

The proposed amendments to 19 TAC Chapter 247 would update the educators' code of ethics to clarify and better address current issues relating to ethical and professional educator conduct. The proposed amendments result from the SBEC's rule review conducted in accordance with Texas Government Code, §2001.039.

The proposed amendments reflect input received at the March 25, 2010, and June 28, 2010, stakeholder meetings. Following is a description of the proposed changes.

Section 247.1 would be reorganized to reflect language previously included in §247.2. Specifically, the statement of purpose currently in 19 TAC §247.2(a) would be amended and moved to §247.1(b). Language currently in §247.1(a) would be amended and moved as proposed new subsection (c) to provide for the enforcement of the Educators' Code of Ethics through the disciplinary proceedings provided in 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases. Proposed new subsection (d) would reference the primary goals for such disciplinary proceedings, as provided in 19 TAC §249.5, Purpose. Proposed new subsection (e) would incorporate by reference the definitions provided in 19 TAC §249.3, Definitions.

The proposed amendment to 19 TAC §247.2 would move current subsection (a) to §247.1, as previously described, and, as a result, current subsection (b) would be reorganized accordingly. Language in paragraph (1)(A) would be amended to include intentionally and recklessly, as well as knowingly deceptive practices, and to specifically cover deceptive practices regarding official policies of educator preparation programs, the Texas Education Agency, and the SBEC, as well as school districts and educational institutions. Paragraph (1)(G) would be amended to strike the word "applicable." Proposed new paragraph (1)(I) would prohibit threats of violence against school district employees, school board members, students, or parents of students. Proposed new paragraph (1)(J) would provide that an educator shall be of good moral character and demonstrate fitness and worthiness to instruct or supervise the youth of this state. Proposed new paragraph (1)(K) would provide that an educator should not purposefully misrepresent the circumstances of prior employment, criminal history, and/or disciplinary record when applying for subsequent employment. Proposed new paragraph (1)(L) would provide that an educator should refrain from the illegal use or distribution of controlled substances and/or abuse of prescription drugs and toxic inhalants. Proposed new paragraph (1)(M) would provide that an educator should not consume alcoholic beverages on school property or during school activities when students are present.

Language in paragraph (2)(B) would be amended to include recklessly, as well as knowingly making false statements against a colleague or the school system. Paragraph (2)(E) would be amended to update the term "sex" to "gender" and include language to address discrimination against colleagues on the basis of sexual orientation. Paragraph (2)(G) would be amended to include retaliation against anyone who provides information for an SBEC disciplinary investigation or proceeding.

Language in paragraph (3)(B) would be amended to include intentional, reckless, and negligent, regarding the treatment by an educator that adversely affects or endangers a student or minor. Paragraph (3)(C) would be amended to cover misrepresentations of facts regarding a student that are intentional or made with reckless disregard. Paragraph (3)(D) would be amended to update the term "sex" to "gender" and include language to address discrimination against students on the basis of sexual orientation. Paragraph (3)(E) would be amended to include intentionally, knowingly, or recklessly engaging in neglect or abuse of a student or minor, as well as physical mistreatment. Paragraphs (3)(F) and (3)(G) would be amended to include minors, as well as students.

Proposed new paragraph (3)(H) would provide that an educator should maintain a professional educator-student relationship with students. Proposed new paragraph (3)(I) would provide that an educator should refrain from excessive or inappropriate communication, including electronic communication, with a student or minor.

The proposed amendments would have no procedural and reporting implications to school districts and educators. Also, the proposed amendments would have no locally maintained paperwork requirements to school districts and educators.

Jerel Booker, associate commissioner for educator and student policy initiatives, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Booker has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be updated definitions and standards of professional conduct more closely reflecting the expectations of the citizens of the state and the SBEC. There are no additional costs to persons required to comply with the proposed amendments.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator and Student Policy Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, associate commissioner for educator and student policy initiatives, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

The amendments are proposed under the Texas Education Code (TEC), §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; and §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics.

The proposed amendments implement the TEC, §21.041(b)(1), (7), and (8).

§247.1. Purpose and Scope.

(a) In compliance with the Texas Education Code, §21.041(b)(8), the State Board for Educator Certification (SBEC) [~~(the board)~~] adopts an Educators' Code of Ethics [~~educators' code of ethics~~] as set forth in §247.2 of this title (relating to Code of Ethics and Standard Practices for Texas Educators). The SBEC [~~board~~] may amend the ethics code in the same manner as any other formal rule. [~~The board is solely responsible for enforcing the ethics code for purposes related to certification disciplinary proceedings.~~]

(b) The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty and good moral character. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community. This chapter shall apply to educators and candidates for certification.

(c) The SBEC is solely responsible for enforcing the Educators' Code of Ethics for purposes related to certification disciplinary proceedings. The Educators' Code of Ethics is enforced through the disciplinary procedure set forth in Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) pursuant to the purposes stated therein.

(d) As provided in §249.5 of this title (relating to Purpose), the primary goals the SBEC seeks to achieve in educator disciplinary matters are:

(1) to protect the safety and welfare of Texas schoolchildren and school personnel;

(2) to ensure educators and applicants are morally fit and worthy to instruct or to supervise the youth of the state; and

(3) to fairly and efficiently resolve educator disciplinary proceedings at the least expense possible to the parties and the state.

(e) The words, terms, and phrases listed in §249.3 of this title (relating to Definitions), when used in this chapter, shall have the meanings listed in §249.3 of this title, unless the context clearly indicates otherwise.

§247.2. Code of Ethics and Standard Practices for Texas Educators.

[~~(a) Statement of Purpose. The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community.~~]

[~~(b)~~] Enforceable Standards.

(1) Professional Ethical Conduct, Practices and Performance.

(A) Standard 1.1. The educator shall not intentionally, knowingly, or recklessly engage in deceptive practices regarding official policies of the school district, [~~or~~] educational institution, educator preparation program, the Texas Education Agency, or the State Board for Educator Certification (SBEC) and its certification process.

(B) Standard 1.2. The educator shall not knowingly misappropriate, divert, or use monies, personnel, property, or equipment committed to his or her charge for personal gain or advantage.

(C) Standard 1.3. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.

(D) Standard 1.4. The educator shall not use institutional or professional privileges for personal or partisan advantage.

(E) Standard 1.5. The educator shall neither accept nor offer gratuities, gifts, or favors that impair professional judgment or to obtain special advantage. This standard shall not restrict the acceptance of gifts or tokens offered and accepted openly from students, parents of students, or other persons or organizations in recognition or appreciation of service.

(F) Standard 1.6. The educator shall not falsify records, or direct or coerce others to do so.

(G) Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other [~~applicable~~] state and federal laws.

(H) Standard 1.8. The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications.

(I) Standard 1.9. The educator shall not make threats of violence against school district employees, school board members, students, or parents of students.

(J) Standard 1.10. As defined in §249.3 of this title (relating to Definitions), the educator shall be of good moral character and demonstrate that he or she is fit and worthy to instruct or supervise the youth of this state.

(K) Standard 1.11. The educator shall not purposefully misrepresent the circumstances of his or her prior employment, criminal history, and/or disciplinary record when applying for subsequent employment.

(L) Standard 1.12. The educator shall refrain from the illegal use or distribution of controlled substances and/or abuse of prescription drugs and toxic inhalants.

(M) Standard 1.13. The educator shall not consume alcoholic beverages on school property or during school activities when students are present.

(2) Ethical Conduct Toward Professional Colleagues.

(A) Standard 2.1. The educator shall not reveal confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.

(B) Standard 2.2. The educator shall not harm others by knowingly or recklessly making false statements about a colleague or the school system.

(C) Standard 2.3. The educator shall adhere to written local school board policies and state and federal laws regarding the hiring, evaluation, and dismissal of personnel.

(D) Standard 2.4. The educator shall not interfere with a colleague's exercise of political, professional, or citizenship rights and responsibilities.

(E) Standard 2.5. The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, gender [~~sex~~], disability, [~~or~~] family status, or sexual orientation.

(F) Standard 2.6. The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.

(G) Standard 2.7. The educator shall not retaliate against any individual who has filed a complaint with the SBEC or who provides information for a disciplinary investigation or proceeding under this chapter.

(3) Ethical Conduct Toward Students.

(A) Standard 3.1. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.

(B) Standard 3.2. The educator shall not intentionally, knowingly, recklessly, or negligently treat a student or minor in a manner that adversely affects or endangers the [~~student's~~] learning, physical health, mental health, or safety of the student or minor.

(C) Standard 3.3. The educator shall not intentionally, [~~deliberately or~~] knowingly, or recklessly misrepresent facts regarding a student.

(D) Standard 3.4. The educator shall not exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, gender [~~sex~~], disability, national origin, religion, [~~or~~] family status, or sexual orientation.

(E) Standard 3.5. The educator shall not intentionally, knowingly, or recklessly engage in physical mistreatment, neglect, or abuse of a student or minor.

(F) Standard 3.6. The educator shall not solicit or engage in sexual conduct or a romantic relationship with a student or minor.

(G) Standard 3.7. The educator shall not furnish alcohol or illegal/unauthorized drugs to any student or minor or knowingly allow any student or minor to consume alcohol or illegal/unauthorized drugs in the presence of the educator.

(H) Standard 3.8. The educator shall maintain appropriate professional educator-student relationships.

(I) Standard 3.9. The educator shall refrain from excessive and/or inappropriate communication with a student or minor, including, but not limited to, electronic communication such as cell phone, text messaging, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is excessive or inappropriate include, but are not limited to:

(i) the nature, purpose, timing, and amount of the communication;

(ii) the subject matter of the communication;

(iii) whether the communication was made openly or the educator attempted to conceal the communication;

(iv) whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;

(v) whether the communication was sexually explicit; and

(vi) whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004905

Jerel Booker

Associate Commissioner, Educator and Student Policy Initiatives, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: October 3, 2010

For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §249.3

The State Board for Educator Certification (SBEC) proposes an amendment to §249.3, concerning disciplinary proceedings, sanctions, and contested cases. The rule establishes definitions for words, terms, and phrases used in disciplinary proceedings, sanctions, and contested cases. The proposed amendment would incorporate technical edits and add definitions for words, terms, and phrases contained in 19 TAC Chapter 247, Educators' Code of Ethics.

The proposed amendment reflects input received at the March 25, 2010, and June 28, 2010, stakeholder meetings. Following is a description of the proposed changes.

The proposed amendment to 19 TAC §249.3 would add definitions for the terms, "abuse," "endanger," "neglect," "negligence," "physical mistreatment," and "student." The definition for the phrase, "unworthy to instruct or to supervise the youth of this state," would be amended to clarify that a criminal conviction is not necessary to render an educator unworthy to instruct. The phrase would be defined as the absence of those moral, mental, and psychological qualities that are required to enable an educator to render the service essential to the accomplishment of the goals and mission of the SBEC policy and the Educators' Code of Ethics. In addition, current provisions would be renumbered accordingly to reflect the addition of the proposed new definitions.

Throughout 19 TAC §249.3, the acronyms would be replaced with proper names since the section addresses definitions. Other technical edits would be made to reflect *Texas Register* formatting requirements.

The proposed amendment would have no procedural and reporting implications to school districts and educators. Also, the proposed amendment would have no locally maintained paperwork requirements to school districts and educators.

Jerel Booker, associate commissioner for educator and student policy initiatives, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Booker has determined that for the first five-year period the proposed amendment is in effect the public and student benefit anticipated as a result of the proposed amendment would be updated definitions of professional conduct more closely reflecting the expectations of the citizens of the state and the SBEC. There are no additional costs to persons who are required to comply with the proposed amendment.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator and Student Policy Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Jerel Booker, associate commissioner for educator and student policy initiatives, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

The amendment is proposed under the Texas Education Code (TEC), §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; and §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics.

The proposed amendment implements the TEC, §21.041(b)(1), (7), and (8).

§249.3. Definitions.

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

(1) Abuse--As defined in the Texas Family Code, §261.001(1).

(2) [~~(1)~~] Administrative denial--A [~~a~~] decision or action by the Texas Education Agency [~~(TEA)~~] staff to deny a person any of the following based on the withholding or voiding of certification test scores; the invalidation of a certification test registration; or evidence of a lack of good moral character or improper conduct:

(A) admission to an educator preparation program;

(B) certification (including certification following revocation, cancellation, or surrender of a previously issued certificate) or renewal of certification; or

(C) reinstatement of a previously suspended certificate.

(3) [~~(2)~~] Administrative law judge [~~(ALJ)~~]--A [~~a~~] person appointed by the chief judge of the State Office of Administrative Hearings [~~(SOAH)~~] under the Texas Government Code, Chapter 2003.

(4) [~~(3)~~] Answer--The [~~the~~] initial responsive pleading filed in reply to factual and legal issues raised in [~~by~~] a petition.

(5) [~~(4)~~] Applicant--A [~~a~~] party seeking any of the following from the Texas Education Agency [~~TEA~~] staff or the State Board for Educator Certification [~~(SBEC)~~]: issuance of a certificate (including issuance of a new certificate following revocation, cancellation, or surrender of a previously issued certificate); renewal of a certificate; or reinstatement of a suspended certificate.

(6) [~~(5)~~] Cancellation--The [~~the~~] invalidation of an erroneously issued certificate.

(7) [~~(6)~~] Certificate--The [~~the~~] whole or part of any certificate, permit, approval, endorsement, or similar form of permission issued by the Texas Education Agency [~~TEA~~] staff or the State Board for Educator Certification [~~SBEC~~]. The official certificate is the record of the certificate as maintained on the Texas Education Agency's [~~SBEC's~~] website.

(8) [~~(7)~~] Certificate holder--A [~~a~~] person who holds a certificate issued under the Texas Education Code [~~(TEC)~~], Chapter 21, Subchapter B.

(9) [~~(8)~~] Chair--The [~~the~~] presiding officer of the State Board for Educator Certification [~~SBEC~~], elected pursuant to the Texas Education Code [~~TEC~~], §21.036, or other person designated by the chair to act in his or her absence or inability to serve.

(10) [~~(9)~~] Chief judge--The [~~the~~] chief administrative law judge of the State Office of Administrative Hearings [~~SOAH~~].

(11) [~~(10)~~] Code of Ethics--The [~~the~~] Code of Ethics and Standards of Practices for Texas Educators, pursuant to Chapter 247 of this title (relating to the Educators' Code of Ethics).

(12) [~~(11)~~] Complaint--A [~~a~~] written statement submitted to the Texas Education Agency [~~TEA~~] staff that contains essential facts alleging improper conduct by an educator, applicant, or examinee, and provides grounds for sanctions.

(13) [~~(12)~~] Contested case--A [~~a~~] proceeding under this chapter in which the legal rights, duties, and privileges of a party are to be determined by the State Board for Educator Certification [~~SBEC~~] after an opportunity for an adjudicative hearing.

(14) [~~(13)~~] Conviction--An [~~an~~] adjudication of guilt for a criminal offense. The term does not include the imposition of deferred adjudication for which the judge has not proceeded to an adjudication of guilt[~~, except as provided by Code of Criminal Procedure, Article 42.12~~].

(15) [~~(14)~~] Disciplinary proceedings--Contested [~~contested~~] case proceedings before the Texas Education Agency [~~TEA~~] staff, the State Office of Administrative Hearings [~~SOAH~~], and the State Board for Educator Certification [~~SBEC~~] that commence when a request for hearing is timely filed under this chapter.

(16) [~~(15)~~] Educator--A [~~a~~] person who is required to hold a certificate issued under the Texas Education Code [~~TEC~~], Chapter 21, Subchapter B.

(17) [~~(16)~~] Effective date--As [~~as~~] applied to a non-rulemaking decision or action by the State Board for Educator Certification [~~SBEC~~] or the Texas Education Agency [~~TEA~~] staff, the date the decision or action becomes final under the appropriate legal authority.

(18) Endanger--Exposure of a child to the risk of injury or to injury that jeopardizes the physical health or safety of the child without regard to whether there has been an actual injury to the child.

(19) [~~(17)~~] Examinee--A [~~a~~] person who registers to take or who takes a basic skills examination prescribed by the State Board for Educator Certification (SBEC) [~~SBEC~~] for admission to an educator preparation program or a comprehensive examination prescribed by the SBEC for a certificate.

(20) [~~(18)~~] Filing--Any [~~any~~] written petition, answer, motion, response, other written instrument, or item appropriately filed with the Texas Education Agency [~~TEA~~] staff, the State Board for Educator Certification [~~SBEC~~], or the State Office of Administrative Hearings [~~SOAH~~] under this chapter.

(21) [~~(19)~~] Good moral character--The [~~the~~] virtues of a person as evidenced, at a minimum, by his or her not having committed crimes relating directly to the duties and responsibilities of the education profession as described in §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53) or acts involving moral turpitude.

(22) [~~(20)~~] Informal conference--An [~~an~~] informal meeting between the Texas Education Agency [~~TEA~~] staff and an educator, applicant, or examinee; the purpose of such a meeting being to give the person an opportunity to show compliance with all requirements of law for the granting or retention of a certificate or test score.

(23) [~~(21)~~] Invalidation--Rendered [~~rendered~~] void; lacking legal or administrative efficacy.

(24) [~~(22)~~] Law--The [~~the~~] United States and Texas Constitutions, state and federal statutes, regulations, rules, relevant case law, and decisions and orders of the State Board for Educator Certification [~~SBEC~~] and the commissioner of education.

(25) [~~(23)~~] Mail--Certified [~~certified~~] United States mail, return receipt requested, unless otherwise provided by this chapter.

(26) [~~(24)~~] Majority--A [~~a~~] majority of the voting members of the State Board for Educator Certification [~~SBEC~~] who are present and voting on the issue at the time the vote is recorded.

(27) [~~(25)~~] Moral turpitude--Improper [~~improper~~] conduct including, but not limited to, the following: dishonesty; fraud; deceit; theft; misrepresentation; deliberate violence; base, vile, or depraved acts that are intended to arouse or to gratify the sexual desire of the actor; drug or alcohol related offenses as described in §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53); or acts constituting abuse or neglect under the Texas Family Code, §261.001.

(28) Neglect--As defined in the Texas Family Code, §261.001(4).

(29) Negligence--Failure to exercise the degree of care that a reasonable person would exercise under the same circumstances.

(30) [~~(26)~~] Party--Each [~~each~~] person named or admitted to participate in a contested case under this chapter.

(31) [~~(27)~~] Person--Any [~~any~~] individual, representative, corporation, or other entity, including the following: an educator, applicant, or examinee; the Texas Education Agency [~~TEA~~] staff, State Board for Educator Certification [~~SBEC~~], or State Office of Administrative Hearings [~~SOAH~~]; any other agency or instrumentality of federal, state, or local government; or any public or non-profit corporation.

(32) [~~(28)~~] Petition--The [~~the~~] written pleading filed by the petitioner in a contested case under this chapter.

(33) [~~(29)~~] Petitioner--The [~~the~~] party having the burden of proof by a preponderance of the evidence in any contested case hearing or proceeding under this chapter. The term includes the following persons:

(A) the Texas Education Agency (TEA) [~~TEA~~] staff;

(B) a person appealing the administrative cancellation of scores based on irregularities involving a TEA-administered test; and

(C) a person appealing the administrative denial of any of the following:

(i) certification (including certification following revocation, cancellation, or surrender of a previously issued certificate) or renewal of certification; or

(ii) reinstatement of a suspended certificate.

(34) Physical mistreatment--Any act of unreasonable or offensive touching that would be offensive to a reasonable person in a similar circumstance. It is an affirmative defense that any unreason-

able or offensive touching was justified under the circumstances, using a reasonable person standard.

(35) [~~(30)~~] Presiding officer--The [~~the~~] chair or acting chair of the State Board for Educator Certification [~~SBEC~~].

(36) [~~(31)~~] Proposal for decision--A [~~a~~] recommended decision issued by an administrative law judge [~~ALJ~~] in accordance with the Texas Government Code, §2001.062.

(37) [~~(32)~~] Quorum--A [~~a~~] majority of the 14 members appointed to and serving on the State Board for Educator Certification (SBEC) [~~SBEC~~] pursuant to the Texas Education Code [~~TEC~~], §21.033; eight SBEC members, as specified in the SBEC Operating Policies and Procedures.

(38) [~~(33)~~] Reinstatement--The [~~the~~] reactivation to valid status of a certificate suspended by the State Board for Educator Certification [~~SBEC~~]; the lifting or discharging of a suspension on a certificate.

(39) [~~(34)~~] Representative--A [~~a~~] person representing an educator, applicant, or examinee in matters arising under this chapter; in a contested case proceeding before the State Office of Administrative Hearings [~~SOAH~~], an attorney licensed to practice law in the State of Texas.

(40) [~~(35)~~] Reprimand--The State Board for Educator Certification's [~~the SBEC's~~] formal censuring of a certificate holder.

(A) An "inscribed reprimand" is a formal, published censure appearing on the face of the educator's virtual certificate.

(B) A "non-inscribed reprimand" is a formal, unpublished censure that does not appear on the face of the educator's virtual certificate.

(41) [~~(36)~~] Revocation--A [~~a~~] sanction imposed by the State Board for Educator Certification [~~SBEC permanently~~] invalidating an educator's certificate.

(42) [~~(37)~~] Respondent--The [~~the~~] party who contests factual or legal issues or both raised in a petition; the party filing an answer in response to a petition.

(43) [~~(38)~~] Sanction--

(A) a disciplinary action by the State Board for Educator Certification [~~SBEC~~], including a restriction, reprimand, suspension, surrender, or revocation of a certificate; or

(B) a reasonable and lawful punitive measure imposed by the administrative law judge [~~ALJ~~] or presiding officer against a party, representative, or other participant involved in a disciplinary proceeding, hearing, or other matter under this chapter.

(44) [~~(39)~~] State Board for Educator Certification--The State Board for Educator Certification [~~the SBEC~~] acting through its voting members in a decision-making capacity.

(45) [~~(40)~~] State Board for Educator Certification member(s)--One [~~one~~] or more of the members of the State Board for Educator Certification [~~SBEC~~], appointed and qualified under the Texas Education Code [~~TEC~~], §21.033.

(46) Student--A person enrolled in a primary or secondary school, whether public, private, or charter, regardless of the person's age, or a person 18 years of age or younger who is eligible to be enrolled in a primary or secondary school, whether public, private, or charter.

(47) [~~(41)~~] Surrender--An [~~an~~] educator's voluntary[~~, permanent~~] relinquishment and invalidation of a particular certificate in lieu of disciplinary proceedings under this chapter and possible revocation of the certificate.

(48) [~~(42)~~] Suspension--A [~~a~~] sanction imposed by the State Board for Educator Certification (SBEC) [~~SBEC~~] temporarily invalidating a particular certificate until reinstated by the SBEC.

(49) [~~(43)~~] Test administration rules or procedures--Rules [~~rules~~] and procedures governing professional examinations administered by the State Board for Educator Certification [~~SBEC~~] through the Texas Education Agency [~~TEA~~] staff and a test contractor, including policies, regulations, and procedures set out in a test registration bulletin.

(50) [~~(44)~~] Texas Education Agency staff--Staff [~~staff~~] of the Texas Education Agency [~~TEA~~] assigned by the commissioner of education to perform the State Board for Educator Certification's [~~SBEC's~~] administrative functions and services.

(51) [~~(45)~~] Unworthy to instruct or to supervise the youth of this state--Absence of those moral, mental, and psychological qualities that are required to enable an educator to render the service essential to the accomplishment of the goals and mission of the State Board for Educator Certification policy and Chapter 247 of this title (relating to Educators' Code of Ethics). Unworthy to instruct serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification) and is not limited to specific criminal convictions. [~~the determination that a person is unfit to hold a certificate under the TEC, Chapter 21, Subchapter B, or to be allowed on a school campus under the auspices of an educator preparation program.~~]

(52) [~~(46)~~] Virtual certificate--The [~~the~~] official record of a person's certificate status as maintained on the Texas Education Agency's [~~SBEC's~~] website.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004906

Jerel Booker

Associate Commissioner, Educator and Student Policy Initiatives, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: October 3, 2010

For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.3

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §73.3, concerning continuing education, to require most licensed doctors of chiropractic (D.C.) to complete at least eight hours of the already-required 16 hours of yearly continuing education (CE) in coding and documentation for Medicare claims during calendar years 2011 or 2012. Except as noted below, no D.C. would be allowed to renew his or her D.C. license

at any time during calendar year 2013 unless the D.C. affirms or proves to the Board that he or she has met all continuing education requirements, including at least eight hours of CE in coding and documentation for Medicare claims. D.C.s who receive their D.C. license on or after September 1, 2012, would be exempt from the eight hour requirement during 2012, but would be required to complete the eight hours of CE in coding and documentation within twelve months of receiving their D.C. license.

The Board is proposing that licensees receive extensive training in coding and documentation of Medicare claims as a response to findings in a report issued by the Office of the Inspector General (OIG) of the United States in May of 2009. The OIG report concluded that "Medicare inappropriately paid $178 million for chiropractic claims in 2006, representing 47 percent of claims meeting our study criteria." In addition, the OIG report found that "[c]hiropractors often do not comply with [Medicare] documentation requirements." The Board believes that adopting more stringent requirements for CE in coding and documentation will result in Texas chiropractors doing a better job of adhering to federal regulations when submitting claims to Medicare, thereby reducing unwarranted payments but also allowing for proper reimbursements for Medicare patients when justified.

Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that, for each year of the first five years this amendment will be in effect, there will be no additional cost to state or local governments. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this amendment will be in effect, other than for chiropractors and their staff who must pay to attend the required CE training in coding and documentation for Medicare.

Mr. Parker has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be better adherence to Medicare rules by Texas chiropractors and possibly better processing of claims for Texas Medicare patients.

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.*

This amendment is proposed under Texas Occupations Code §201.152, relating to rules, and §201.356, relating to continuing education. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.356 authorizes the Board to require license holders to attend continuing education courses specified by the Board.

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

§73.3. Continuing Education.

(a) (No change.)

(b) Requirements.

(1) (No change.)

(2) The 16 hours of continuing education may be completed at any course or seminar elected by the licensee, which has been approved under §73.7 of this title (relating to Approved Continuing Education Courses).

(A) A licensee must attend any course designated as a "TBCE Required Course," and the course may be counted as part of the 16 hour requirement. Effective with all doctor of chiropractic licenses renewed on or after July 1, 2009, a minimum of four of the 16 required hours of continuing education shall include topics designated by the board.

(i) - (ii) (No change.)

(iii) A minimum of one hour of the total required continuing education shall consist of recordkeeping, documentation, and coding relevant to the practice of chiropractic in Texas. In addition to the requirements in §73.7 of this title, a recordkeeping, documentation, and coding [~~risk management~~] instructor shall have a doctorate degree and must either have an active license to practice chiropractic or law or be part of the full-time faculty of a chiropractic college accredited by the Council on [~~of~~] Chiropractic Education. This continuing education may not be taken online except as provided under paragraph (4) of this subsection. Notwithstanding the requirements in this clause, all chiropractic licensees must complete at least eight hours of continuing education in coding and documentation for Medicare claims during either calendar year 2011 or 2012, except that licensees who receive their initial Texas chiropractic license on or after September 1, 2012, have 12 months after their initial licensure date to complete the eight hours of continuing education in coding and documentation for Medicare claims. No licensee who was initially licensed in Texas prior to September 1, 2012, shall be allowed to renew his or her chiropractic license at any time during calendar year 2013 unless he or she has completed the required eight hours of continuing education in coding and documentation for Medicare claims during either calendar year 2011 or 2012. Licensees who were initially licensed on or after September 1, 2012, must complete the eight hours of continuing education in coding and documentation for Medicare claims no later than one year after their initial licensure in order to be eligible to renew their licenses at their next renewal date on or following the first annual anniversary of their original licensure date. The eight hours of required continuing education in coding and documentation for Medicare claims may be counted as part of the total of 16 continuing education hours required during the year in which the eight hours were completed.

(iv) (No change.)

(B) - (C) (No change.)

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

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004898
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 305-6716

♦ ♦ ♦

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.25

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.25, concerning Impaired Licensees and

Applicants. The proposed amendment broadens the range of records from medical professionals upon which the Board can rely in determining whether probable cause exists for requiring a possibly impaired licensee or applicant to undergo a mental and/or physical examination. The proposed amendment also broadens the range of criminal offenses upon which the Board can rely in making the same determination.

Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that, for each year of the first five years this amendment will be in effect, there will be no additional cost to state or local governments. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this amendment will be in effect.

Mr. Parker has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be increased safety of chiropractic patients by reducing the probability that a licensee or applicant is impaired and may not practice safely. The Board will be able to use a broader range of records from more medical professionals in establishing that it may have probable cause to require a licensee or applicant to undergo testing to determine if the licensee or applicant is impaired in some way that could threaten the safety of patients.

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.*

This 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.

§75.25. Impaired Licensees and Applicants.

(a) (No change.)

(b) Probable cause may include, but is not limited to, any one of the following [~~listed in paragraphs (1) - (6) of this subsection~~]:

(1) - (3) (No change.)

(4) evidence of repeated arrests of a licensee or applicant for intoxication or offenses in which intoxication is a factor;

(5) evidence of recurring temporary commitments to a mental institution of a licensee or applicant; [~~or~~]

(6) chiropractic records and/or medical records showing that a licensee or applicant has an illness or condition which results in the inability to function properly in his or her practice; or[~~.~~]

(7) medical records evidencing a mental or physical condition of the licensee or applicant.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004896

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 305-6716

♦ ♦ ♦

CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.3

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §80.3, concerning Requests for Information and Records from Licensees, to clarify fees that may be charged by a licensee for certifying records that are released to patients or to third parties.

The Board has received several complaints recently that some licensees are charging excessive fees (sometimes exceeding $200) for certifying that copies of records provided by the licensee are true and current copies of the patient's records and are also charging excessive fees for having the records-release affidavit or certification document notarized. The proposed amendment to §80.3 caps the affidavit or certification document fees at $15 and limits notarization charges by the licensee to no more than the actual notary costs paid by the licensee.

Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that, for each year of the first five years this amendment will be in effect, there will be no additional cost to state or local governments. Mr. Parker has also determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this amendment will be in effect, other than to reduce the excessive fees collected by some licensees for providing services that are often provided at no charge by other Board licensees.

Mr. Parker has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be to reduce the overall charges paid by chiropractic patients or third parties to receive certified copies of patient records. This should improve the resolution of insurance reimbursement complaints for some patients whose insurance companies have refused to pay the excessive fees for the needed records. Clearly stating the reasonable fees that may be charged in these circumstances should expedite the release of records and the conclusion of insurance claims. The Board knows of no better way to correct the excessive fee problem other than by adopting reasonable rules in that regard.

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.*

This 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.

§80.3. Request for Information and Records from Licensees.

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

(e) Fee for records. The licensee may charge a reasonable fee for furnishing the information requested under subsection (a) of this section, in accordance with the following provisions:

(1) - (6) (No change.)

(7) A reasonable fee for completing and signing an affidavit or questionnaire certifying that the information provided is a true and current copy of the records may not exceed $15.

(8) In addition to the fee contemplated in paragraph (7) of this subsection, reasonable fees may also include the actual costs paid by the licensee to a notary for notarizing an affidavit, questionnaire, or other document.

(f) (No change.)

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004901
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 305-6716

♦ ♦ ♦

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board proposes amendments to §273.4, concerning fees. The amendments decrease the license renewal fees by $8.00 in order to match receipts with the legislative appropriation for the agency. Amendments also change the late renewal fee for renewals one to ninety days late, and for renewals 90 to 365 days late, and the late fee for failure to timely obtain continuing education, since these fees are based on the license renewal fee. The amendments also change the fee for the Retired License to the amount of the inactive renewal fee as required by §351.265 of the Act and in conformance with Occupations Code §112.051. Amendments also clarify that the renewal fee includes an amount for the Peer Assistance Program.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for local government as a result of enforcing or administering the amendments. For state government, there will be decreased revenue of $29,320.00 (including the amount dedicated to the University of Houston) of the first year of the biennium and each year thereafter that the amended license fee amounts are in effect. Decreased revenue of $4,967 each year will be realized due to the modification of the late renewal penalty as required by statute. Decreased revenue of less than $100 of the first year of the biennium and each year thereafter that fee amounts are in effect is expected from the amendment to decrease the late continuing education penalty. All decreased revenue is offset by decreased expenditures during the period.

Mr. Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be that the agency is funded at the appropriate level. There are no economic costs for persons who are required to comply with the amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The Board does not license businesses or optometric practices, including small businesses or micro businesses. The Board licenses approximately 3,700 individuals as optometrists and therapeutic optometrists. A significant majority of these individuals do own or work in one or more of 1,000 to 3,000 optometric practices which may meet the definition of a small business. Some of these optometry practices may meet the definition of a micro business. The decrease in license renewal fees and penalties are a requirement for regulated licensees, not unregulated businesses.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The board has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The Board has determined that the proposed rule 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 Texas Government Code §2007.043.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.304, 351.308 and 351.265; and Senate Bill 1, 81st Legislature, Regular Session. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession; §351.152 as granting the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act; §351.304 as setting the requirements for late renewal fees, §351.308 as setting the fee for delayed continuing education compliance and §351.265 as setting the fee for Retired License. Senate Bill 1 authorizes the funding mechanism for the agency.

§273.4. Fees (Not Refundable).

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

(g) License Renewal $208.00 [~~$216.00~~] plus $200.00 additional fee required by §351.153 of the Act, and plus $1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include $200.00 additional fee. Total fees: $409.00 [~~$417.00~~] active renewal; $209.00 [~~$217.00~~] inactive renewal. The license renewal fee includes $10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.

(h) License fee for late renewal, one to 90 days late: $312.00 [~~$324.00~~] plus $200.00 additional fee required by §351.153 of the Act, and plus $1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include $200.00 additional fee. Total

late license fees: $513.00 [~~$525.00~~] active renewal; $313.00 [~~$325.00~~] inactive renewal.

(i) License fee for late renewal, 90 days to one year late: $416.00 [~~$432.00~~] plus $200.00 additional fee required by §351.153 of the Act, and plus $1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include $200.00 additional fee. Total late license fees: $617.00 [~~$633.00~~] active renewal; $417.00 [~~$433.00~~] inactive renewal.

(j) Late fees (for all renewals with delayed continuing education) $208.00 [~~$216.00~~].

(k) - (n) (No change.)

(o) Retired License. $208.00 [~~$216.00~~] plus $1.00 fee required by House Bill 2985, 78th Legislature. Total fee: $209.00 [~~$217.00~~].

(p) - (q) (No change.)

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004895
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 305-8502

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (Board) proposes amendments to Chapter 371, §§371.1, 371.4 and 371.70 - 371.72, relating to the Drinking Water State Revolving Fund.

BACKGROUND AND INTRODUCTION.

The Drinking Water State Revolving Fund (DWSRF) is authorized pursuant to the Safe Drinking Water Act, 42 U.S.C. §§300f - 300(j)-26 and the Texas Water Code, Chapter 15, Subchapter J. Each federal fiscal year (FY) an appropriation to the Environmental Protection Agency (EPA) is dedicated to capitalization grants for state revolving fund programs. The State of Texas, through the Board, provides a 20% match for the federal capitalization grant. The capitalization grant constitutes the federal funds portion of the DWSRF and is used to provide loans and loan guarantees to eligible water systems for expenditures to facilitate full compliance with national primary drinking water regulations. The DWSRF is designed to remain available in perpetuity, and in addition to the federal capitalization grant the Fund consists of direct appropriations and investment earnings on amounts credited to the Fund. All payments of principal and interest and all proceeds from the sale, refunding or prepayment of bonds are deposited into the Fund.

BRIEF EXPLANATION OF THE PROPOSED RULES.

Chapter 371 relating to Drinking Water State Revolving Fund was recently repealed and a new Chapter 371 issued to clarify and streamline the rules applicable to loan recipients and to improve the efficiency and administration of the DWSRF. The newly-issued Chapter 371 rules, which became effective on August 4, 2010, did not provide the executive administrator with the authority to release loan and grant proceeds into an escrow account, trust account or approved investment pool. In order to provide maximum program flexibility, amendments to Chapter 371 are being proposed that would provide the executive administrator with the authority to release loan and grant proceeds into an approved escrow, trust or investment pool account at the time of closing on all or part of a loan or grant. In addition, a minor change is being made to §371.1 to the definition of "disadvantaged community" for clarification purposes and a change to §371.4 to clarify language relating to limitations on the amount of Source Water Protection financial assistance that may be provided to the Board's customers.

Subchapter A. General Program Requirements. New definitions are being proposed for the following terms: disadvantaged community, escrow, escrow agent, investment pool, state depository institution, trust and agency certificate and trust institution. Section §371.4 has been changed to clarify the language relating to limitations.

Subchapter G. Loan Closings and Availability of Funds. Major changes are being proposed under §371.70, §371.71 and §371.72, to allow the executive administrator to release loan and grant proceeds into an approved escrow account, trust account or investment pool at the time of closing on all or a portion of a grant or loan. In the event that the executive administrator approves such a release, the bond ordinance, resolution or loan agreement and promissory note must contain certain requirements related to the creation, operation, recordkeeping and reporting on these accounts.

SECTION BY SECTION DISCUSSION OF THE PROPOSED RULES.

Subchapter A.

Section 371.1 relating to Definitions contains certain new definitions that include the following terms: disadvantaged community, escrow, escrow agent, investment pool, state depository institution, trust and agency certificate and trust institution.

Section 371.4 relating to Other Authorized Activities has been modified to clarify the language relating to limitations on funding assistance.

Subchapter G.

Subchapter G relating to Loan Closings and Availability of Funds provides details about the types of documents and their content necessary to close a loan where the Board purchases a local entity's bonds, or where the security provided is in the form of a promissory note and deed of trust. The subchapter also describes the methods for disbursing loan proceeds.

Section 371.70 relating to Loans Secured by Bonds or Other Authorized Securities requires a disbursement of loan funds at closing based on the receipt of outlay reports. Subsection (b)(2)(A) is proposed for amendment to allow the executive administrator to release loan and grant proceeds into an escrow account, trust account or investment pool account at the closing on all or a part of the loan or grant. The account must be kept separate from

all other funds; it must also be maintained at a designated state depository institution, a properly chartered and licensed trust institution, or an investment pool approved by the executive administrator. Funds cannot be released from the escrow, trust or investment pool account without prior written approval of the executive administrator. Account statements must be forwarded to the Board on a monthly basis and the management and investment of such grant and loan proceeds must comply with the Public Funds Investment Act, Chapter 2256, Government Code, as amended and the Public Funds Collateral Act, Chapter 2257, Government Code, as amended.

Section 371.71 relating to Loans Secured by Promissory Notes and Deeds of Trust contains subsection (a) applicable to entities eligible that provide promissory notes and deeds of trust. Subsection (a) states that no loans shall close without a disbursement from the loan funds. Subsection (b) describes the entities that may secure loans under this method. Subsection (c) provides notice that the executive administrator may recommend that the applicant employ certain consultants to assist the entity in evaluating the proposed debt. Subsection (d) lists the documents required for loan closing and would be amended to allow the executive administrator to release loan and grant proceeds into an escrow account, trust account or investment pool account at the closing on all or a part of the loan or grant. The account must be kept separate from all other funds; it must also be maintained at a designated state depository institution, a properly chartered and licensed trust institution, or an investment pool approved by the executive administrator. Funds cannot be released from the escrow, trust or investment pool account without prior written approval of the executive administrator. Account statements must be forwarded to the Board on a monthly basis and the management and investment of such grant and loan proceeds must comply with the Public Funds Investment Act, Chapter 2256, Government Code, as amended and the Public Funds Collateral Act, Chapter 2257, Government Code, as amended.

Section 371.72 relating to Disbursement of Funds provides notice in subsection (a) that loan disbursements are available only on a reimbursement basis for DWSRF loans unless the executive administrator approves the release of proceeds at closing into an approved escrow account, trust account or investment pool. Non-substantive changes and corrections to typographical errors are also proposed.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Ms. Melanie Callahan, Chief Financial Officer, has approved the fiscal note and has determined that for each of the first five years these rules will be in effect, the following statements are correct and accurate to the best of the agency's ability to project future economic trends.

There is no expected additional cost to state or local governments as a result of administering these rules. The loan origination fee amounts have not been increased. The interest rates are tied to market conditions.

These rules are not expected to result in reductions in cost to either state or local governments because the loan processing costs for the Board are not significantly affected, and there is no change for local entities that apply for loans because there is no change in the loan fees.

These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

PUBLIC BENEFIT AND COSTS.

For the first five years these rules will be in effect, the public benefits expected are enhanced funds management that will result in more funds available for loans and other financial assistance for communities to maintain and enhance the quality of public drinking water. Ms. Callahan has determined that there will be no economic cost to persons required to comply with these rules because the requirements of these rules apply only to those persons who voluntarily seek assistance from the State Revolving Fund, and because there is no proposed increase to program fees.

LOCAL EMPLOYMENT IMPACT STATEMENT.

Pursuant to Government Code §2001.022, these proposed rules have been examined and there will not be any direct effect on local employment. These rules are applicable to projects funded by the DWSRF in any geographic area of the State. A local governmental entity may decide to apply for financial assistance from the DWSRF to construct a project, and that voluntary decision would create additional jobs for the duration of the construction. However, the adoption of these rules alone has no impact on local employment in any geographic region of the State.

REGULATORY ANALYSIS.

Pursuant to Government Code §2001.0225, requiring a regulatory analysis of a major environmental rule, it has been determined that these rules are not major environmental rules under §2001.0225 and therefore the analysis required under that section is not applicable.

TAKINGS IMPACT ANALYSIS.

The Board has determined that the proposed rule will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed rule does not burden or restrict or limit the owner's right to or use of property. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

SUBMITTAL OF COMMENTS.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 475-2053.

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §371.1, §371.4

STATUTORY AUTHORITY. These rules are proposed under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J; and §15.609 relating to authority to charge fees.

Cross-reference to statute: Texas Water Code Chapter 15, 16 and 17.

§371.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Chapter 15 of the Texas Water Code and not defined here shall have the meanings provided by Chapter 15.

(1) Act--The federal Safe Drinking Water Act, 42 U.S.C.A. §300f, et seq., as amended.

(2) Applicant--The entity applying for financial assistance from the DWSRF and includes the entity that receives the financial assistance, and the entity that owns the project funded under this chapter.

(3) Application--The forms provided by the executive administrator that must be completed for consideration for financial assistance from the DWSRF.

(4) Authorized representative--The signatory agent of the Applicant authorized and directed by the Applicant's governing body to file the application and to sign documents relating to the project, on behalf of the Applicant.

(5) Board--The Texas Water Development Board.

(6) Bonds--All bonds, notes, certificates of obligation, book-entry obligations, and other obligations issued or authorized to be issued by any political subdivision.

(7) Bypass--The selection of projects for funding without adhering to the priorities resulting from the project's rating in the IUP.

(8) Capitalization grant--The Federal grant awarded annually to the State for capitalization of the DWSRF.

(9) Closing--The exchange of the Applicant's approved debt instruments for DWSRF financial assistance.

(10) Commission--The Texas Commission on Environmental Quality.

(11) Commitment--An offer by the Board to provide financial assistance to an Applicant who timely fulfills the conditions in a Board resolution.

(12) Commitment term--The amount of time, after the Board commitment, within which the commitment for financial assistance must be closed.

(13) Community water system--A public water system that:

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(14) Consolidation--Any one of the following activities:

(A) a public water system acquiring another public water system;

(B) a public water system providing retail service to another public water system; or

(C) a public water system providing wholesale service, which may include operation of the system, to another public water system.

(15) Construction--The erection, acquisition, alteration, remodeling, improvement, extension or other man-made change necessary for an eligible project or activity.

(16) Construction fund--A fund established with loan proceeds, kept separate from all other funds of the Applicant, and held at an official state depository institution.

(17) Contaminant--Any physical, chemical, biological, or radiological substance present in water.

(18) Contract documents--The engineering documentation relating to the project including engineering drawings, maps, technical specifications, design reports, instructions and other contract conditions and forms that are in sufficient detail to allow contractors to bid on the work.

(19) Corporation--A nonprofit water supply corporation created and operating under Chapter 67 of the Texas Water Code.

(20) Davis-Bacon Act--The federal statute at 40 U.S.C. §§3141 et seq. as amended and in conformance with the U.S. Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction) and 29 CFR Part 3 (Contractors and Subcontractors on Public Work Financed in Whole or in Part by Loans or Grants from the United States).

(21) Debt--All bonds or other documents issued or to be issued by any political subdivision or eligible applicant pledging repayment of the Board's financial assistance.

(22) Design--Surveys, plans, working drawings, specifications, and any procedures and protocols necessary for the project.

(23) Disadvantaged community--The service area [~~of a political subdivision,~~] or portion of a [~~the~~] service area [~~of a community that is located outside the political subdivision and~~] that has an adjusted median household income that is no more than 75% of the state median household income for the most recent year for which statistics are available; and if the service area is not charged for sewer services, has a household cost factor for water rates that is greater than or equal to one percent; or if the service area is charged for water and sewer services, has a combined household cost factor for water and sewer rates that is greater than or equal to two percent. The Board may alter or add to these factors to provide financial assistance to an entity that cannot otherwise afford a state revolving fund loan.

(24) Drinking Water State Revolving Fund (DWSRF)--The financial assistance program authorized by Texas Water Code, Chapter 15, Subchapter J.

(25) Eligible entity--Any of the following entities:

(A) a nonprofit noncommunity water system;

(B) a nonprofit community water system;

(C) a political subdivision that is a municipality, intermunicipal, interstate or state agency, or a nonprofit water supply corporation created and operating under Chapter 67 of the Texas Water Code; or

(D) and any other entity eligible under federal law to receive funds from the DWSRF.

(26) EPA--The U.S. Environmental Protection Agency or a designated representative.

(27) Escrow--The transfer of funds to an eligible state depository institution until such funds are eligible for release.

(28) Escrow agent--The state depository institution appointed to hold the funds that are not eligible for release to the Applicant.

(29) [~~(27)~~] Executive administrator--The executive administrator of the Board or a designated representative.

(30) [~~(28)~~] Financial assistance--The DWSRF loans, including principal forgiveness and negative interest loans and grants to eligible Applicants.

(31) [~~(29)~~] Force majeure--Acts of god, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

(32) [~~(30)~~] Fund--The DWSRF created pursuant to the Texas Water Code, Chapter 15, Subchapter J.

(33) [~~(31)~~] Green project--A project or components of a project that, when implemented, will result in energy efficiency, water efficiency, green infrastructure, or environmental innovation that are characterized as green projects either categorically or by utilizing a business case where required.

(34) [~~(32)~~] Green project reserve--A federal directive requiring a specified portion of the capitalization grant to be used for green projects.

(35) [~~(33)~~] Intended use plan (IUP)--A document prepared annually by the Board, after public review and comment, which identifies the intended uses of all DWSRF program funds and describes how those uses support the overall goals of the DWSRF program.

(36) Investment pool--An entity created under the Public Funds Investment Act, Chapter 2256, Government Code, as amended, to invest public funds jointly on behalf of the entities that participate in the pool and whose investment objectives in order of priority are:

(A) preservation and safety of principal;

(B) liquidity; and

(C) yield.

(37) [~~(34)~~] Lending rate--The rate of interest applicable to a particular DWSRF loan.

(38) [~~(35)~~] Market interest rates--Interest rates comparable to those attained for municipal securities in an open market offering.

(39) [~~(36)~~] Municipality--A city, town, or other public body created by or pursuant to State law.

(40) [~~(37)~~] Nonprofit organization--Any legal entity that is recognized as a tax exempt organization by the Texas Comptroller of Public Accounts pursuant to 34 Texas Administrative Code, Part 1, Chapter 3, Subchapter O (relating to State Sales and Use Tax).

(41) [~~(38)~~] Nonprofit noncommunity (NPNC) water system--A public water system that is not a community water system and that is owned and operated by a nonprofit organization.

(42) [~~(39)~~] Outlay report--The Board's form used to withdraw funds.

(43) [~~(40)~~] Political subdivision--A municipality, intermunicipal, interstate, or state agency, any other public entity eligible for assistance, or a nonprofit water supply corporation created and operating under Texas Water Code Chapter 67.

(44) [~~(41)~~] Population--The number of people who reside within the territorial boundaries of or receive wholesale or retail water service from the Applicant based upon data that is acceptable to the executive administrator and which includes the following:

(A) acceptable demographic projections or other information in the engineering feasibility report or the latest official census for an incorporated city; or

(B) information on the population for which the project is designed, where the Applicant is not an incorporated city or town.

(45) [~~(42)~~] Primary drinking water regulation--Regulations promulgated by EPA which:

(A) apply to public and private water systems;

(B) specify contaminants which, in the judgment of the administrator, may have any adverse effect on the health of persons;

(C) specify for each such contaminant either:

(i) a maximum contaminant level if, in the judgment of the administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems; or

(ii) if, in the judgment of the administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of the Act; and

(D) contain criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels including quality control and testing procedures to insure compliance with such levels and to ensure the proper operation and maintenance of the system, and requirements as to:

(i) the minimum quality of water which may be taken into the system; and

(ii) the siting of new facilities for public water systems.

(46) [~~(43)~~] Priority list--That portion of the IUP listing eligible projects ranked according to their rating and that may be further prioritized as described in an applicable IUP.

(47) [~~(44)~~] Private placement memorandum--A document functionally similar to an official statement used in connection with an offering of municipal securities in a private placement.

(48) [~~(45)~~] Project--The planning, the acquisition of land, water rights and permits, the design, the construction and other activities eligible for funding under the Act.

(49) [~~(46)~~] Project engineer--The engineer hired by the Applicant to provide services during any phase of a project.

(50) [~~(47)~~] Project information form--The Board form required from Applicants seeking funds from the DWSRF.

(51) [~~(48)~~] Public water system--

(A) In General. A system that provides water to the public for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

(i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

(ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(B) Connections. A connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if:

(i) the water is used exclusively for purposes other than residential use (consisting of drinking, bathing, cooking, or other similar uses);

(ii) the administrator or the commission determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(iii) the administrator or the commission determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(C) Irrigation districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar uses shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subparagraph (B)(ii) and (iii) of this paragraph.

(D) Transition period. A water supplier that would be a public water system only as a result of modifications made shall not be considered a public water system until two years after August 6, 1996. If a water supplier does not serve 15 service connections or 25 people at any time after the conclusion of the two-year period, the water supplier shall not be considered a public water system.

(52) [~~(49)~~] Ready to proceed--A project that has obtained all permits, legally required authorizations, and all land and water rights, has complied with all engineering and environmental planning review requirements and other Board requirements and design is complete.

(53) [~~(50)~~] Release of funds--The sequence and timing for Applicant's [~~Applicant'~~] access to funds.

(54) [~~(51)~~] Secondary drinking water regulation--Regulations promulgated by EPA which apply to public water systems and which specify the maximum contaminant levels which, in the judgment of the administrator, are necessary to protect the public welfare. Such regulations may vary according to geographic and other circumstances and may apply to any contaminant in drinking water:

(A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use; or

(B) which may otherwise adversely affect the public welfare.

(55) [~~(52)~~] Small water system--An entity that serves ten thousand persons or fewer.

(56) [~~(53)~~] State--State of Texas.

(57) State depository institution--A state or national bank designated by the comptroller in accordance with the Local Government Code, Chapter 404, Subchapter C, as amended.

(58) [~~(54)~~] Subsidy--Any special financial terms and conditions available including loan forgiveness, negative interest rates, grants or other financial incentives as detailed in an IUP.

(59) Trust and Agency Certificate--The instrument executed between the executive administrator and a home-rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the DWSRF loan and grant proceeds.

(60) Trust institution--A bank, credit union, foreign bank, savings association, savings bank or trust company that is authorized by its charter to conduct trust business.

(61) [~~(55)~~] Water conservation plan--A report outlining a program that contains the methods and means for achieving water conservation in an area.

(62) [~~(56)~~] Water conservation program--A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.

§371.4. Other Authorized Activities: Source Water Protection and Technical Assistance.

(a) (No change.)

(b) Limitation. The amount of financial assistance provided for certain activities is limited to the [~~may not exceed~~] percentages specified the applicable capitalization grant. Those activities are:

(1) acquisition of land or conservation easements;

(2) acquisition of necessary water rights;

(3) implementation of voluntary, incentive-based source water quality protection measures;

(4) creation of a capacity development strategy;

(5) delineation or assessment of source water protection areas; and

(6) establishment and implementation of wellhead protection programs.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004902
Kenneth Petersen
General Counsel
Texas Water Development Board
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 463-8061

♦ ♦ ♦

SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§371.70 - 371.72

STATUTORY AUTHORITY. These rules are proposed under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J; and §15.609 relating to authority to charge fees.

Cross-reference to statute: Texas Water Code Chapter 15, 16 and 17.

§371.70. Loans Secured by Bonds or Other Authorized Securities.

(a) (No change.)

(b) Applicability. This section applies to loan closings for entities issuing bonds or other authorized securities. The following documents are required for closing a loan secured by bonds or other authorized securities:

(1) evidence that applications have been filed for all licenses, permits, registrations, and other authorizations required by local, state and federal laws and rules that are necessary for planning, design, acquisition and construction of the authorized project;

(2) a certified copy of the ordinance or resolution adopted by the governing body authorizing the issuance of debt to be sold to the Board. The ordinance or resolution shall have sections providing as follows:

(A) in the event that loan or grant proceeds are to be released into an escrow account, trust account or investment pool account at the closing on all or a portion of the loan or grant, an escrow trust or investment pool account shall be created that shall be separate from all other funds, as follows:

(i) the account shall be maintained at a designated state depository institution, a properly chartered and licensed trust institution or an investment pool approved by the executive administrator;

(ii) funds shall not be released from the escrow account trust account or investment pool without prior approval of the executive administrator who shall issue written authorization for the release of funds;

(iii) escrow account trust account and investment pool account statements shall be provided on a monthly basis to the executive administrator;

(iv) the investment of any loan or grant proceeds deposited into an approved escrow or trust account, including any proceeds invested with an investment pool, shall be handled in a manner that complies with the Public Funds Investment Act, Government Code, Chapter 2256, as amended; and

(v) the escrow or trust account shall be adequately collateralized in a manner sufficient to protect the Board's interest in the project and that complies with the Public Funds Collateral Act, Government Code, Chapter 2257, as amended;

(B) [~~(A)~~] require the Applicant's to fix and maintain rates, in accordance with state law, and collect charges to provide adequate operation and maintenance of the project and to provide insurance coverage on the project in an amount sufficient to protect the Board's interest;

(C) [~~(B)~~] require the use of a book-entry-only system;

(D) [~~(C)~~] require the use of a paying agent/registrar that is a Depository Trust Company (DTC) participant;

(E) [~~(D)~~] require that the payment of all DTC closing fees assessed by the Board's custodian bank be directed to the Board's custodian bank by the Applicant;

(F) [~~(E)~~] require evidence that one fully registered bond has been sent to the DTC or to the Applicant's paying agent/registrar prior to closing;

(G) [~~(F)~~] require that all payments are made to the Board via wire transfer at no cost to the Board;

(H) [~~(G)~~] require that the partial redemption of bonds or other authorized securities be made in inverse order of maturity;

(I) [~~(H)~~] require that insurance coverage be obtained and maintained in an amount sufficient to protect the Board's interest in the project;

(J) [~~(I)~~] require that the Applicant, or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the Applicant's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis as required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the Board and the beneficial owner of the political subdivision's obligations, if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12. The ordinance or resolution shall also contain any other requirements of the SEC or the IRS relating arbitrage, private activity bonds or other relevant requirements regarding the securities held by the Board;

(K) [~~(J)~~] establish a construction fund at an official state depository institution; the fund shall be kept separate from all other funds of the Applicant;

(L) [~~(K)~~] require the maintenance of current, accurate and complete records and accounts in accordance with generally accepted accounting standards to demonstrate compliance with requirements in the loan documents;

(M) [~~(L)~~] require the Applicant to annually submit an audit, prepared by a certified public accountant in accordance with generally accepted auditing standards;

(N) [~~(M)~~] require the Applicant to submit a final accounting within 60 days of the receipt of the final inspection report;

(O) [~~(N)~~] document the adoption of a water conservation program and the implementation of an approved water conservation program for the duration of the loan; and

(P) [~~(O)~~] require the Applicant's agreement to comply with special environmental conditions specified in the Board's environmental determination as well as with any applicable Board laws or rules relating to use of the loan funds;

(3) unqualified approving opinions of the attorney general of Texas and, if bonds or other authorized securities are issued, a certification from the comptroller of public accounts that such debt has been registered in that office;

(4) an unqualified approving opinion by a recognized bond attorney;

(5) if the project will result in the development of surface or groundwater resources, the Applicant shall provide information showing that it has the legal right to use the quantity of water necessary for project effectiveness and efficiency. Upon receipt of the information, the executive administrator shall prepare a finding that the Applicant has a reasonable expectation of obtaining the water rights necessary for project implementation prior to any release of funds for planning, land acquisition and design activities. Prior to the release of funds for construction, a written water rights certification shall be prepared by the executive administrator. The certification shall be based upon the Applicant's information showing the necessary water rights have been acquired;

(6) evidence that the Applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial,

and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term;

(7) a private placement memorandum containing a detailed description of the issuance of debt to be sold to the Board. The Applicant shall submit a draft private placement memorandum at least 30 days prior to loan closing; a final version of the memorandum shall be submitted no later than seven days before closing; and

(8) any additional information specified in writing by the executive administrator.

(c) - (d) (No change.)

§371.71. Loans Secured by Promissory Notes and Deeds of Trust.

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

(d) Documents required for loan closing. The executive administrator shall ensure that the following documents have been submitted prior to loan closing:

(1) evidence that applications have been filed for all licenses, permits, registrations, and other authorizations required by local, state and federal laws and rules that are necessary for planning, design, acquisition [~~or~~] and construction of the authorized project;

(2) an executed promissory note and loan agreement in a form approved by the executive administrator;

(3) a Deed of Trust and Security Agreement that shall contain a first mortgage lien evidenced by a deed of trust on all the real and personal property of the water system;

(4) an owner's title insurance policy for the benefit of the Board covering all the real property identified in the deed of trust;

(5) evidence that the rates on which the Applicant intends to rely for repayment of the financial assistance have received final and binding approval from the commission and, for Applicants required to utilize a surcharge account, evidence that the approval of the commission was conditioned on the creation of a surcharge account;

(6) a certified copy of the resolution adopted by the governing body authorizing the indebtedness and a certificate from the secretary of the governing body attesting to adoption of the resolution in accordance with the by-laws or rules of the governing body and in compliance with the Open Meetings Act, if applicable;

(7) In the event that loan or grant proceeds are to be released into an escrow account, trust account or investment pool account at the closing on all or a portion of the loan or grant, an escrow trust or investment pool account shall be created that shall be separate from all other funds, as follows:

(A) the account shall be maintained at a designated state depository institution, a properly chartered and licensed trust institution or an investment pool approved by the executive administrator;

(B) funds shall not be released from the escrow account trust account or investment pool without prior approval of the executive administrator who shall issue written authorization for the release of funds;

(C) escrow account trust account and investment pool account statements shall be provided on a monthly basis to the executive administrator;

(D) the investment of any loan or grant proceeds deposited into an approved escrow or trust account, including any proceeds invested with an investment pool, shall be handled in a manner that complies with the Public Funds Investment Act, Government Code, Chapter 2256, as amended; and

(E) the escrow or trust account shall be adequately collateralized in a manner sufficient to protect the Board's interest in the project and that complies with the Public Funds Collateral Act, Government Code, Chapter 2257, as amended;

(8) [~~(7)~~] a legal opinion from Applicant's counsel that provides:

(A) that the entity has the legal authority to enter into the loan agreement and to execute a promissory note and a statement that the entity is in good standing;

(B) that the entity is not in breach or default of any State of Texas or United States order, judgment, decree or other instrument which would have a material effect on the loan transaction;

(C) that there is no pending suit, action, proceeding or investigation by a public entity that would materially adversely affect the enforceability or validity of the required loan documents;

(D) evidence that the entity is in good standing with the Office of the Secretary of State; and

(E) a statement relating to any other issues deemed relevant by the executive administrator.

(9) [~~(8)~~] evidence that an approved water conservation plan has been adopted and will be implemented through the life of the project;

(10) [~~(9)~~] evidence of the Applicant's agreement to comply with special environmental conditions contained in the Board's environmental determination;

(11) [~~(10)~~] evidence that TCEQ has approved the entity's water rates;

(12) [~~(11)~~] copies of executed service and revenue contracts;

(13) [~~(12)~~] evidence that the Applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term;

(14) [~~(13)~~] if the project will result in the development of surface or groundwater resources, the Applicant shall demonstrate that it has the right to use the quantity of water necessary for project effectiveness and efficiency. Upon receipt of the information, the executive administrator shall prepare a finding that the Applicant has a reasonable expectation of obtaining the water rights necessary for project implementation prior to any release of funds for planning, land acquisition and design activities. A written water rights certification must be prepared by the executive administrator before funds can be released for construction activities based upon a showing by the Applicant that the necessary water rights have been acquired; and

(15) [~~(14)~~] any other documents relevant to the particular transaction.

(e) (No change.)

§371.72. Disbursement of Funds.

(a) Reimbursement method of accessing funds. DWSRF financial assistance is available for disbursement under a reimbursement method unless the executive administrator approves the release of funds into an escrow account, a trust account or an investment pool at the closing on all or part of a loan or grant, as appropriate. The executive administrator shall reimburse the Applicants' [~~Applicants~~] expenditure upon the receipt of an outlay report supported by detailed invoices of expenditures or the executive administrator may issue a

written authorization for the release of funds from an escrow account trust account or investment pool based on the receipt of outlay reports supported by detailed invoices of expenditures.

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004903
Kenneth Petersen
General Counsel
Texas Water Development Board
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 463-8061

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety (the department) proposes an amendment to §4.1, concerning Transportation of Hazardous Materials.

The proposed amendment updates the rule so that it reflects November 1, 2010 in subsection (a). This amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter.

Cheryl MacBride, Assistant Director of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. MacBride has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

Ms. MacBride has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, September 13, 2010, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to 37 TAC §4.1 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major David Palmer, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major David Palmer at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major David Palmer, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendment is proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through November [~~January~~] 1, 2010. All other references

in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through November [~~January~~] 1, 2010.

(b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(B) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) FMCSA field administrator, as used in the federal motor carrier safety regulations, means the director of the Texas Department of Public Safety or the designee of the director for vehicles operating in intrastate commerce;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(3) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway is adopted by the department.

(5) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties).

(9) A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-service Criteria as a guideline.

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

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004899
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 424-5848

♦ ♦ ♦

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11, §4.20

The Texas Department of Public Safety (the department) proposes amendments to §4.11 and §4.20, concerning Regulations Governing Transportation Safety.

The proposed amendment for §4.11 updates the rule so that it reflects November 1, 2010 in subsection (a). This amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter.

The proposed amendment for §4.20 is necessary to reflect the proper title of the Texas Department of Public Safety official designated for notification and assistance requests under the terms of the memorandum of understanding. In addition to the primary official, the change reflects the ability of that official to allow a designee.

Cheryl MacBride, Assistant Director of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. MacBride has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

Ms. MacBride has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, September 13, 2010, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to 37 TAC §4.11 and §4.20 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major David Palmer, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major David Palmer at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major David Palmer, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through November [~~January~~] 1, 2010. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through November [~~January~~] 1, 2010. The rules adopted herein are to ensure that:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely;

(4) commercial motor vehicle operators are qualified, by reason of training and experience, to operate the vehicle safely; and[~~,~~]

(5) the minimum levels of financial responsibility for motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce is maintained as required.

(b) Terms. Certain terms, when used in the federal regulations as adopted in subsection (a) of this section, will be defined as follows:

(1) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6) when vehicles operated by the motor carrier meet the applicability requirements of subsection (c) of this section;

(2) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(4) department means the Texas Department of Public Safety;

(5) director means the director of the Texas Department of Public Safety or the designee of the director;

(6) FMCSA field administrator, as used in the federal motor carrier safety regulations, means the director of the Texas Department of Public Safety for vehicles operating in intrastate commerce;

(7) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch;

(8) commercial motor vehicle has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, Part 390.5 if operated interstate;

(9) foreign commercial motor vehicle has the meaning assigned by Texas Transportation Code, §648.001;

(10) agricultural commodity is defined as an agricultural, horticultural, viticultural, silvicultural, or vegetable product, bees and honey, planting seed, cottonseed, rice, livestock or a livestock product, or poultry or a poultry product that is produced in this state, either in its natural form or as processed by the producer, including wood chips. The term does not include a product which has been stored in a facility not owned by its producer;

(11) planting and harvesting seasons are defined as January 1 to December 31;

(12) producer is defined as a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on

which the commodity is produced and the owner's tenant or sharecropper; and

(13) off-road motorized construction equipment includes but is not limited to motor scrapers, backhoes, motor graders, compactors, excavators, tractors, trenchers, bulldozers, and other similar equipment routinely found at construction sites and that is occasionally moved to or from construction sites by operating the equipment short distances on public highways. Off-road motorized construction equipment is not designed to operate in traffic and such appearance on a public highway is only incidental to its primary functions. Off-road motorized construction equipment is not considered to be a commercial motor vehicle as that term is defined in Texas Transportation Code, §644.001.

(14) The phrase "The commercial driver's license requirements of part 383 of this subchapter" as used in Title 49, Code of Federal Regulations, §382.103(a)(1) shall mean the commercial driver's license requirements of Texas Transportation Code, Chapter 522.

(15) For purposes of removal from safety-sensitive functions for prohibited conduct as described in Title 49, Code of Federal Regulations, Part 382.501(c), commercial motor vehicle means a vehicle subject to the requirements of Texas Transportation Code, Chapter 522 and a vehicle subject to §4.22 of this title (relating to Contract Carriers of Certain Passengers), in addition to those vehicles enumerated in Title 49, Code of Federal Regulations, Part 382.501(c).

(c) Applicability.

(1) The regulations shall be applicable to the following vehicles:

(A) a vehicle or combination of vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight, a registered gross weight, or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver; [~~and~~]

(D) a vehicle transporting hazardous material requiring a placard;[~~.~~]

(E) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter;[~~.~~]

(F) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States; and[~~.~~]

(G) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(2) The regulations contained in Title 49, Code of Federal Regulations, Part 392.9a, and all interpretations thereto, are applicable to motor carriers operating exclusively in intrastate commerce and to the intrastate operations of interstate motor carriers that have not been federally preempted by the United Carrier Registration Act of 2005. The term "operating authority" as used in Title 49, Code of Federal Regulations, Part 392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapter 643, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, Part 392.9a may request a review under §4.18 of this title (relating to Intrastate Operating Authority Out-of-Service Review). All costs associated with the towing and storage of a vehicle and load declared out-of-service under this paragraph [~~subsection (c)(2) of this section~~] shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) A medical examination certificate, issued in accordance with Title 49, Code of Federal Regulations, Part 391.41, 391.43, and 391.45, shall expire on the date indicated by the medical examiner; however, no such medical examination certificate shall be valid for more than two years from the date of issuance.

(5) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

§4.20. Animal Health Memorandum of Understanding.

In compliance with the Texas Agriculture Code, §161.051, the Department of Public Safety has adopted a joint memorandum of understanding with the Texas Animal Health Commission that provides for Department of Public Safety commissioned officers to check for health papers and permits when stopping a vehicle transporting livestock. The agreement is as follows.

(1) The Texas Animal Health Commission will:

(A) provide information and training to the Department of Public Safety regarding health papers and permits;

(B) investigate possible violations reported by Department of Public Safety officers;

(C) make a proper request for assistance to the Department of Public Safety, assistant director [~~chief~~] of the Texas Highway Patrol Division, or their designee; and

(D) will also notify the assistant director [~~chief~~] of the Texas Highway Patrol Division, or their designee, when appropriate, of the location of Texas Animal Health Commission roadblocks or special night operations.

(2) The Department of Public Safety will:

(A) report potential problems to the Texas Animal Health Commission; and

(B) provide assistance when properly requested by Texas Animal Health Commission 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 August 23, 2010.

TRD-201004900
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 424-5848

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 45. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), proposes new Subchapter A, General Provisions, consisting of §§45.101 - 45.105; Subchapter B, Eligibility, Enrollment, and Review, Division 1, Eligibility and Maintenance of Interest List, consisting of §45.201 and §45.202; Division 2, Enrollment Process, consisting of §§45.211 - 45.217; Division 3, Reviews, consisting of §§45.221 - 45.225; Subchapter C, Rights and Responsibilities of an Individual, consisting of §45.301 and §45.302; Subchapter D, Transfer, Denial, Suspension, Reduction, and Termination of Services, consisting of §§45.401 - 45.410; Subchapter F, Adaptive Aids and Minor Home Modifications, Division 1, Adaptive Aids, consisting of §§45.601 - 45.609; Division 2, Minor Home Modifications, consisting of §§45.611 - 45.619; Subchapter G, Additional CMA Requirements, consisting of §§45.701 - 45.707; Subchapter H, Additional DSA Requirements, consisting of §§45.801 - 45.808; Subchapter I, Fiscal Monitoring, consisting of §45.901 and §45.902; and the repeal of Subchapter C, Program and Claim Payment Requirements, consisting of §§45.301, 45.303, 45.305, 45.307, 45.309, 45.311, 45.313, 45.317, 45.319, 45.321, 45.323, 45.325, 45.327, 45.329, 45.331, 45.333, 45.335, 45.337, 45.339, 45.341, and 45.343; and Subchapter D, Fiscal Monitoring, consisting of §45.401 and §45.403, in Chapter 45, Community Living Assistance and Support Services.

BACKGROUND AND PURPOSE

The proposed rules in Chapter 45 describe the requirements for operation of the Community Living Assistance and Support Services (CLASS) Program. The CLASS Program is a Medicaid waiver program approved by the Centers for Medicare and Medicaid Services under §1915(c) of the Social Security Act. DADS operates the CLASS Program under the authority of HHSC. The purpose of the proposal is to rewrite and reorganize the CLASS rules so that they are easier for CLASS Providers and the public to use and understand. Currently, CLASS Program rules are located in two different chapters of the Texas Administrative Code and this proposal will combine all CLASS rules into one chapter. In addition, the purpose of the proposal is to clarify, update, and add rule language to reflect current practices and requirements of the CLASS Program, much of which is currently set forth in policy clarification letters, Information Letters, and the *CLASS Provider Manual.* Further, the new rules are proposed to make terminology consistent with that in the CLASS Program waiver application renewal, effective September 1, 2009, and with other Medicaid waiver programs operated by DADS. Such changes include use of the Mental Retardation/Related Conditions (MR/RC) Assessment form instead of the Level of Care form, requiring a physician signature on the MR/RC Assessment form upon initial evaluation, but not annually, as previously required, and changing terminology from individual service plan (ISP) to individual plan of care (IPC).

The proposed rules no longer include audiology as a CLASS Program service because this service is available to individuals in the CLASS Program through a non-waiver Medicaid source. The proposed rules also no longer include hydrotherapy as a CLASS Program service because the activities under this service may be performed as physical therapy, occupational therapy, and, in some circumstances, aquatic therapy. Further, there is not a state or other entity that licenses or certifies persons to provide hydrotherapy.

The proposed rules require a direct services agency (DSA) to submit to DADS a newly completed MR/RC Assessment at least 60 calendar days before the current IPC expires and a proposed renewal IPC, new individual program plan, and habilitation plan at least 30 days before the current IPC expires to ensure that DADS has sufficient time to conduct a utilization review of the renewal IPC before the end of the current IPC period.

The proposed rules permit DADS to withdraw an offer of a program vacancy made to an individual if the individual does not submit a Medicaid application to HHSC within 30 days of the case manager's initial face-to-face visit or an extension granted by DADS or does not make good faith efforts to complete such an application. This provision allows DADS to offer a program vacancy that is remaining unused to the next person on the interest list and fill CLASS Program vacancies in a more timely manner.

In addition, the proposed rules permit a DSA to provide habilitation, respite, or an adaptive aid that is not included on an individual's IPC if a registered nurse determines that the individual's health and safety is in immediate jeopardy. The DSA must, within seven days after providing the service, submit documentation that explains the circumstances and evidences the nurse's determination. This provision allows a DSA the discretion to provide a service in an emergency situation without first obtaining approval by a DADS staff person, who may not be available if DADS offices are closed. This process is consistent with that in other Medicaid waiver programs operated by DADS.

Further, the proposed rules permit DADS to terminate an individual's CLASS Program services if the individual has been admitted to a facility specified in the rule or leaves the state for more than 180 days, unless a 30-day extension of the person's suspension has been granted by DADS. This provision is added to implement DADS' policy for all Medicaid waivers operated by DADS to use these time frames in terminating services when an individual is admitted to a facility or is out of state.

The proposed rules also no longer require a case manager to have a college degree. A case manager is qualified if he or she has a high school diploma or its equivalent and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities. This provision expands the pool of qualified persons who are able to provide case management.

SECTION-BY-SECTION SUMMARY

Proposed new Subchapter A describes general provisions of the CLASS Program, including definitions for terms used in the chapter, a description of the CLASS Program, and services excluded from the CLASS Program.

Proposed new Subchapter B describes the enrollment process for an individual seeking CLASS Program services and review processes conducted by DADS. Specifically, Division 1 sets forth the eligibility criteria a person must meet to receive CLASS Pro-

gram services and includes information regarding DADS' maintenance of the CLASS Program interest list. Division 2 describes the process by which a person is offered a CLASS Program vacancy and is enrolled into the CLASS Program. This division also describes the requirements regarding the development of an enrollment IPC, DADS' review of the enrollment IPC, and the requirements for offering an individual the consumer directed services option. Division 3 describes the process for a CLASS Program provider to renew and revise an IPC and DADS' process in conducting a utilization review of a renewal or revised IPC.

Proposed new Subchapter C contains information regarding the requirements for an individual being enrolled in the CLASS Program and the circumstances in which an individual is entitled to a fair hearing.

Proposed new Subchapter D describes the required procedures when an individual requests a transfer to another case management agency (CMA) or DSA. This subchapter also sets forth the conditions and required procedures regarding the denial of an individual's request for enrollment or request for a CLASS Program service and the suspension, reduction, or termination of CLASS Program services.

Proposed new Subchapter F describes the process for a DSA to obtain an adaptive aid and minor home modification for an individual, including a description of items and services that are considered adaptive aids and minor home modifications; authorization limits and monetary amounts for repair and maintenance of adaptive aids and minor home modifications; the purchase, specification, and bid requirements for adaptive aids and minor home modifications; and the time frames for providing and delivering adaptive aids and for completing minor home modifications.

Proposed new Subchapter G describes additional requirements of a CMA, including requirements for written policies and procedures for safeguarding an individual, staff person qualifications and training, service delivery and record keeping, and quality management and complaint processes.

Proposed new Subchapter H describes additional requirements of a DSA, including requirements for written policies and procedures for safeguarding an individual, staff person qualifications and training, service delivery and record keeping, respite, and quality management and complaint processes.

Proposed new Subchapter I contains rules governing the fiscal monitoring of the CLASS Program, which are currently located in Subchapter D. Moving this information to proposed Subchapter I allows for a more logical organization of the rules. Terminology in the rules has been updated from that in Subchapter D.

The proposed repeal of Subchapter C removes program and claim payment requirements. The issues addressed in this subchapter, including the CLASS Program service array, adaptive aids, and minor home modifications, are addressed in proposed Subchapter A and proposed Subchapter F.

The proposed repeal of Subchapter D removes requirements regarding fiscal monitoring of CLASS Program providers. Moving this information to proposed Subchapter I allows for a more logical organization of the rules.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections and repeal will not have an adverse economic effect on small businesses or micro-businesses, because any new requirements imposed by these rules do not require CLASS Program providers to incur a cost in complying with the requirements. There is no anticipated cost to persons who are required to comply with the proposed rules.

PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, Deputy Commissioner for DADS, has determined that, for each year of the first five years the proposed rules are in effect, the public benefit expected as a result of enforcing the proposed rules is that individuals seeking to enroll in or enrolled in the CLASS Program and program providers will find the proposed rules easier to use and understand, in part, because the proposed rules are more consistent with those of other Medicaid waiver programs operated by DADS.

Also, the proposed rules will help ensure that CLASS Program vacancies are filled in a more timely manner and the CLASS interest list is reduced because DADS may withdraw an offer of a program vacancy made to an individual who is not timely and in good faith proceeding with the enrollment process.

Further, the proposed rules benefit the public by permitting a DSA to provide habilitation, respite, or an adaptive aid that is not included on an individual's IPC if a registered nurse determines that the individual's health and safety is in immediate jeopardy. This provision allows a DSA the discretion to provide a service in an emergency without first obtaining approval by a DADS staff person who may not be available if DADS offices are closed.

Also, allowing a person to provide case management who has a high school diploma or its equivalent and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities expands the pool of qualified persons who are able to provide case management to individuals in the CLASS Program.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are required to comply with the proposed rules. The proposed rules and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Patrick Koch at (512) 438-4553 in DADS' Provider Services. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-7R009, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls

on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 7R009" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§45.101 - 45.105

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.101. Purpose.

This chapter describes policies and procedures for the CLASS Program.

§45.102. Application.

This chapter applies to a program provider and an individual.

§45.103. Definitions.

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

(1) Actively involved--Significant, ongoing, and supportive involvement with an individual by a person, as determined by the individual, based on the person's:

(A) interactions with the individual;

(B) availability to the individual for assistance or support when needed; and

(C) knowledge of, sensitivity to, and advocacy for the individual's needs, preferences, values, and beliefs.

(2) Adaptive aid--An item or service that enables an individual to retain or increase the ability to perform ADLs or perceive, control, or communicate with the environment in which the individual lives, and:

(A) is included in the list of adaptive aids in the *CLASS Provider Manual;* or

(B) is the repair and maintenance of an adaptive aid on such list that is not covered by a warranty.

(3) ADL--Activity of daily living.

(4) Aquatic therapy--A service that involves a low-risk exercise method done in water to improve an individual's range of motion, flexibility, muscular strengthening and toning, cardiovascular endurance, fitness, and mobility.

(5) Auditory integration training/auditory enhancement training--Specialized training that assists an individual to cope with hearing dysfunction or over-sensitivity to certain frequency ranges of sound by facilitating auditory processing skills and exercising the middle ear and auditory nervous system.

(6) Behavior support plan--An individualized written plan prescribing the systematic application of behavioral techniques and containing specific objectives to decrease or eliminate targeted behavior.

(7) Behavioral Support--Specialized interventions that assist an individual in increasing adaptive behaviors and replacing or modifying maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in the community and which consist of the following activities:

(A) assessment of the targeted behavior so that a behavior support plan may be developed;

(B) development of an individualized behavior support plan;

(C) training of and consultation with an individual, family member, or other persons involved in the individual's care regarding the implementation of the behavior support plan;

(D) monitoring and evaluation of the effectiveness of the behavior support plan;

(E) modification, as necessary, of the behavior support plan based on monitoring and evaluation of the plan's effectiveness; and

(F) counseling with and educating an individual, family members, or other persons involved in the individual's care about the techniques to use in assisting the individual to control maladaptive or socially unacceptable behaviors.

(8) Business day--A day when DADS' state office is open.

(9) Case management--A service that assists an individual in the following:

(A) assessing the individual's needs;

(B) enrolling into the CLASS Program;

(C) developing the individual's IPC;

(D) coordinating the provision of CLASS Program services;

(E) monitoring the effectiveness of the CLASS Program services and the individual's progress toward achieving the outcomes identified for the individual;

(F) revising the individual's IPC, as appropriate;

(G) accessing non-CLASS Program services;

(H) resolving a crisis that occurs regarding the individual; and

(I) advocating for the individual's needs.

(10) Catchment area--As determined by DADS, a geographic area composed of multiple Texas counties.

(11) CDS option--Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions) in which an individual or LAR employs and retains service providers and directs the delivery of program services.

(12) CDSA--Consumer directed service agency. An entity, as defined in §41.103 of this title that provides financial management services.

(13) CMA--Case management agency. A program provider that contracts with DADS to provide case management.

(14) CLASS Program--The Community Living Assistance and Support Services Program.

(15) CMS--The Centers for Medicare and Medicaid Services. CMS is the agency within the United States Department of Health and Human Services that administers Medicare and Medicaid programs.

(16) Competitive employment--Employment that pays an individual at or above the greater of:

(A) the applicable minimum wage; or

(B) the prevailing wage paid to individuals without disabilities for performing the same or similar work.

(17) Continued family services--Services provided to an individual 18 years of age or older who resides with a support family, as described in §45.531 of this chapter (relating to Support Family Requirements), that allow the individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. The individual must be receiving support family services immediately before receiving continued family services. Continued family services consist of services described in §45.533 of this chapter (relating to Support Family Duties).

(18) DADS--The Texas Department of Aging and Disability Services.

(19) Direct services--CLASS Program services other than case management, financial management services, support consultation, support family services, or transition assistance services.

(20) DSA--Direct services agency. A program provider that is a HCSSA that contracts with DADS to provide direct services.

(21) DFPS--The Texas Department of Family and Protective Services.

(22) Enrollment IPC--The first IPC developed for an individual upon enrollment into the CLASS Program.

(23) Financial management services--A service, as defined in §41.103 of this title, that is provided to an individual who chooses to participate in CDS.

(24) Habilitation--A service that allows an individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Habilitation services consist of the following:

(A) habilitation training, which is interacting face-to-face with an individual who is awake to train the individual in the following activities:

(i) self-care;

(ii) personal hygiene;

(iii) household tasks;

(iv) mobility;

(v) money management;

(vi) community integration;

(vii) use of adaptive equipment;

(viii) management of caregivers;

(ix) personal decision making;

(x) interpersonal communication;

(xi) reduction of maladaptive behaviors;

(xii) socialization and the development of relationships;

(xiii) participating in leisure and recreational activities;

(xiv) use of natural supports and typical community services available to the public;

(xv) self-administration of medication; and

(xvi) strategies to restore or compensate for reduced cognitive skills;

(B) habilitation ADLs, which are:

(i) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

(I) self-care;

(II) personal hygiene;

(III) ambulation and mobility;

(IV) money management;

(V) community integration;

(VI) use of adaptive equipment;

(VII) self-administration of medication;

(VIII) reinforce any therapeutic goal of the individual;

(IX) provide transportation to the individual; and

(X) protect the individual's health, safety and security;

(ii) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(iii) performing one of the following activities that does not involve interacting face-to-face with an individual:

(I) shopping for the individual;

(II) planning or preparing meals for the individual;

(III) housekeeping for the individual;

(IV) procuring or preparing the individual's medication; or

(V) arranging transportation for the individual; and

(C) habilitation delegated, which is tasks delegated by a registered nurse to a service provider of habilitation in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks By Registered Professional Nurses to Unlicensed Personnel For Clients With Acute Conditions Or In Acute Care Environments) or Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegations In Independent Living Environments For Clients With Stable and Predictable Conditions).

(25) HCSSA--A home and community support services agency licensed by DADS in accordance with Texas Health and Safety Code Chapter 142.

(26) HHSC--The Texas Health and Human Services Commission.

(27) Hippotherapy--The provision of therapy that:

(A) involves an individual interacting with and riding on horses;

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual; and

(C) is provided by two service providers at the same time, as described in §45.803(d)(10) of this chapter (relating to Qualifications of DSA Staff Persons).

(28) ICF/MR--Intermediate care facility for persons with mental retardation or related conditions.

(29) Individual--A person seeking to enroll or who is enrolled in the CLASS Program.

(30) Institutional services--Medicaid-funded services provided in a nursing facility licensed in accordance with Texas Health and Safety Code, Chapter 242, or in an ICF/MR certified by DADS for a capacity of more than six persons.

(31) Integrated employment--Employment at a work site that provides an individual with an opportunity for routine interaction with people without disabilities other than the individual's work site supervisor or service providers.

(32) IPC--Individual plan of care. A written plan developed by an individual's service planning team that:

(A) describes:

(i) the type and amount of each CLASS Program service to be provided to the individual; and

(ii) services and supports to be provided to the individual through non-CLASS Program resources including natural supports, medical services, and educational services; and

(B) is authorized by DADS in accordance with Subchapter B of this chapter.

(33) IPC cost--The estimated annual cost of CLASS Program services on an IPC.

(34) IPC period--The effective period of an enrollment IPC and a renewal IPC as follows:

(A) for an enrollment IPC, the period of time from the effective date of an enrollment IPC, as described in §45.214(j) of this chapter (relating to Development of Enrollment IPC), until the first calendar day of the same month of the effective date in the following year; and

(B) for a renewal IPC, a 12-month period of time starting on the effective date of a renewal IPC as described in §45.222(b) of this chapter (relating to Renewal IPC and Requirement for Authorization to Continue Services).

(35) IPP--Individual program plan. A written plan that describes the goals and objectives to be met by the provision of each CLASS Program service on an individual's IPC that:

(A) are supported by justifications;

(B) are measurable; and

(C) have timelines.

(36) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(37) Licensed vocational nursing--The provision of vocational nursing, as defined in Texas Occupations Code, Chapter 301.

(38) Medicaid--A program administered by CMS and funded jointly by the states and the federal government that pays for health care to eligible groups of low-income people.

(39) Medicaid waiver program--A service delivery model authorized under §1915(c) of the Social Security Act in which certain Medicaid statutory provisions are waived by CMS.

(40) Mental retardation--Consistent with Texas Health and Safety Code, §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period (0-18 years of age).

(41) Minor home modification--A physical adaptation to an individual's residence that is necessary to address the individual's specific needs and that enables the individual to function with greater independence in the individual's residence or to control his or her environment and:

(A) is included on the list of minor home modifications in the *CLASS Provider Manual;* or

(B) except as provided by §45.618(c) of this chapter (relating to Repair or Replacement of Minor Home Modification), is the repair and maintenance of a minor home modification purchased through the CLASS Program that is needed after one year has elapsed from the date the minor home modification is complete and that is not covered by a warranty.

(42) Massage therapy--The provision of massage therapy as defined in Texas Occupations Code, Chapter 455.

(43) Music therapy--The use of musical or rhythmic interventions to restore, maintain, or improve an individual's social or emotional functioning, mental processing, or physical health.

(44) Natural supports--Assistance from persons, including family members and friends, that helps an individual live in a community and that occurs naturally within the individual's environment.

(45) Nutritional services--The provision of nutrition services as defined in Texas Occupations Code, Chapter 701.

(46) Occupational therapy--The practice of occupational therapy as described in Texas Occupations Code, Chapter 454.

(47) Own home or family home--A residence that is not:

(A) an ICF/MR licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252, or certified by DADS;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Youth Commission, a jail, or prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with mental retardation, a related condition, or a physical disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(48) Physical therapy--The provision of physical therapy as defined in Texas Occupations Code, Chapter 453.

(49) Physician--A person who is licensed as a physician by the Texas State Board of Medical Examiners in accordance with Chapter 155 of the Texas Occupations Code or is licensed as physician or osteopath in accordance with the laws of Oklahoma, New Mexico, Arkansas, or Louisiana.

(50) Prevocational services--Services that are not job-task oriented and are provided to an individual who the service planning team does not expect to be employed (without receiving supported employment) within one year after prevocational services are to begin, to prepare the individual for employment. Prevocational services consist of:

(A) assessment of vocational skills an individual needs to develop or improve upon;

(B) individual and group counseling regarding barriers to employment;

(C) training in skills:

(i) that are not job-task oriented;

(ii) that are related to goals identified in the individual's habilitation plan;

(iii) that are essential to obtaining and retaining employment, such as the effective use of community resources, transportation, and mobility training; and

(iv) for which an individual is not compensated more than 50 percent of the federal minimum wage or industry standard, whichever is greater;

(D) training in the use of adaptive equipment necessary to obtain and retain employment; and

(E) transportation between the individual's place of residence and prevocational services work site when other forms of transportation are unavailable or inaccessible.

(51) Program provider--An entity that delivers CLASS Program case management or direct services under a provider agreement.

(52) Provider agreement--A written agreement between DADS and a program provider that obligates the program provider to provide CLASS Program services.

(53) Recreational therapy--Recreational or leisure activities that assist an individual to restore, remediate or habilitate the individual's level of functioning and independence in life activities, promote health and wellness, and reduce or eliminate the activity limitations caused by an illness or disabling condition.

(54) Registered nurse--A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301.

(55) Registered nursing--The provision of professional nursing, as defined in Texas Occupations Code, Chapter 301.

(56) Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with mental retardation and requires treatment or services similar to those required for individuals with mental retardation;

(B) is manifested before the individual reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(57) Relative--A person related to another person within the fourth degree of consanguinity or within the second degree of affinity. A more detailed explanation of this term is included in the *CLASS Provider Manual.*

(58) Renewal IPC--An IPC developed for an individual in accordance with §45.223 of this chapter (relating to Renewal and Revision of an IPC) because the IPC will expire within 90 calendar days.

(59) Respite--The temporary assistance with an individual's ADLs if the individual has the same residence as a person who routinely provides such assistance and support to the individual, and the person is temporarily unavailable to provide such assistance and support due to non-routine circumstances, and is not a service provider of support family services or continued family services. Respite services consist of the following:

(A) interacting face-to-face with an individual who is awake to assist the individual in the following activities:

(i) self-care;

(ii) personal hygiene;

(iii) ambulation and mobility;

(iv) money management;

(v) community integration;

(vi) use of adaptive equipment;

(vii) self-administration of medication;

(viii) reinforce any therapeutic goal of the individual;

(ix) provide transportation to the individual; and

(x) protect the individual's health, safety, and security;

(B) interacting face-to-face or by telephone with an individual or an involved person regarding an incident that directly affects the individual's health or safety; and

(C) performing one of the following activities that does not involve interacting face-to-face with an individual:

(i) shopping for the individual;

(ii) planning or preparing meals for the individual;

(iii) housekeeping for the individual;

(iv) procuring or preparing the individual's medication;

(v) arranging transportation for the individual; or

(vi) protecting the individual's health, safety, and security while the individual is asleep.

(60) Revised IPC--An enrollment IPC or a renewal IPC that is revised during an IPC period in accordance with §45.223 of this chapter to add a new CLASS Program service or change the amount of an existing service.

(61) Service planning team--A planning team convened and facilitated by a CLASS Program case manager consisting of the following persons:

(A) the individual;

(B) if applicable, the individual's LAR;

(C) the case manager;

(D) a representative of the DSA;

(E) other persons whose inclusion is requested by the individual or LAR and who agree to participate; and

(F) at the DSA's discretion, a person selected by the DSA who is:

(i) professionally qualified by certification or licensure and has special training and experience in the diagnosis and habilitation of persons with the individual's related condition; or

(ii) directly involved in the delivery of services and supports to the individual.

(62) Service provider--A person who is an employee or contractor of the DSA who provides a direct service.

(63) Specialized licensed vocational nursing--The provision of licensed vocational nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(64) Specialized registered nursing--The provision of registered nursing to an individual who has a tracheostomy or is dependent on a ventilator.

(65) Speech therapy--The provision of speech-language pathology as defined in Texas Occupations Code, Chapter 401.

(66) Specialized therapies--Services to promote skills development, decrease inappropriate behaviors, facilitate emotional well-being, create opportunities for socialization, or improve physical and medical status that consist of the following:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) nutritional services;

(F) recreational therapy; and

(G) therapeutic horseback riding.

(67) Staff person--A full-time or part-time employee of the program provider.

(68) Support consultation--A service, as defined in §41.103 of this title, that may be provided to an individual who chooses to participate in CDS.

(69) Supported employment--A service that assists an individual to sustain competitive, integrated employment.

(70) Support family services--Services provided to an individual under 18 years of age who resides with a support family, as described in §45.531 of this chapter, that allow the individual to reside successfully in a community setting by training the individual to acquire, retain, and improve self-help, socialization, and daily living skills or assisting the individual with ADLs. Support family services consist of the services described in §45.533 of this chapter.

(71) Therapeutic horseback riding--The provision of therapy that:

(A) involves an individual interacting with and riding on horses;

(B) is designed to improve the balance, coordination, focus, independence, confidence, and motor and social skills of the individual; and

(C) is provided by only one service provider as described in §45.803(d)(9) of this chapter.

(72) Temporary admission--Being admitted for 180 consecutive calendar days or less.

(73) Transition assistance services--Services provided to a person who is receiving institutional services and is eligible for and enrolling into the CLASS Program. A more detailed description of this CLASS Program service is contained in Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services).

§45.104. Description of the CLASS Program.

(a) The CLASS Program is a Medicaid waiver program approved by CMS under §1915(c) of the Social Security Act. It provides community-based services and supports to an eligible individual as an alternative to the ICF/MR Program.

(b) DADS operates the CLASS Program under the authority of HHSC.

(c) DADS limits the enrollment in the CLASS Program to the number of individuals approved by CMS or by available funding from the state.

(d) The CLASS Program offers the following services:

(1) adaptive aids;

(2) auditory integration training/auditory enhancement training;

(3) behavioral support;

(4) case management;

(5) financial management services (only in CDS option);

(6) habilitation

(7) licensed vocational nursing;

(8) minor home modifications;

(9) occupational therapy;

(10) physical therapy;

(11) prevocational services;

(12) registered nursing;

(13) respite, which consists of:

(A) in-home respite; and

(B) out-of-home respite;

(14) speech therapy;

(15) specialized licensed vocational nursing;

(16) specialized registered nursing;

(17) specialized therapies, which consist of:

(A) aquatic therapy;

(B) hippotherapy;

(C) massage therapy;

(D) music therapy;

(E) nutritional services;

(F) recreational therapy; and

(G) therapeutic horseback riding;

(18) support consultation (only in CDS option);

(19) support family services;

(20) continued family services;

(21) supported employment; and

(22) transition assistance services.

§45.105. Excluded Services.

The CLASS Program does not provide for the following:

(1) room and board except for out-of-home respite as described in §45.806(b)(2) of this chapter (relating to Respite);

(2) special education and related services as defined in 20 United States Code (USC) §1401 that otherwise are available to the individual through a state or local educational agency; and

(3) vocational rehabilitation services that otherwise are available to the individual through a program funded under 29 USC Chapter 16, Subchapter I.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004781
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND REVIEW
DIVISION 1. ELIGIBILITY AND MAINTENANCE OF INTEREST LIST

40 TAC §45.201, §45.202

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.201. Eligibility Criteria.

(a) An individual is eligible for CLASS Program services if:

(1) the individual is financially eligible for Medicaid because the individual receives supplemental security income (SSI) cash benefits or is determined by HHSC to be financially eligible for Medicaid;

(2) the individual is determined by DADS to meet the diagnostic eligibility criteria for the CLASS Program as described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(3) the individual has been diagnosed with a related condition that manifested before the individual was 22 years of age;

(4) the individual demonstrates a need for habilitation;

(5) the individual has an IPC cost for CLASS Program services at or below 200 percent of the estimated annualized per capita cost of providing services in an ICF/MR to an individual who meets the diagnostic eligibility criteria described in §9.239 of this title considering all other resources, including resources described in §40.1 of this title (relating to Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program);

(6) the individual is not enrolled in another Medicaid waiver program; and

(7) the individual resides in the individual's own home or family home.

(b) An individual is not considered to reside in the individual's own home or family home if the individual is admitted to one of the facilities listed in §45.103(46)(A) - (G) of this chapter (relating to Definitions) for more than 180 consecutive calendar days.

§45.202. Interest List.

(a) DADS maintains an interest list with the names of those persons interested in receiving CLASS Program services.

(1) To place an individual's name on the interest list, the individual or LAR must call the CLASS Program toll-free number, which is 1-877-438-5658.

(2) DADS places an individual's name on the interest list in the order in which the request is received and assigns the individual a request date.

(3) DADS removes an individual's name from the interest list if:

(A) the individual or LAR has requested in writing that the individual's name be removed from the interest list;

(B) the individual is deceased;

(C) the individual moves out of the state of Texas;

(D) the individual or LAR has not responded to DADS' attempts to contact the individual or LAR during a periodic update of the CLASS interest list;

(E) the individual receives an offer of a program vacancy as described in §45.211(a) of this subchapter (relating to Written Offer of a CLASS Program Vacancy); or

(F) DADS withdraws an offer of a program vacancy in accordance with §45.211(d) of this subchapter.

(b) If DADS removes an individual's name from the interest list in accordance with subsection (a)(3)(D) of this section, the individual or LAR may request that DADS review the circumstances under which the individual's name was removed and reinstate the individual's name to the interest list with the registration date assigned before the individual's name was removed (that is, the original registration date).

(c) If DADS receives a request to reinstate the individual's name, as described in subsection (b) of this section, within 90 calendar days after DADS' removal of the individual's name from the interest list, DADS reinstates the name with the original registration date. If DADS receives the request to reinstate more than 90 calendar days after DADS' removal of the individual's name from the interest list, DADS may at its discretion reinstate the individual's name to the interest list with the original registration date.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004782
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

DIVISION 2. ENROLLMENT PROCESS

40 TAC §§45.211 - 45.217

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.211. Written Offer of a CLASS Program Vacancy.

(a) When a CLASS Program vacancy occurs, DADS sends a written offer in accordance with this subsection.

(1) DADS sends the written offer of a program vacancy to:

(A) the individual whose registration date is earliest on the CLASS Program interest list; or

(B) an individual who is on the CLASS Program interest list and is receiving institutional services.

(2) DADS encloses with the written offer:

(A) a Selection Determination form which includes a list of CMAs and DSAs serving the catchment area in which the individual resides; and

(B) a CLASS Applicant Acknowledgement form.

(b) The individual or LAR accepts DADS' offer of a CLASS Program vacancy by:

(1) documenting the selection of one CMA and one DSA on the Selection Determination form; and

(2) returning the completed Selection Determination form to DADS within 30 calendar days after the date of the written offer from DADS.

(c) Upon receipt of a Selection Determination form completed by the individual or LAR, DADS notifies the CMA and DSA selected by the individual or LAR.

(d) DADS withdraws an offer of a program vacancy made to an individual if:

(1) after 30 calendar days from the date of the written offer, the individual has not submitted a completed Selection Determination form to DADS;

(2) the individual or LAR declines CLASS Program services;

(3) the individual or LAR does not complete the enrollment process as described in §45.212 of this division (relating to Process for Enrollment of an Individual); or

(4) the individual was offered a program vacancy because the individual is receiving institutional services and the individual

moves out of the ICF/MR or nursing facility before the effective date of the enrollment IPC.

§45.212. Process for Enrollment of an Individual.

(a) Upon notification by DADS that an individual selected the CMA as a program provider, a CMA must assign a case manager to perform the following functions within 14 calendar days of DADS notification to the CMA:

(1) verify that the individual resides in the catchment area for which the individual's selected CMA and DSA have a CLASS Program provider agreement;

(2) conduct an initial face-to-face, in-home visit with the individual and LAR and during the visit provide an oral and written explanation of the following to the individual, LAR, or person actively involved with the individual:

(A) CLASS Program services;

(B) the mandatory participation requirements of an individual as described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual);

(C) the CDS option as described in §45.217 of this division (relating to CDS);

(D) the process by which they may file a complaint regarding case management or other CLASS Program services as required by §45.707(c)(3) and (4) of this chapter (relating to CMA: Quality Management and Complaint Process) and §45.808(3) and (4) of this chapter (relating to DSA: Complaint Process);

(E) voter registration, if the individual is 18 years of age or older; and

(F) transition assistance services, if the individual is receiving institutional services.

(3) obtain the signature of the individual or LAR on a Verification of Freedom of Choice form designating the choice for the individual of CLASS Program services over enrollment in the ICF/MR Program.

(b) The CMA must:

(1) within two business days of the case manager's face-to-face, in-home visit required by subsection (a)(2) of this section:

(A) collect and maintain the information necessary for the CMA and DSA to process the individual's request for enrollment into the CLASS Program in accordance with the *CLASS Provider Manual;* and

(B) provide the individual's selected DSA with the collected information required by subparagraph (A) of this paragraph;

(2) assist the individual or LAR in completing and submitting an application for Medicaid financial eligibility as required by §45.302(1) of this chapter (relating to Mandatory Participation Requirements of an Individual); and

(3) ensure that the case manager documents in the individual's record the progress toward completing a Medicaid application and enrollment into CLASS Program services.

(c) If an individual or LAR does not submit a Medicaid application to HHSC within 30 calendar days of the case manager's initial face-to-face, in-home visit as required by §45.302(1) of this chapter, but is making good faith efforts to complete the application, the CMA may extend, in 30-calendar day increments, the time frame in which the application must be submitted to HHSC, except as provided in paragraph (1) of this subsection.

(1) The CMA may not grant an extension that results in a time period of more than 365 calendar days from the date of the case manager's initial face-to-face, in-home visit.

(2) The CMA must ensure that the case manager documents each extension in the individual's record.

(d) If an individual or LAR does not submit a Medicaid application to HHSC as required by §45.302(1) of this chapter and is not making good faith efforts to complete the application, the CMA must request, in writing, that DADS withdraw the offer of a program vacancy made to the individual in accordance with §45.211(d)(3) of this subchapter (relating to Written Offer of a CLASS Program Vacancy).

(e) If DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services to an individual because they have determined that they cannot ensure the individual's health and safety, the CMA must provide to DADS, in writing, the specific reasons the DSAs have determined that they cannot ensure the individual's health and safety.

(f) If the individual is receiving institutional services and anticipates needing transition assistance services, the case manager must, before the effective date of the enrollment IPC:

(1) provide the individual or LAR with a list of provider agencies of transition assistance services;

(2) using the Transition Assistance Services Assessment and Authorization form as described in the *CLASS Provider Manual,* assist the individual or LAR to:

(A) identify the individual's essential needs for transition assistance services; and

(B) provide estimated amount of transition assistance services needed by the individual.

(g) A DSA must, after receiving notice from DADS that an individual selected the DSA as a program provider, assign a registered nurse to perform the following functions within 14 calendar days after information is provided to the DSA by the CMA as required by subsection (b)(1)(B) of this section:

(1) conduct an initial face-to-face, in-home visit with the individual and LAR;

(2) perform nursing and adaptive behavior assessments of the individual; and

(3) complete the Mental Retardation/Related Conditions (MR/RC) Assessment in accordance with the *CLASS Provider Manual.*

(h) A DSA must ensure that:

(1) the diagnosis of the individual's condition documented on the MR/RC Assessment is authorized by a physician; and

(2) the completed MR/RC assessment is submitted to DADS for a decision regarding the individual's diagnostic eligibility.

(i) DADS reviews the completed MR/RC Assessment in accordance with §45.213 of this division (relating to Determination of Diagnostic Eligibility by DADS).

(j) A DSA must, after receiving written notice from DADS as described in §45.213(d) of this division of whether diagnostic eligibility is approved for an individual, notify the individual's CMA of DADS' decision within one business day after receiving the notice from DADS.

(k) If DADS denies diagnostic eligibility, the CMA must send written notice to the individual or LAR of the denial of the individual's request for enrollment into the CLASS Program in accordance with §45.402(c) of this chapter (relating to Denial of a Request for Enrollment into the CLASS Program).

(l) If the CMA receives notice from the DSA that DADS approves diagnostic eligibility, the CMA must ensure that a proposed enrollment IPC, habilitation plan, and IPPs for the individual are developed and submitted to DADS for review in accordance with §45.214 of this division (relating to Development of Enrollment IPC).

(m) DADS reviews a proposed enrollment IPC in accordance with §45.216 of this division (relating to DADS' review of an Enrollment IPC) to determine if:

(1) the IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria) and the requirements in §45.214(a)(1)(B) of this division; and

(2) the CLASS Program services specified in the IPC meet the requirements described in §45.214(b) of this division.

(n) If DADS notifies the individual's CMA, in accordance with §45.216(d) of this division, that the individual's request for enrollment is approved:

(1) the CMA must, within one business day after DADS' notification, notify the individual or LAR and the individual's DSA of DADS' decision; and

(2) the CMA and DSA must initiate CLASS Program services for the individual in accordance with the individual's IPC within seven calendar days after DADS' notification.

(o) If DADS notifies the CMA that the individual's request for enrollment is approved but action is being taken as described in §45.216(e) of this division, including modifying the individual's proposed enrollment IPC, the CMA must:

(1) implement the modified enrollment IPC; and

(2) send the individual or LAR written notice of the denial or reduction of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service) or §45.405(c) of this chapter (relating to Reduction of a CLASS Program Service).

(p) The CMA and DSA must not provide CLASS Program services to an individual until notified by DADS that the individual's request for enrollment into the CLASS Program has been approved.

§45.213. Determination of Diagnostic Eligibility by DADS.

(a) DADS reviews the completed Mental Retardation/Related Conditions (MR/RC) Assessment submitted by an individual's DSA as required by §45.212(h)(2) of this division (relating to Process for Enrollment of an Individual) and §45.221(a) of this subchapter (related to Annual Review and Reinstatement of Diagnostic Eligibility) to determine if the MR/RC Assessment evidences that an individual meets the eligibility criteria described in §45.201(a)(2) and (3) of this subchapter (relating to Eligibility Criteria).

(b) If requested by DADS, the DSA must submit current data obtained from standardized evaluations and formal assessments to support the related condition diagnosis required by §45.201(a)(3) of this subchapter.

(c) If DADS determines that the completed MR/RC Assessment and supporting documentation evidences that the individual meets the eligibility criteria described in §45.201(a)(2) and (3) of this subchapter, DADS approves diagnostic eligibility for the individual.

(d) DADS notifies the individual's DSA, in writing, of whether it approves or denies diagnostic eligibility for the individual.

(e) DADS approval of diagnostic eligibility is effective:

(1) the date DADS receives the completed MR/RC Assessment; and

(2) through the last calendar day of the IPC period.

§45.214. Development of Enrollment IPC.

(a) A CMA must, within 30 calendar days after notification by the DSA of DADS' approval of diagnostic eligibility for an individual as required by §45.212(j) of this division (relating to Process for Enrollment of an Individual), ensure that an individual's case manager:

(1) convenes a service planning team meeting in which the service planning team develops:

(A) a habilitation plan, as described in the *CLASS Provider Manual*, based on information obtained from assessments conducted and observations made by the DSA as required by §45.212(g) of this chapter (relating to Process for Enrollment of an Individual);

(B) a proposed enrollment IPC that specifies:

(i) the type of CLASS Program service to be provided to an individual;

(ii) the number of units of each CLASS Program service to be provided to the individual; and

(iii) any other service or support to be provided to the individual through sources other than the CLASS Program; and

(2) develops an IPP for each CLASS Program service listed on the proposed enrollment IPC.

(b) The case manager must ensure that the CLASS Program services on the proposed enrollment IPC:

(1) are necessary to protect the individual's health and welfare in the community;

(2) address the individual's related condition;

(3) are not available to the individual through any other source, including the Medicaid State Plan, other governmental programs, private insurance, or the individual's natural supports;

(4) prevent the individual's admission to an institution;

(5) are the most appropriate type and amount of CLASS Program services to meet the individual's needs; and

(6) are cost effective.

(c) If the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed enrollment IPC, the case manager must:

(1) ensure that during the service planning team meeting required by subsection (a) of this section the proposed enrollment IPC is reviewed, signed as evidence of agreement, and dated by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA; and

(2) no later than 30 calendar days before the effective date of the proposed enrollment IPC as determined by the service planning team:

(A) submit the following to DADS for its review:

(i) the proposed enrollment IPC;

(ii) the IPPs; and

(iii) the habilitation plan; and

(B) send a copy of the proposed enrollment IPC to the CDSA, if applicable.

(d) If the individual or LAR requests a CLASS Program service that the case manager or DSA has determined does not meet the criteria described in subsection (b) of this section or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications) the CMA must:

(1) in accordance with *CLASS Provider Manual*, send the individual or LAR written notice of the denial of the requested CLASS Program service, copying the DSA and CDSA;

(2) no later than 30 calendar days before the effective date of the proposed IPC as determined by the service planning team, submit to DADS for its review:

(A) the proposed enrollment IPC that includes the type and amount of CLASS Program services in dispute and not in dispute and is signed and dated by:

(i) the individual or LAR;

(ii) the case manager; and

(iii) the DSA;

(B) the IPPs; and

(C) the habilitation plan; and

(3) send a copy of the proposed enrollment IPC to the CDSA, if applicable.

(e) DADS reviews a proposed enrollment IPC in accordance with §45.216 of this division (relating to DADS' Review of an Enrollment IPC). At DADS' request, the CMA must submit additional documentation supporting the proposed enrollment IPC to DADS within 10 calendar days after DADS' request.

(f) If DADS determines that the proposed enrollment IPC does not meet the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria), DADS notifies the CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's request for enrollment is denied and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(g) If DADS determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter and the CLASS Program services specified in the IPC meet the requirements described in subsection (b) of this section, DADS notifies the individual's CMA, in writing, that the IPC is authorized.

(h) If DADS determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter but that one or more of the CLASS Program services specified in the IPC do not meet the requirements described in subsection (b) of this section, DADS:

(1) denies the service(s);

(2) modifies the IPC; and

(3) notifies the individual's CMA, in writing, of the action taken.

(i) If DADS notifies the CMA that the individual's CLASS Program services have been denied and the proposed enrollment IPC modified in accordance with subsection (h) of this section, the CMA must:

(1) implement the modified IPC; and

(2) send written notice to the individual or LAR of the denial of CLASS Program Services, in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service).

(j) The effective date of an enrollment IPC is one of the following, whichever is later:

(1) the effective date as determined by the service planning team; or

(2) the date DADS notifies the CMA that the individual's request for enrollment is approved and the IPC is authorized in accordance with §45.216(d) or (e) of this division.

(k) An enrollment IPC is effective for an IPC period.

(l) An individual's enrollment IPC must be reviewed and updated in accordance with §45.223 of this subchapter (relating to Renewal and Revision of an IPC).

§45.215. Development of IPPs.

(a) The case manager must:

(1) develop an IPP for each CLASS Program service listed on a proposed enrollment IPC, and submit the IPP to DADS in accordance with §45.214 of this division (relating to Development of an Enrollment IPC); and

(2) develop a new or revised IPP for each CLASS Program service and submit the IPPs to DADS in accordance with §45.223 of this subchapter (relating to Renewal and Revision of an IPC).

(b) The case manager must ensure that the each IPP is reviewed, signed, and dated as evidence of agreement by:

(1) the individual or LAR;

(2) the case manager; and

(3) the DSA.

§45.216. DADS' Review of an Enrollment IPC.

(a) DADS reviews a proposed enrollment IPC, habilitation plan, and IPPs submitted by a CMA in accordance with §45.214 of this division (relating to Development of Enrollment IPC) to determine if:

(1) the IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria) and the requirements in §45.214(a)(1)(B) of this division; and

(2) the CLASS Program services specified in the IPC meet the requirements described in §45.214(b) of this division.

(b) At DADS request, the CMA must submit additional documentation supporting the proposed enrollment IPC to DADS within 10 calendar days after DADS' request.

(c) If DADS determines that the proposed enrollment IPC does not meet the eligibility criterion described in §45.201(a)(5) of this subchapter, DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's request for enrollment is denied and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) If DADS determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter and the requirements in §45.214(a)(1)(B) of this division and the CLASS Program services specified in the IPC meet the requirements described in §45.214(b) of this division, DADS notifies the individual's CMA, in writing, that the IPC is authorized and the individual's request for enrollment is approved.

(e) If DADS determines that the proposed enrollment IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter but that one or more of the CLASS Program services specified in the IPC do not meet the requirements described in §45.214(b)(1) - (6) of this division or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications), DADS:

(1) denies the service(s);

(2) modifies and authorizes the IPC;

(3) approves the individual's request for enrollment with the modified IPC; and

(4) notifies the individual's CMA, in writing, of the action taken.

(f) If DADS notifies the CMA of the denial of the CLASS Program service and of the enrollment IPC modified in accordance with subsection (e) of this section, the CMA must:

(1) implement the modified enrollment IPC; and

(2) send the individual or LAR written notice of the denial or reduction of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service).

§45.217. CDS Option.

(a) During the initial face-to-face, in-home visit with the individual and LAR, as described in §45.212(a)(2) of this division (related to Process for Enrollment of an Individual), and annually thereafter, the CMA must ensure that an individual's case manager informs the individual or LAR or person actively involved with the individual of:

(1) the CDS option in accordance with §41.109(a) of this title (relating to Enrollment in the CDS Option); and

(2) the specific CLASS Program services for which the CDS option is available as set forth in Appendix C of the CLASS Program waiver application approved by CMS, which is available at *www.dads.state.tx.us.*

(b) If the individual or LAR chooses to participate in the CDS option, the case manager must:

(1) provide the name and contact information to the individual or LAR of each CDSA providing services in the catchment area in which the individual lives;

(2) document the individual's or LAR's choice of CDSA in accordance with DADS instructions;

(3) document each service to be provided through the CDS option on the IPC; and

(4) complete the required forms as described in §41.109(a) of this title.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004783
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

DIVISION 3. REVIEWS

40 TAC §§45.221 - 45.225

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.221. Annual Review and Reinstatement of Diagnostic Eligibility.

(a) To establish that an individual continues to meet the diagnostic eligibility criteria described in §45.201(a)(2) and (3) of this subchapter (relating to Eligibility Criteria), a DSA must submit a newly completed Mental Retardation/Related Conditions (MR/RC) Assessment to DADS for review at least 60 calendar days before the expiration of the individual's IPC period.

(b) Information on the MR/RC Assessment must be supported by current data obtained from evaluations and assessments conducted of the individual.

(c) DADS reviews the completed MR/RC Assessment and notifies the DSA of its determination in accordance with §45.213 of this subchapter (relating to Determination of Diagnostic Eligibility by DADS).

(d) DADS does not pay a CMA or DSA for CLASS Program services provided during a period of time in which DADS has not approved an individual's diagnostic eligibility unless the DSA requests and is granted a reinstatement of such approval.

(e) To request reinstatement of approval of diagnostic eligibility, the DSA must submit to DADS a current MR/RC Assessment completed in accordance with the *CLASS Provider Manual.*

(f) DADS does not grant reinstatement of approval of diagnostic eligibility:

(1) if the DSA does not submit a current MR/RC Assessment for the individual;

(2) to obtain approval of diagnostic eligibility for a period of time for which DADS denied diagnostic eligibility; or

(3) for a period of time during which the individual is not financially eligible for Medicaid as required by §45.201(a)(1) of this subchapter.

(g) If DADS grants a reinstatement of approval of diagnostic eligibility, the reinstatement will be for a period of not more than 180 calendar days before the date DADS receives the completed MR/RC Assessment from the DSA in accordance with subsection (d) of this section.

§45.222. Renewal IPC and Requirement for Authorization to Continue Services.

(a) A renewal IPC is effective for an IPC period.

(b) The effective date of a renewal IPC is:

(1) for renewal of an enrollment IPC, the first calendar day of the same month of the enrollment IPC's effective date in the following year; or

(2) for any other renewal IPC, the first calendar day of the month after the month in which the IPC period expires.

(c) A provider must submit a proposed renewal IPC and obtain authorization from DADS for such IPC in accordance with §45.223 of this division (relating to Renewal and Revision of an IPC) to continue providing services to an individual after the expiration of:

(1) the IPC period of the individual's enrollment IPC; or

(2) the IPC period of the individual's renewal IPC.

§45.223. Renewal and Revision of an IPC.

(a) At least every 90 calendar days from the effective date of an individual's IPC as determined by §45.214(j) of this subchapter (relating to Development of Enrollment IPC) or §45.222(b) of this division (relating to Renewal IPC and Requirement for Authorization to Continue Services), a case manager must meet with the individual or LAR in the individual's home to review the individual's progress toward achieving the goals and objectives as described on the IPP for each CLASS Program service listed on the individual's IPC. The case manager must document the results of the review in the individual's record.

(b) An individual's case manager must:

(1) convene a service planning team that develops a proposed renewal IPC, new IPPs and a new habilitation plan at least annually, but no more than 90 calendar days before the end of the IPC period of the IPC being renewed; and

(2) if the individual's need for a CLASS Program service changes, develop a proposed revised IPC and revised IPP(s) and, if necessary, a revised habilitation plan;

(c) The case manager must ensure that:

(1) a proposed renewal IPC and proposed revised IPC, developed in accordance with subsection (b)(1) or (2) of this section, meet the criteria described in §45.214(a)(1)(B) and (b) of this subchapter; and

(2) new or revised IPPs developed in accordance with subsection (b)(1) or (2) of this section meet the criteria described in §45.215(a) of this subchapter (relating to Development of IPPs) and are reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA.

(d) If the individual or LAR, case manager, and DSA agree on the type and amount of services to be included in a proposed renewal IPC or a proposed revised IPC developed in accordance with subsection (b) of this section, the case manager must:

(1) ensure that the proposed renewal IPC or proposed revised IPC is reviewed, signed, and dated as evidence of agreement by:

(A) the individual or LAR;

(B) the case manager; and

(C) the DSA; and

(2) submit the proposed IPC, IPPs, and habilitation plan to DADS for its review in accordance with the following:

(A) for a proposed renewal IPC developed in accordance with subsection (b)(1) of this section, the proposed renewal IPC, new IPPs, and new habilitation plan must be submitted to DADS at least 30 calendar days before the end of the IPC period; and

(B) for a proposed revised IPC developed in accordance with subsection (b)(2) of this section, the proposed revised IPC, any revised IPPs, and any revised habilitation plan must be submitted to DADS at least 30 calendar days before the effective date proposed by the service planning team; and

(3) send a copy of the proposed renewal or proposed revised IPC to the CDSA, if applicable.

(e) If the individual or LAR requests a CLASS Program service that the case manager or DSA has determined does not meet the criteria described in §45.214(b)(1) - (6) of this subchapter or the requirements described in Subchapter F (relating to Adaptive Aids and Minor Home Modifications) the case manager must:

(1) in accordance with the *CLASS Provider Manual*, send the individual or LAR written notice of the denial of or proposal to reduce, as appropriate, the requested CLASS Program service, copying the DSA and CDSA; and

(2) in accordance with the time frames described in subsection (d)(2) of this section, submit to DADS for its review:

(A) the proposed renewal IPC or proposed revised IPC, which includes the type and amount of CLASS Program services in dispute and not in dispute, and is signed and dated by:

(i) the individual or LAR;

(ii) the case manager; and

(iii) the DSA;

(B) the IPPs; and

(C) the new habilitation plan or any revised habilitation plan; and

(3) send a copy of the proposed renewal or proposed revised IPC to the CDSA, if applicable.

(f) At DADS' request, the CMA must submit additional documentation supporting the proposed IPC to DADS within 10 calendar days after DADS' request.

(g) If DADS determines that the proposed renewal IPC or the proposed revised IPC does not meet the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria), DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's CLASS Program services are proposed for termination and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(h) If DADS determines that the proposed renewal IPC or the proposed revised IPC meets the eligibility criterion described in

§45.201(a)(5) of this subchapter and the CLASS Program services specified in the IPC meet the requirements described in §45.214(b)(1) - (6) of this subchapter, DADS notifies the individual's CMA, in writing, that the IPC is authorized.

(i) If DADS determines that the proposed renewal IPC or the proposed revised IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter but that one or more of the CLASS Program services specified in the IPC does not meet the requirements described in §45.214(b) of this subchapter or the requirements described in Subchapter F (relating to Adaptive Aids and Minor Home Modifications), DADS:

(1) denies or proposes reduction of the service(s), as appropriate;

(2) modifies and authorizes the IPC; and

(3) notifies the individual's CMA, in writing, of the action taken.

(j) If DADS notifies the CMA of the denial or proposed reduction of a CLASS Program service and of the IPC modified in accordance with subsection (i) of this section, the CMA must:

(1) implement the modified IPC; and

(2) send the individual or LAR written notice of the denial of or proposal to reduce the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service) or §45.405(c) of this chapter (relating to Reduction of a CLASS Program Service).

(k) The IPC period of a revised IPC is the same IPC period as the enrollment IPC or renewal IPC being revised.

§45.224. Revised IPC and IPP for Services Provided to Prevent Immediate Jeopardy.

(a) If a DSA provides habilitation, respite, or an adaptive aid to an individual that is not included on the individual's IPC in accordance with §45.805(b) of this chapter (relating to DSA: Service Delivery), the DSA, must, within seven calendar days after providing the service, submit to the CMA:

(1) documentation describing the circumstances necessitating the provision of the new service or the increase in the amount of the existing service; and

(2) documentation by a registered nurse of the nurse's determination that the service was necessary to prevent the individual's health and safety from being placed in immediate jeopardy as required by §45.805(b) of this chapter.

(b) Within seven calendar days after the CMA receives the documentation described in subsection (a) of this section, the CMA must:

(1) based on the documentation, develop a proposed revised IPC and revise the IPP; and

(2) submit the proposed revised IPC, revised IPP, and documentation to DADS.

(c) DADS authorizes the IPC only if, after reviewing the documentation described in subsection (a) of this section, it determines that the service was necessary to prevent the individual's health and safety from being placed in immediate jeopardy. At DADS' request, the CMA must submit additional documentation supporting the proposed revised IPC to DADS within 10 calendar days after DADS' request.

(d) If DADS does not authorize the IPC, DADS does not pay the DSA for the service provided.

§45.225. Utilization Review of an IPC by DADS.

(a) At DADS' discretion, DADS conducts a utilization review of an IPC to determine if:

(1) the IPC meets the eligibility criterion described in §45.201(a)(5) of this subchapter (relating to Eligibility Criteria); and

(2) the CLASS Program services specified in the IPC meet the requirements described in §45.214(b)(1) - (6) of this subchapter (relating to Development of Enrollment IPC).

(b) If requested by DADS, a CLASS Program provider must submit documentation supporting the IPC to DADS within 10 calendar days after DADS' request.

(c) If DADS determines that the IPC does not meet the eligibility criterion described in §45.201(a)(5) of this subchapter, DADS notifies the individual's CMA and DSA of such determination and sends written notice to the individual or LAR that the individual's CLASS Program services are proposed for termination and includes in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

(d) If DADS determines that one or more of the CLASS Program services specified in the IPC do not meet the requirements described in §45.214(b)(1) - (6) of this subchapter or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications), DADS:

(1) denies or proposes reduction of the service(s), as appropriate;

(2) modifies and authorizes the IPC; and

(3) notifies the individual's CMA, in writing, of the action taken.

(e) If DADS notifies the CMA of the denial or proposed reduction of the individual's CLASS Program services and of the IPC modified in accordance with subsection (d) of this section, the CMA must:

(1) implement the modified IPC; and

(2) send the individual or LAR written notice of the denial or proposed reduction of the CLASS Program service in accordance with §45.403(c) of this chapter (relating to Denial of a CLASS Program Service) or §45.405(c) of this chapter (relating to Reduction of a CLASS Program Service).

(f) The IPC period of an enrollment IPC or a renewal IPC modified by DADS in accordance with subsection (d) of this section does not change as a result of DADS' modification.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004784
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER C. PROGRAM AND CLAIM PAYMENT REQUIREMENTS

40 TAC §§45.301, 45.303, 45.305, 45.307, 45.309, 45.311, 45.313, 45.317, 45.319, 45.321, 45.323, 45.325, 45.327, 45.329, 45.331, 45.333, 45.335, 45.337, 45.339, 45.341, 45.343

(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 Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The proposed repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.301. Service Array for Community Living Assistance and Support Services (CLASS) Providers.

§45.303. Cost-Effective Purchases of Adaptive Aids.

§45.305. Time Frames for Adaptive Aids Costing Less Than $500.

§45.307. Time Frames for Adaptive Aids Costing $500 or More.

§45.309. Cost-Effective Purchases of Medical Supplies.

§45.311. Time Frames for Medical Supplies.

§45.313. Time Frames for Emergency Purchases of Medical Supplies.

§45.317. Freight Charges for Medical Supplies and Adaptive Aids.

§45.319. Cost-Effective Purchases of Minor Home Modifications.

§45.321. Time Frames for Minor Home Modifications Costing $1,000 or More.

§45.323. Time Frames for Minor Home Modifications Costing Less Than $1,000.

§45.325. Landlord Approval for Minor Home Modifications.

§45.327. Accountability for Minor Home Modifications.

§45.329. Completion of Minor Home Modifications.

§45.331. Billable Units.

§45.333. Non-Billable Time and Activities.

§45.335. Mutually Exclusive Services.

§45.337. Service Claim Limits.

§45.339. Claims and Service Delivery Records.

§45.341. Monetary Exceptions.

§45.343. Unallowable Services.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004792
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER C. RIGHTS AND RESPONSIBILITIES OF AN INDIVIDUAL

40 TAC §45.301, §45.302

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.301. Individual's Right to a Fair Hearing.

An individual whose request for enrollment into the CLASS Program is denied or is not acted upon with reasonable promptness, or whose CLASS Program services have been denied, suspended, reduced, or terminated by DADS, is entitled to a fair hearing in accordance with Texas Administrative Code, Title 1, Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

§45.302. Mandatory Participation Requirements of an Individual.

An individual, or an LAR on behalf of the individual, must comply with the following mandatory participation requirements:

(1) completing and submitting an application for Medicaid financial eligibility to HHSC within 30 calendar days after the case manager's initial face-to-face, in-home visit as described in §45.212(a)(2) of this chapter (relating to Process for Enrollment of an Individual) or within another time frame permitted by §45.212(c) of this chapter;

(2) participating on the service planning team to:

(A) develop an enrollment IPC as described in §45.214 of this chapter (relating to Development of Enrollment IPC); and

(B) renew and revise the IPC and IPPs as described in §45.223 of this chapter (relating to Renewal and Revision of IPC);

(3) reviewing, agreeing to, signing, and dating an IPC and IPPs in accordance with §45.214 of this chapter, §45.215(b) of this chapter (relating to Development of IPPs), and §45.223 of this chapter;

(4) using natural supports and other non-CLASS Program services and supports for which the individual may be eligible before using CLASS Program services;

(5) cooperating with the CMA and DSA in the delivery of CLASS Program services listed on the individual's IPC, including:

(A) working with the CMA and DSA in scheduling meetings;

(B) attending scheduled meetings with the case manager or service provider;

(C) being available to receive the CLASS Program services;

(D) notifying the CMA or DSA in advance if the individual or LAR is unable to attend a scheduled meeting or is unavailable to receive services in the individual's own or family home;

(E) admitting CMA and DSA representatives to the individual's own home or family home for a scheduled meeting or to receive CLASS Program services;

(6) cooperating with the DSA's service providers to ensure progress toward achieving the goals and objectives described in the IPP for each CLASS Program service listed on the IPC;

(7) if found by HHSC to be financially eligible for CLASS Program services based on the special institutional income limit, paying the required co-payment in a timely manner;

(8) notifying the CMA and DSA if the individual receives notice from HHSC of a change in the status of the individual's financial eligibility for Medicaid;

(9) not engaging in criminal behavior in the presence of the case manager or service provider;

(10) not permitting a person present in the individual's own or family home to engage in criminal behavior in the presence of the service provider or case manager;

(11) not acting in a manner that is threatening to the health and safety of the case manager or service provider;

(12) not permitting a person present in the individual's own or family home to act in a manner that is threatening to the health and safety of the case manager or service provider;

(13) in accordance with §45.409 of this chapter (relating to Termination of CLASS Program Services Without Advance Notice Due to Behavior Causing Immediate Jeopardy), not exhibiting behavior or permitting a person present in the individual's residence to exhibit behavior that places the health and safety of the case manager or service provider in immediate jeopardy;

(14) not initiating or participating in fraudulent health care practices;

(15) not engaging in behavior that endangers the individual's health or safety; and

(16) not permitting a person present in the individual's own home or family home to engage in behavior that endangers the individual's health or safety.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004785
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER D. FISCAL MONITORING

40 TAC §45.401, §45.403

(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 Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The proposed repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.401. Administrative Errors.

§45.403. Financial Errors.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004793
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER D. TRANSFER, DENIAL, SUSPENSION, REDUCTION, AND TERMINATION OF SERVICES

40 TAC §§45.401 - 45.410

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.401. Coordination of Transfers.

(a) A CMA must, upon receiving notice from an individual or LAR of the individual's intention to transfer to another CMA or DSA:

(1) document in the individual's record the date the transfer request was received;

(2) make transfer arrangements, including completing appropriate documentation, in accordance with the *CLASS Provider Manual* with:

(A) the individual or LAR; and

(B) the receiving CMA or DSA, as appropriate.

(b) The CMA must establish an effective date for the individual's transfer that:

(1) is at least 14 calendar days after the date of the notice of intent to transfer described in subsection (a) of this section; and

(2) is agreed to by the CMA and individual or LAR, and, as appropriate, the receiving CMA or receiving DSA.

(c) The receiving CMA or DSA, as applicable, must timely provide documentation, as described in the *CLASS Provider Manual,* to the CMA to allow the CMA to complete forms in accordance with the *CLASS Provider Manual.*

(d) The current CMA must submit the following to DADS before the effective date of the transfer:

(1) the individual's current IPC; and

(2) forms completed in accordance with the *CLASS Provider Manual.*

(e) The IPC period of an enrollment IPC or renewal IPC does not change upon an individual's transfer to another CMA or DSA under this section.

(f) A CMA must, upon receiving notice from an individual or LAR of the individual's intention to transfer to another CDSA, follow the guidelines described in §41.403 of this title (relating to Transfer Process).

§45.402. Denial of a Request for Enrollment into the CLASS Program.

(a) DADS denies an individual's request for enrollment into the CLASS Program if:

(1) the individual does not meet the eligibility criteria described in §45.201 of this chapter (relating to Eligibility Criteria); or

(2) the DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services to the individual because they have determined that they cannot ensure the individual's health and safety.

(b) DADS notifies the CMA selected by the individual, in writing, if DADS denies the individual's request for enrollment into the CLASS Program.

(c) Upon receipt of DADS' written notice of denial, except for a denial based on §45.201(a)(5) of this chapter, the CMA must, in accordance with the *CLASS Provider Manual,* send written notice to the individual or LAR of the denial of the individual's request for enrollment into the CLASS Program, copying the individual's selected DSA and CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.403. Denial of a CLASS Program Service.

(a) DADS denies a CLASS Program service on an individual's IPC, based on a review described in §45.216 of this chapter (relating to DADS' Review of an Enrollment IPC), §45.223 of this chapter (relating to Renewal and Revision of an IPC), or §45.225 of this chapter (relating to Utilization Review of an IPC by DADS), if DADS determines that the IPC does not meet the requirements described in §45.214(b) of this chapter (relating to Development of Enrollment IPC) or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications).

(b) DADS notifies the CMA selected by the individual, in writing, if DADS denies a CLASS Program service on the individual's IPC.

(c) Upon receipt of DADS written notice of denial of a CLASS Program service, the CMA must, in accordance with the *CLASS Provider Manual,* send written notice to the individual or LAR of the denial of the service, copying the individual's DSA and CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.404. Suspension of CLASS Program Services With Advance Notice.

(a) DADS suspends an individual's CLASS Program services if the individual:

(1) is under a temporary admission to one of the following facilities:

(A) an ICF/MR licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter (relating to Respite);

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242, unless the individual is receiving out-of-home respite in the facility in accordance with §45.806 of this chapter;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS, unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a facility operated by the Department of Assistive and Rehabilitative Services; or

(G) a residential facility operated by the Texas Youth Commission, a jail, or prison; or

(2) leaves the state for 180 consecutive calendar days or less.

(b) The period of suspension is the length of the admission to the facility or the time spent in another state.

(c) During a temporary admission to one of the facilities listed in subsection (a)(1) of this section or during an extension of the individual's suspension granted in accordance with subsection (d) of this section, an individual is not considered to be residing in the facility.

(d) DADS may extend an individual's suspension for 30 calendar days if the individual demonstrates that:

(1) the individual will likely be released from a facility listed in subsection (a)(1) of this section within 30 calendar days after:

(A) the temporary admission expires; or

(B) the end of a 30 calendar-day extension previously granted by DADS; or

(2) the individual will likely return to Texas and be available to receive CLASS Program services within 30 calendar days after:

(A) the end of the 180 calendar-day time period described in subsection (a)(2) of this section; or

(B) the end of a 30 calendar-day extension previously granted by DADS.

(e) If a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must request, in writing, that DADS suspend CLASS Program services for the individual. Within two business days after the CMA becomes aware of the situation, the CMA must send the written request with written supporting documentation to DADS.

(f) DADS notifies the individual's CMA, in writing, of whether it authorizes a proposed suspension of CLASS Program services.

(g) Upon receipt of a written notice from DADS authorizing the proposed suspension of CLASS Program services, the CMA must, in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the proposal to suspend the services, copying the individual's DSA and CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.405. Reduction of a CLASS Program Service.

(a) DADS reduces a CLASS Program service on an individual's IPC, based on a review described in §45.223 of this chapter (relating to Renewal and Revision of an IPC) or §45.225 of this chapter (relating to Utilization Review of an IPC by DADS), if DADS determines that the IPC does not meet the requirements described in §45.214(b)(1) - (6) of this chapter (relating to Development of Enrollment IPC) or the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications).

(b) DADS notifies the individual's CMA, in writing, if it proposes to reduce a CLASS Program service. DADS includes a copy of the modified IPC with the notice.

(c) Upon receipt of a written notice from DADS proposing to reduce a CLASS Program service, the CMA must, in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the proposal to reduce the service, copying the individual's DSA and CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.406. Termination of CLASS Program Services With Advance Notice Because of Ineligibility or Leave from the State or Because DSAs Cannot Ensure Health and Safety.

(a) DADS terminates an individual's CLASS Program services if:

(1) the individual does not meet the eligibility criteria described in §45.201 of this chapter (relating to Eligibility Criteria);

(2) the individual is admitted for more than 180 consecutive calendar days to one of the facilities listed in §45.404(a)(1) of this division (relating to Suspension of CLASS Program Services With Advance Notice) and DADS has not extended the individual's suspension in accordance with §45.404(d) of this division;

(3) the individual leaves the state for more than 180 consecutive calendar days and DADS has not extended the individual's suspension in accordance with §45.404(d) of this division; or

(4) the DSAs serving the catchment area in which the individual resides are not willing to provide CLASS Program services to the individual because they have determined that they cannot ensure the individual's health and safety.

(b) If a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must request, in writing, that DADS terminate CLASS Program services for the individual. Within two business days after the CMA becomes aware of the situation, the CMA must send the written request with written supporting documentation to DADS.

(c) If the reason for the requested termination of services is subsection (a)(4) of this section, the CMA must include in the written documentation the specific reasons the DSAs have determined that they cannot ensure the individual's health and safety.

(d) DADS notifies the individual's CMA, in writing, of whether it authorizes the proposed termination of CLASS Program services.

(e) Upon receipt of a written notice from DADS authorizing the proposed termination of CLASS Program services, the CMA must, in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the proposal to terminate CLASS Program Services, copying the individual's DSA and CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.407. Termination of CLASS Program Services With Advance Notice Because of Non-compliance with Mandatory Participation Requirements.

(a) DADS may terminate an individual's CLASS Program services if the individual refuses to comply with a mandatory participation

requirement described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual).

(b) If a CMA becomes aware that an individual has not complied with a mandatory participation requirement described in §45.302 of this chapter, the CMA must immediately attempt to resolve the situation, including facilitating at least one face-to-face meeting between:

(1) the individual or LAR;

(2) a representative from the CMA; and

(3) a representative from the DSA.

(c) If, after making attempts to resolve the situation as required by subsection (b) of this section, the CMA determines that the situation cannot be resolved, the CMA must request, in writing, that DADS terminate CLASS Program services for the individual. The request must be sent to DADS within two business days of the CMA's determination that the situation cannot be resolved and be supported by written documentation. The written documentation must include a description of:

(1) the situation that resulted in the request to terminate CLASS Program services; and

(2) the attempts by the CMA and DSA to resolve the situation, including face-to-face meetings with the individual or LAR.

(d) DADS notifies the individual's CMA, in writing, of whether it authorizes the proposed termination of CLASS Program services.

(e) Upon receipt of a written notice from DADS authorizing the proposed termination of CLASS Program services, the CMA must, in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the proposal to terminate CLASS Program services, copying the individual's DSA and CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.408. Termination of CLASS Program Services Without Advance Notice.

(a) DADS terminates an individual's CLASS Program services if any of the following situations exists:

(1) the CMA or DSA has factual information confirming the death of the individual;

(2) the CMA or DSA receives a clear written statement signed by the individual that the individual no longer wishes CLASS Program services;

(3) the individual's whereabouts are unknown and the post office returns mail directed to him or her by the CMA or DSA, indicating no forwarding address; or

(4) the CMA or DSA establishes that the individual has been accepted for Medicaid services by another state.

(b) If a CMA becomes aware that a situation described in subsection (a) of this section exists, the CMA must request, in writing, that DADS terminate CLASS Program services for the individual. The request must be sent to DADS within two business days after the CMA becomes aware of the situation and be supported by written documentation.

(c) DADS notifies the individual's CMA, in writing, of whether it authorizes the termination of CLASS Program services.

(d) Upon receipt of a written notice from DADS authorizing the termination of CLASS Program services, the CMA must, in accordance with the *CLASS Provider Manual*, send written notice to the individual or LAR of the termination, copying the individual's DSA and CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.409. Termination of CLASS Program Services Without Advance Notice Because of Behavior Causing Immediate Jeopardy.

(a) DADS may terminate an individual's CLASS Program services if an individual or a person in the individual's residence exhibits behavior that places the health and safety of the CMA's case manager or a DSA's service provider in immediate jeopardy.

(b) If a CMA or DSA becomes aware that a situation described in subsection (a) of this section exists, the CMA or DSA must:

(1) immediately file a report with the appropriate law enforcement agency and, if appropriate, make an immediate referral to DFPS;

(2) notify the CMA or DSA, as appropriate, and DADS by telephone of the situation no later than the business day after the day the CMA or DSA becomes aware of the situation.

(c) The CMA must, working with the DSA, attempt to resolve the situation.

(d) If, after making attempts to resolve the situation as required by subsection (c) of this section, the CMA determines that the situation cannot be resolved, the CMA must request, in writing, that DADS terminate CLASS Program services for the individual. The request must be sent to DADS within two business days after DADS was notified of the situation by the CMA or DSA and be supported by written documentation.

(e) The CMA must include in the written documentation required by subsection (d) of this section:

(1) a description of the situation that resulted in the request to terminate the individual's CLASS Program services;

(2) a detailed description of the attempts by the CMA to resolve the situation; and

(3) if available, a copy of any report issued by a law enforcement agency or DFPS regarding the situation.

(f) DADS notifies the individual's CMA and DSA, in writing, of whether it authorizes the termination of CLASS Program services.

(g) Upon receipt of written notice from DADS authorizing the termination of CLASS Program services, the CMA must, no later than the date of the termination of services, send written notice to the individual or LAR of such termination, copying the DSA and CDSA. The CMA must include in the notice the individual's right to request a fair hearing in accordance with §45.301 of this chapter (relating to Individual's Right to a Fair Hearing).

§45.410. Offering Access to Other Services if Termination Presents a Threat to an Individual's Health and Safety.

If the termination of an individual's CLASS Program services presents a threat to the individual's health and safety, the CMA must ensure that the case manager offers the individual access to:

(1) alternative long-term services and supports in the community; or

(2) nursing facility or ICF/MR services.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004786
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER F. ADAPTIVE AIDS AND MINOR HOME MODIFICATIONS
DIVISION 1. ADAPTIVE AIDS

40 TAC §§45.601 - 45.609

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.601. Items and Services Purchasable as an Adaptive Aid.

(a) The only items and services that a DSA may purchase or lease as an adaptive aid are listed in the *CLASS Provider Manual.* The repair and maintenance of an adaptive aid, not covered by a warranty, are also purchasable as an adaptive aid.

(b) A DSA may not purchase or lease, as an adaptive aid, an item or service not listed in the *CLASS Provider Manual.*

(c) An adaptive aid must be the exclusive property of the individual to whom it is provided.

§45.602. Authorization Limit for Adaptive Aids and Amount for Repair and Maintenance.

(a) The maximum amount DADS authorizes as payment to a DSA for all adaptive aids provided to an individual is $10,000 per IPC period, except as provided in subsection (b) of this section.

(b) In addition to the $10,000 authorization limit described in subsection (a) of this section, DADS may authorize up to $300 per IPC period for repair and maintenance of adaptive aids purchased through the CLASS Program.

(c) To request authorization for repair and maintenance of an adaptive aid as described in subsection (b) of this section, a DSA is not required to follow the process described in §45.603 of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing Less Than $500) but must include the amount requested on an individual's IPC as described in §45.214 of this chapter (relating to Development of Enrollment IPC) or §45.223 of this chapter (Renewal and Revision of an IPC).

(d) A DSA must follow the process for requesting authorization to purchase an adaptive aid as described in §45.603 of this division if:

(1) requesting authorization for repair and maintenance of an adaptive aid in an amount that exceeds the $300 limit described in subsection (b) of this section; or

(2) requesting authorization for repair and maintenance of an adaptive aid that is not purchased through the CLASS Program but is identical to an item or service that a DSA may purchase as an adaptive aid listed in the *CLASS Provider Manual.*

(e) A request described under subsection (d) of this section and authorized by DADS is counted toward the authorization limit described in subsection (a) of this section.

§45.603. Requirements For Authorization to Purchase an Adaptive Aid Costing Less Than $500.

(a) To purchase an adaptive aid costing less than $500 for an individual, a CMA must:

(1) ensure that the individual's service planning team completes the Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form as described in the *CLASS Provider Manual*, evidencing its agreement that the adaptive aid recommended by the appropriate licensed professional is necessary;

(2) within 14 calendar days after completing the requirement in paragraph (1) of this subsection, ensure that, in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review), the individual's service planning team includes the recommended adaptive aid in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(3) within 14 calendar days after completing the requirement described in paragraph (2) of this subsection, submit to DADS:

(A) the completed Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (2)(A) of this subsection, as applicable; and

(C) the individual's IPP as described in paragraph (2)(B) of this subsection.

(b) DADS reviews the documentation described in subsection (a)(3) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter (relating to DADS' Review of an Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(c) DADS notifies a DSA, in the TMHP online billing system, of whether the proposed IPC is authorized.

§45.604. Requirements For Authorization to Purchase an Adaptive Aid Costing More Than $500.

(a) To purchase an adaptive aid costing more than $500 for an individual, a CMA must:

(1) ensure that the individual's service planning team includes the cost of the specifications for the adaptive aid, as described in §45.605 of this division (relating to Requirements for Specifications for an Adaptive Aid), in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(2) within 14 calendar days after completing the requirement described in paragraph (1) of this subsection, submit to DADS:

(A) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (1)(A) of this subsection, as applicable; and

(B) the individual's IPP as described in paragraph (1)(B) of this subsection.

(b) The cost of the specifications included on an IPC and IPP as required by subsection (a)(1) of this section may not exceed an amount equal to three units of service of behavioral support, occupational therapy, physical therapy, or speech therapy, as applicable.

(c) DADS reviews the documentation described in subsection (a)(2) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter (relating to DADS' Review of an Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(d) DADS notifies a DSA, in the TMHP online billing system, of whether the proposed IPC is authorized.

(e) If DADS authorizes the proposed IPC for payment of the specifications, the DSA must:

(1) within 30 calendar days after the date DADS authorizes the IPC, obtain the specifications regarding the adaptive aid in accordance with §45.605 of this division; and

(2) within 60 calendar days after obtaining the specifications:

(A) obtain bids from vendors in accordance with §45.606 of this division (related to Requirements for Bids of an Adaptive Aid); and

(B) select a vendor from which to purchase the adaptive aid.

(f) A CMA must, within 14 calendar days after completing the requirements in subsection (e)(2) of this section, ensure that the individual's service planning team completes the Adaptive Aids, Medical Supplies and Minor Home Modifications form as described in the *CLASS Provider Manual*, evidencing its agreement that the adaptive aid recommended by the appropriate licensed professional is necessary.

(g) A CMA must:

(1) within 14 calendar days after completing the requirement in subsection (f) of this section, ensure that, in accordance with Subchapter B of this chapter (relating to Eligibility, Enrollment, and Review), the individual's service planning team includes the cost of the adaptive aid in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(2) within 14 calendar days after completing the requirement described in paragraph (1) of this subsection, submit to DADS:

(A) the completed Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form as required by subsection (f) of this section;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (1)(A) of this subsection, as applicable;

(C) the individual's IPP as described in paragraph (1)(B) of this subsection; and

(D) documentation regarding bids as required by §45.606 of this division.

(h) DADS reviews the documentation described in subsection (g)(2) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter or §45.223 of this chapter.

(i) DADS notifies a DSA, in the TMHP online billing system, of whether the proposed IPC is authorized.

§45.605. Requirements for Specifications for an Adaptive Aid.

(a) If DADS authorizes payment for specifications for an adaptive aid costing more than $500 in accordance with §45.604(c) of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing More Than $500), a DSA must:

(1) obtain the specifications from a licensed professional required by DADS for that adaptive aid as described in the *CLASS Provider Manual;*

(2) ensure that the specifications:

(A) include a complete description of the adaptive aid; and

(B) are approved, in writing, by the individual or LAR and the DSA by completing the Specifications for Adaptive Aids or Minor Home Modifications form as described in the *CLASS Provider Manual.*

(b) The DSA must obtain an invoice from the person who develops the specifications, substantiating the cost of the specifications.

(c) The DSA must provide a copy of the specifications to the CMA.

§45.606. Requirements for Bids of an Adaptive Aid.

(a) As required by §45.604(e)(2)(A) of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing More Than $500), for a recommended adaptive aid costing more than $500, a DSA must obtain comparable bids for the requested adaptive aid from three vendors. Comparable bids describe the adaptive aid and any associated items or modifications identified in the completed Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form required by §45.604(f) of this division.

(b) A bid obtained in accordance with subsection (a) of this section must include:

(1) the total cost of the requested adaptive aid, which may be from a catalog, website, or brochure price list;

(2) the amount of any additional expenses related to the delivery of the adaptive aid, including shipping and handling, taxes, installation, and other labor charges;

(3) the date of the bid;

(4) the name, address, and telephone number of the vendor, who may not be a relative of the individual;

(5) for an adaptive aid other than interpreter service and specialized training for augmentative communication programs, a complete description of the adaptive aid and any associated items or modifications as identified in the completed Request for Adaptive Aids, Medical Supplies and Minor Home Modifications form, which may include pictures or other descriptive information from a catalog, website, or brochure; and

(6) for interpreter service and specialized training for augmentative communication programs, the number of hours of the service or training to be provided in-person and the hourly rate of the service.

(c) A DSA may obtain only one bid or two comparable bids for an adaptive aid if the DSA has written justification for obtaining less than three bids because the adaptive aid is available from a limited number of vendors.

(d) If a DSA requests to purchase an adaptive aid that is not based on the lowest bid, the DSA must have written justification for payment of a higher bid. The following are examples of justifications that support payment of a higher bid:

(1) the higher bid is based on the inclusion of a longer warranty for the adaptive aid; and

(2) the higher bid is from a vendor that is more accessible to the individual than another vendor.

(e) If the requested adaptive aid is a vehicle modification, a DSA must obtain proof that the individual or individual's family member owns the vehicle for which the vehicle modification is requested.

(f) A DSA may not disclose information regarding a submitted bid to any other vendor who has submitted a bid or to a vendor who may submit a bid.

§45.607. Time Frames for Providing Adaptive Aids to Individuals.

(a) Except as provided for a medical supply as described in subsection (c) of this section, for an adaptive aid costing less than $500 and authorized by DADS, a DSA must ensure that the individual receives the adaptive aid within 14 business days after one of the following dates, whichever is later:

(1) the date DADS authorizes the proposed IPC that includes the recommended adaptive aid; or

(2) the effective date of the individual's IPC as determined by the service planning team.

(b) Except as provided for a medical supply as described in subsection (c) of this section, for an adaptive aid costing $500 or more and authorized by DADS, a DSA must ensure that the individual receives the adaptive aid within 30 business days after one of the following dates, whichever is later:

(1) the date DADS authorizes the proposed IPC that includes the recommended adaptive aid; or

(2) the effective date of the individual's IPC as determined by the service planning team.

(c) For an adaptive aid that is a medical supply, as listed in the *CLASS Provider Manual*, a DSA must ensure that the individual receives the medical supply as follows:

(1) for a medical supply that is not immediately needed by the individual, within five business days after one of the following dates, whichever is later:

(A) the date DADS authorizes the proposed IPC that includes the recommended adaptive aid; or

(B) the effective date of the individual's IPC as determined by the service planning team; and

(2) for a medical supply that is immediately needed by the individual, within two business days after the date DADS authorizes the IPC that includes the recommended adaptive aid.

(d) If a DSA cannot provide the adaptive aid in the time frame described in subsections (a), (b), or (c)(1) of this section, the DSA must comply with this subsection.

(1) Other than for a medical supply, for an adaptive aid costing less than $500, the DSA must notify the individual and the individual's case manager, orally or in writing, before the 14-day time frame described in subsection (a) of this section expires:

(A) that the adaptive aid will not be provided within the 14-day time frame; and

(B) of a new proposed date for provision of the adaptive aid.

(2) Other than for a medical supply, for an adaptive aid costing $500 or more, the DSA must notify the individual and the individual's case manager, orally or in writing, before the 30-day time frame described in subsection (b) of this section expires:

(A) that the adaptive aid will not be provided within the 30-day time frame; and

(B) of a new proposed date for provision of the adaptive aid.

(3) For an adaptive aid that is a medical supply and not immediately needed by the individual, the DSA must notify the individual and the individual's case manager, orally or in writing, before the five-day time frame described in subsection (c)(1) of this section expires:

(A) that the adaptive aid will not be provided within the five-day time frame;

(B) the reasons why the medical supply will not be provided within the five-day time frame; and

(C) of a new proposed date for provision of the medical supply.

§45.608. Cost Effective Delivery of Adaptive Aid.

(a) A DSA must ensure that if an adaptive aid is delivered to an individual by a commercial carrier, such as United Parcel Services or the United States Postal Service, the most cost-effective carrier is used.

(b) A DSA may not use a commercial carrier to provide overnight delivery unless it is necessary to meet the time frame for a medical supply immediately needed by the individual and there is no other more cost-effective means to deliver the adaptive aid within that time frame.

§45.609. Requirements of DSA Following Provision of Adaptive Aid.

(a) Within 10 business days after an individual has received an adaptive aid, a DSA must ensure that:

(1) the adaptive aid meets the specifications required by §45.604(e)(1) of this division (relating to Requirements For Authorization to Purchase an Adaptive Aid Costing More Than $500); and

(2) a staff person involved in purchasing the adaptive aid for the individual:

(A) contacts the individual to determine whether the adaptive aid meets the needs of the individual; and

(B) documents the results of that visit on the Documentation of Completion of Purchase form as described in *DADS Provider Manual.*

(b) If the DSA determines that the adaptive aid does not meet the specifications required by §45.604(e)(1) of this division, the DSA

must work with the vendor to ensure that the adaptive aid meets the specifications within 30 calendar days after the DSA's determination.

(c) If the staff person or individual or LAR determines that the adaptive aid does not adequately meet the individual's needs because the individual needs training or other assistance, or the adaptive aid requires repair or adjustment, the DSA must ensure that, within 14 business days after the determination, a person who is qualified to perform such training, assistance, repair, or adjustment visits the individual in person and performs the necessary functions.

(d) If the individual or LAR has concerns about the adaptive aid that are not addressed by the DSA's compliance with subsections (b) and (c) of this section, the DSA must process the individual's or LAR's concerns as a complaint in accordance with §45.808 of this chapter (relating to DSA: Complaint Process).

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004787
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

DIVISION 2. MINOR HOME MODIFICATIONS

40 TAC §§45.611 - 45.619

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.611. Items or Services Purchasable as a Minor Home Modification.

(a) The only items or services that a DSA may purchase as a minor home modification are listed in the *CLASS Provider Manual.* Except as provided by §45.618(c) of this division (relating to Repair or Replacement of Minor Home Modification), the repair and maintenance of a minor home modification purchased through the CLASS Program needed after one year has elapsed from the date the minor home modification is complete and that are not covered by a warranty are also purchasable as a minor home modification.

(b) A DSA may not purchase, as a minor home modification, an item or service not listed in the *CLASS Provider Manual.*

(c) The following are examples of items and services that may not be purchased as a minor home modification:

(1) general repair or maintenance of a residence (for example, repairing a leaking roof, a rotten porch, or termite damage; removing mold; or leveling a floor);

(2) general remodeling of a residence that does not address an individual's specific needs; and

(3) an adaptation that adds square footage to a residence.

§45.612. Authorization Limit for Minor Home Modifications and Amount for Repair and Maintenance.

(a) Except as provided in subsection (b) of this section, the maximum amount DADS authorizes as payment to a DSA for all minor home modifications provided to an individual is $10,000 for the lifetime of the individual.

(b) In addition to the $10,000 authorization limit described in subsection (a) of this section, DADS may authorize up to $300 per IPC period for repair and maintenance of minor home modifications purchased through the CLASS Program needed after one year has elapsed from the date the minor home modification is complete.

(c) To request authorization for repair and maintenance of a minor home modification as described in subsection (b) of this section, a DSA is not required to follow the process set forth in §45.613 of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification) but must include the amount requested on an individual's IPC as described in §45.214 of this chapter (relating to Development of Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(d) A DSA must follow the process for requesting authorization to purchase a minor home modification as described in §45.613 of this division if:

(1) requesting authorization for repair and maintenance of a minor home modification in an amount that exceeds the $300 limit described in subsection (b) of this section; or

(2) requesting authorization for repair and maintenance of a minor home modification that is not purchased through the CLASS Program but is identical to an item or service that a DSA may purchase as a minor home modification listed in the *CLASS Provider Manual.*

(e) A request described under subsection (d) of this section and authorized by DADS is counted toward the authorization limit described in subsection (a) of this section.

§45.613. Requirements for Authorization to Purchase a Minor Home Modification.

(a) To purchase a minor home modification for an individual a CMA must:

(1) ensure that the individual's service planning team includes the cost of the specifications for the requested minor home modification, as described in §45.614 of this division (relating to Requirements for Specifications for a Minor Home Modification), not to exceed $200, in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(2) within 14 calendar days after completing the requirement described in paragraph (1) of this subsection, submit to DADS:

(A) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as described in paragraph (1)(A) of this subsection, as applicable; and

(B) the individual's IPP as described in paragraph (1)(B) of this subsection.

(b) DADS reviews the documentation described in subsection (a)(2) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter (relating to DADS' Review of an Enrollment IPC) or §45.223 of this chapter (relating to Renewal and Revision of an IPC).

(c) DADS notifies a DSA, in the TMHP online billing system, of whether the proposed IPC is authorized.

(d) If DADS authorizes the proposed IPC for payment of the specifications, the DSA must:

(1) within 30 calendar days after the date DADS authorizes the IPC, obtain the specifications regarding the requested minor home modification in accordance with §45.614 of this division;

(2) within 60 calendar days after obtaining the specifications:

(A) if the minor home modification costs more than $1000, obtain bids from vendors in accordance with §45.615 of this division (related to Bid Requirements for a Minor Home Modification); and

(B) select a vendor to complete construction of the minor home modification; and

(3) before construction of the minor home modification:

(A) obtain written approval for construction of the modification from the owner of the property in question, unless such approval is granted in an applicable lease agreement; and

(B) ensure that the selected vendor obtains any required building permits.

(e) A CMA must, within 14 calendar days after completing the requirements in subsection (d)(2) of this section, ensure that the individual's service planning team completes the Adaptive Aids, Medical Supplies and Minor Home Modifications form as described in the *CLASS Provider Manual*, evidencing its agreement that the minor home modification recommended by the licensed professional is necessary.

(f) A CMA must:

(1) within 14 calendar days after completing the requirement in subsection (e) of this section, ensure that the individual's service planning team includes the cost of the minor home modification and the cost of the inspection of the minor home modification, not to exceed $150, in:

(A) the individual's proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC, as applicable; and

(B) the individual's IPP; and

(2) within 14 calendar days after completing the requirement described in paragraph (1) of this subsection, submit to DADS:

(A) the completed Request for Adaptive Aids, Medical Supplies, and Minor Home Modifications form required by subsection (e) of this section;

(B) the proposed enrollment IPC, proposed renewal IPC, or proposed revised IPC as described in paragraph (1)(A) of this subsection, as applicable;

(C) the individual's IPP described paragraph (1)(B) of this subsection; and

(D) documentation regarding bids as required by §45.615 of this division.

(g) DADS reviews the documentation described in subsection (f)(2) of this section and determines whether the proposed IPC is authorized in accordance with §45.216 of this chapter or §45.223 of this chapter.

(h) DADS notifies a DSA, in the TMHP online billing system, of whether the proposed IPC is authorized.

(i) The DSA must direct the vendor to begin construction of the minor home modification within seven calendar days after one of the following, whichever is later:

(1) the date DADS authorizes the proposed IPC; or

(2) the effective date of the IPC as determined by the service planning team.

(j) A DSA must, within seven business days after it receives information that the minor home modification is completed, conduct an in-person inspection of the minor home modification in accordance with §45.616 of this division (relating to Inspection of a Minor Home Modification).

§45.614. Requirements for Specifications for a Minor Home Modification.

(a) If DADS authorizes payment for specifications for a minor home modification in accordance with §45.613(c) of this division (relating to Requirements for Authorization to Purchase a Minor Home Modification), a DSA must:

(1) obtain the specifications from a person who has experience in constructing home modifications;

(2) ensure that the specifications:

(A) include a complete description of the minor home modification and any associated installations identified in the specifications;

(B) include a drawing or picture of both the existing room, structure, or other area and the proposed modification made to scale;

(C) comply with the Texas Accessibility Standards promulgated by the Texas Department of Licensing and Regulation unless:

(i) the DSA determines that it is not structurally feasible to do so and the DSA documents, in writing, the basis for its determination; or

(ii) the individual or LAR requests, in writing, that the specifications not be in compliance with the Texas Accessibility Standards; and

(D) are approved, in writing, by each member of the service planning team by completing the Specifications for Adaptive Aids or Minor Home Modifications form as described in the *CLASS Provider Manual.*

(b) The DSA must obtain an invoice from the person who develops the specifications, substantiating the cost of the specifications.

§45.615. Bid Requirements for a Minor Home Modification.

(a) As required by §45.613(d)(2)(A) of this division (relating to Requirements For Authorization to Purchase a Minor Home modification), for a minor home modification costing more than $1,000, a DSA must obtain comparable bids for the minor home modification

from three vendors. Comparable bids describe the minor home modification and any associated installations identified in the specifications required by §45.613(d)(1) of this division.

(b) A bid obtained in accordance with subsection (a) of this section must be based on the specifications and include:

(1) an itemized list of materials and labor necessary to construct the modification;

(2) the cost of each material and labor listed;

(3) the date of the bid;

(4) the name, address, and telephone number of the vendor;

(5) a detailed explanation of the vendor's warranty for the modification, if any; and

(6) a statement that the minor home modification will be made in accordance with all applicable state and local building codes.

(c) A DSA may obtain only one bid or two comparable bids for a minor home modification if the DSA has written justification for obtaining less than three bids because the minor home modification is available from a limited number of vendors.

(d) If a DSA requests to purchase a minor home modification that is not based on the lowest bid, the DSA must have written justification for payment of a higher bid. An example of a justification that supports payment of a higher bid is that the higher bid is based on the inclusion of a longer warranty for the minor home modification.

(e) The person who developed the specifications required by §45.613(d)(1) of this division may be one of the bidders required by this section.

(f) A DSA may not disclose information regarding a submitted bid to any other vendor who has submitted a bid or to a vendor who may submit a bid.

§45.616. Inspection of a Minor Home Modification.

(a) A DSA must conduct an in-person inspection of the minor home modification to determine if:

(1) the minor home modification has been completed;

(2) the minor home modification has been made in accordance with the specifications required by §45.613(d)(1) of this chapter (relating to Requirements For Authorization to Purchase a Minor Home Modification); and

(3) the quality of workmanship of the minor home modification is adequate.

(b) The inspection required by subsection (a) of this section may be performed by the person who developed the specifications unless that person is affiliated with the vendor who completed the minor home modification.

(c) The DSA must obtain an invoice from the person who conducted the inspection, substantiating the cost of the inspection.

(d) If, based on the inspection, the DSA determines that the minor home modification meets the conditions listed in subsection (a) of this section, the DSA must send a completed Documentation of Completion of Purchase form as described in the *CLASS Provider Manual* to the individual's CMA within seven business days after completion of the inspection.

(e) If, based on the inspection, the DSA determines that the minor home modification does not meet the conditions listed in subsection (a) of this section, the DSA must ensure that the vendor meets the conditions within 30 calendar days after the DSA's determination.

(f) A DSA may not submit a claim for payment of the minor home modification until the DSA determines that the minor home modification meets the conditions listed in subsection (a) of this section.

§45.617. Time Frames for Completion of Minor Home Modification.

(a) A DSA must ensure that a minor home modification is completed within 60 calendar days after one of the following dates, whichever is later:

(1) the date DADS authorizes the proposed IPC that includes the cost of the minor home modification and inspection as described in §45.613(f) of this division (relating to Requirements For Authorization to Purchase a Minor Home Modification); or

(2) the effective date of the IPC as determined by the service planning team.

(b) If the DSA determines that the minor home modification will not be completed within the time frame required by subsection (a) of this section, the DSA must notify the individual or LAR, in writing, of a new proposed date of completion. The proposed date may not exceed 30 calendar days after the date required by subsection (a) of this section.

§45.618. Repair or Replacement of Minor Home Modification.

(a) The repair or replacement of a minor home modification needed within one year after the date the minor home modification is complete is not purchasable as a minor home modification.

(b) If a minor home modification requires repair or replacement within one year after the date of completion, the DSA must repair or replace the minor home modification at its own expense, except as provided in subsection (c) of this section.

(c) If a minor home modification requires repair or replacement because the minor home modification was intentionally damaged, the repair or replacement must be done at the expense of the individual or LAR.

§45.619. Satisfaction of Minor Home Modification.

(a) A DSA must ensure that a staff person involved in purchasing the minor home modification for the individual:

(1) visits the individual to determine whether the individual and LAR is satisfied with the minor home modification; and

(2) documents the result of that visit on a Documentation of Completion of Purchase form as described in *CLASS Provider Manual*.

(b) If the individual or LAR is not satisfied with the minor home modification, the DSA must process the individual's or LAR's dissatisfaction as a complaint in accordance with §45.808 of this chapter (relating to DSA: Complaint Process).

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004788
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER G. ADDITIONAL CMA REQUIREMENTS

40 TAC §§45.701 - 45.707

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.701. Compliance with Laws, Rules, Regulations, and Requirement for E-mail Subscription.

(a) A CMA must comply with applicable state and federal laws, rules, and regulations including:

(1) this chapter;

(2) Chapter 49 of this title (relating to Contracting for Community Care Services); and

(3) 1 Texas Administrative Code (TAC), §355.505 (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program).

(b) A CMA is not required to be a HCSSA.

(c) A CMA must subscribe to receive e-mail notifications regarding the CLASS Program by entering information at *https://service.govdelivery.com/service/subscribe.html?code=TXHHSC_65.*

§45.702. Protection of Individual and Explanation of Option to Transfer.

(a) A CMA must have and implement written policies and procedures that safeguard an individual against:

(1) infectious and communicable diseases;

(2) conflicts of interest with CMA staff persons;

(3) acts of financial impropriety;

(4) abuse, neglect, and exploitation; and

(5) deliberate damage of personal possessions.

(b) At the time an individual is enrolled in the CLASS Program, and at least annually thereafter, a case manager must explain to an individual, orally and in writing, the mandatory participation requirements of an individual as described in §45.302 of this chapter (relating to Mandatory Participation Requirements of an Individual).

(c) After an individual is enrolled in the CLASS Program, a CMA must, at least annually:

(1) provide an oral explanation to the individual or LAR that the individual may transfer to a different CMA or DSA;

(2) give the individual or LAR a written list of CMAs and DSAs serving the catchment area in which the individual resides;

(3) have the individual or LAR select a CMA and DSA by completing a Selection Determination form as described in the *CLASS Provider Manual;* and

(4) coordinate the individual's transfer in accordance with §45.401 of this chapter (relating to Coordination of Transfers), if the individual or LAR selects a different DSA or CMA on the Selection Determination form.

§45.703. Qualifications of CMA Staff Persons.

(a) A CMA must have a full-time or part-time program director who:

(1) manages and oversees the CMA's operations, including the provision of case management services to individuals enrolled with the CMA;

(2) is at least 18 years of age;

(3) has:

(A) a bachelor's degree in a health and human services field and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; and

(4) is an employee of the CMA.

(b) A CMA must ensure that a case manager working for the CMA:

(1) has:

(A) a bachelor's degree in a health and human services field, and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities;

(2) is an employee of the CMA;

(3) is not employed by or contracting with a DSA to provide a direct service to an individual served by the CMA; and

(4) is not a relative of the individual to whom the case manager is providing case management.

(c) A CMA must ensure that its staff persons:

(1) have not been convicted of an offense listed under §250.006 of the Texas Health and Safety Code; and

(2) are not listed as unemployable in either the Employee Misconduct Registry or the Nurse Aid Registry maintained by DADS.

§45.704. Training of CMA Staff Persons.

A CMA must ensure that a CMA staff person:

(1) completes DADS computer-based CLASS Program Basic Training available at *www.dads.state.tx.us* within 60 calendar days after job duties are assumed; and

(2) completes, annually thereafter, the CLASS Individual Rights and Safeguards portion of such training.

§45.705. CMA Service Delivery.

(a) A CMA must ensure that:

(1) a full-time case manager is assigned to provide case management to no more than 50 individuals at one time; and

(2) a part-time case manager is assigned to provide case management to no more than 25 individuals at one time.

(b) In determining the number of individuals to which a case manager will be assigned, the CMA must take into consideration the intensity of an individual's needs, the frequency and duration of contacts the case manager will need to make with the individual, and the amount of travel time involved in making such contacts.

(c) A CMA must have:

(1) an adequate number of case managers available to ensure the provision of case management to an individual at all times;

(2) a written process that ensures that case managers are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to provide case management.

(d) A CMA must ensure that a case manager participates as a member of an individual's service planning team in accordance with this chapter and the *CLASS Provider Manual.*

(e) A CMA must ensure that case management is provided to an individual in accordance with the individual's IPC.

(f) A CMA must submit an IPC to DADS within the time periods required by §45.214 of this chapter (relating to Development of Enrollment IPC) and §45.223(d)(2) of this chapter (relating to Renewal and Revision of an IPC) to ensure that a DSA receives reimbursement for the provision of CLASS Program services.

§45.706. CMA Recordkeeping.

(a) A CMA must maintain a separate record for each individual receiving case management from the CMA. The individual's record must include:

(1) the individual's current IPC;

(2) the individual's current IPP;

(3) the individual's current Mental Retardation/Related Conditions (MR/RC) Assessment; and

(4) any other relevant documentation concerning the individual.

(b) A CMA must ensure that case management activities are documented in the individual's record, including:

(1) the date of contact;

(2) the description of the case management provided;

(3) the progress or lack of progress in achieving goals or outcomes in observable, measurable terms that directly relate to the specific goal or objective addressed;

(4) the person with whom the contact occurred; and

(5) the case manager who provided the contact.

§45.707. CMA: Quality Management and Complaint Process.

(a) A CMA must, at least annually, conduct a survey of all individuals, LARs, and persons actively involved with the individual to determine their satisfaction with the provision of case management.

(b) A CMA must develop a written quality assurance process to evaluate and improve the quality of case management provided by the CMA based, at least in part, on the results of the survey required by subsection (a) of this section.

(c) A CMA must:

(1) have a written process by which complaints about the provision of case management from the individual, LAR, or person actively involved with the individual are submitted to the CMA;

(2) allow complaints to be submitted either orally or in writing;

(3) inform the individual, LAR, or person actively involved with the individual, in writing, on or before the provision of case management to an individual, of the process by which they may file a complaint regarding case management;

(4) obtain and maintain documentation of receipt of the complaint process by the individual or LAR;

(5) date-stamp a written complaint upon receipt;

(6) document receipt of an oral complaint, with the date of receipt and a narrative of the allegations;

(7) investigate each complaint and respond, in writing, to the complainant regarding the results of the investigation in a timely manner; and

(8) maintain a written log of complaints filed by individuals, LARs, or persons actively involved with the individual that contains the following information:

(A) the date the CMA received the complaint;

(B) the name of the person who filed the complaint;

(C) a description of the nature of the complaint;

(D) the name of the staff person who conducted the investigation of the complaint;

(E) the names of persons contacted during the investigation of the complaint;

(F) the outcome of the complaint; and

(G) the date final action was taken by the CMA in response to the 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 August 19, 2010.

TRD-201004789
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER H. ADDITIONAL DSA REQUIREMENTS

40 TAC §§45.801 - 45.808

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.801. Compliance with Laws, Rules, Regulations, and Requirement for E-mail Subscription.

(a) A DSA must comply with applicable state and federal laws, rules, and regulations including:

(1) this chapter;

(2) Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies);

(3) Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services);

(4) Chapter 49 of this title (relating to Contracting for Community Care Services); and

(5) 1 TAC §355.505 (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program).

(b) A DSA must subscribe to receive e-mail notifications regarding the CLASS Program by entering information at *https://service.govdelivery.com/service/subscribe.html?code=TXHHSC_65*.

§45.802. DSA: Protection of Individuals.

A DSA must have and implement written human resource policies and procedures that safeguard an individual against:

(1) infectious and communicable diseases;

(2) conflicts of interest with DSA staff persons;

(3) acts of financial impropriety;

(4) abuse, neglect, and exploitation; and

(5) deliberate damage of personal possessions.

§45.803. Qualifications of DSA Staff Persons.

(a) A DSA must ensure that a staff person meets the requirements of this section.

(b) A service provider for a direct service:

(1) must be at least 18 years of age; and

(2) may not be a relative of the individual to whom the service provider is providing the direct service, except that a service provider of habilitation or respite may be a relative of the individual unless prohibited by subsection (d)(18) of this section.

(c) A DSA must have a full-time or part-time program director who:

(1) manages and oversees the DSA's operations including the provision of CLASS Program services to individuals enrolled with the DSA and has:

(A) a bachelor's degree in a health and human services field and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities;

(2) is at least 18 years of age;

(3) is an employee of the DSA; and

(4) is not a relative of an individual being served by the DSA.

(d) A DSA must ensure that CLASS Program services are provided by qualified service providers in accordance with this subsection.

(1) A qualified service provider of registered nursing and of specialized registered nursing must be a registered nurse.

(2) A qualified service provider of licensed vocational nursing and of specialized licensed vocational nursing must be a person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(3) A qualified service provider of occupational therapy must be an occupational therapist or an occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454.

(4) A qualified service provider of physical therapy must be a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453.

(5) A qualified service provider of speech therapy must be a speech-language pathologist or a licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401.

(6) A qualified service provider of auditory integration/auditory enhancement training must be an audiologist or a licensed assistant in audiology licensed in accordance with Texas Occupations Code, Chapter 401.

(7) A qualified service provider of nutritional services must be a licensed dietician licensed in accordance with Texas Occupations Code, Chapter 701.

(8) A qualified service provider of massage therapy must be a massage therapist licensed in accordance with Texas Occupations Code, Chapter 455.

(9) A qualified service provider of therapeutic horseback riding must be a person certified by the North American Riding for the Handicapped Association as a therapeutic riding instructor.

(10) A qualified service provider of hippotherapy must be:

(A) a person certified by the North American Riding for the Handicapped Association as a therapeutic riding instructor; and

(B) one of the following:

(i) an occupational therapist licensed in accordance with Texas Occupations Code, Chapter 454;

(ii) an occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(iii) a physical therapist licensed in accordance with Texas Occupations Code, Chapter 453; or

(iv) a physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453.

(11) A qualified service provider of recreational therapy must be a person who holds a credential as a certified therapeutic recreation specialist awarded by the National Council of Therapeutic Recreation Certification.

(12) A qualified service provider of music therapy is a person who holds a credential as a board certified music therapist awarded by the Certification Board for Music Therapists.

(13) A qualified service provider of aquatic therapy must:

(A) be one of the following:

(i) a massage therapist licensed in accordance with Texas Occupations Code, Chapter 455; or

(ii) a person who holds a credential as a certified therapeutic recreation specialist awarded by the National Council of Therapeutic Recreation Certification; and

(B) hold a certificate of completion of the "Basic Water Rescue" course from the American Red Cross or be certified by the American Red Cross as a lifeguard.

(14) A qualified service provider of behavioral support must:

(A) be one of the following:

(i) a psychologist licensed in accordance with the Texas Occupations Code, Chapter 501;

(ii) a provisional license holder licensed in accordance with the Texas Occupations Code, Chapter 501;

(iii) a psychological associate licensed in accordance the Texas Occupations Code, Chapter 501;

(iv) a social worker licensed in accordance with the Texas Occupations Code, Chapter 505;

(v) a licensed professional counselor licensed in accordance with the Texas Occupations Code, Chapter 503; or

(vi) a behavior analyst certified by the Behavior Analyst Certification Board, Inc.; and

(B) have received training in behavioral support or have experience in providing behavioral support.

(15) A qualified service provider of prevocational services must have:

(A) a bachelor's degree in a health and human services field, and two years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(B) one of the following:

(i) a high school diploma and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state and four years' work experience in the delivery of services and supports to persons with related conditions or similar disabilities.

(16) A qualified service provider of habilitation, respite, or supported employment may not be:

(A) the parent of the individual to whom the service provider is providing habilitation, respite, or supported employment if the individual is under 18 years of age; or

(B) the spouse of the individual to whom the service provider is providing habilitation, respite, or supported employment.

(17) A qualified service provider of transition assistance services must meet the requirements described in §62.21 of this title (relating to Staff Requirements).

(18) A qualified service provider of support family services or continued family services must meet the requirements described in §45.531(a) of this chapter (relating to Support Family Requirements).

(e) A DSA may not contract with or employ a service provider who is employed by or contracting with a CMA to provide case management to an individual served by the DSA.

(f) A DSA must ensure that a staff person who transports an individual in a vehicle has:

(1) a current Texas driver's license; and

(2) vehicle liability insurance in accordance with state law.

§45.804. Training of DSA Staff Persons.

(a) A DSA must ensure that a DSA staff person who has direct contact with an individual:

(1) completes DADS computer-based CLASS Program Basic Training available at *www.dads.state.tx.us* within 60 calendar days after job duties are assumed; and

(2) completes, annually thereafter, the CLASS Individual Rights and Safeguards portion of such training.

(b) A DSA must ensure that, before providing services to an individual, a service provider of habilitation completes:

(1) two hours of orientation covering the following:

(A) an overview of related conditions; and

(B) an explanation of commonly performed tasks regarding habilitation;

(2) training in cardiopulmonary resuscitation and choking prevention; and

(3) training in the habilitation activities necessary to meet the needs and characteristics of the individual to whom the service provider is assigned, in accordance with the *CLASS Provider Manual*, with training to occur in the individual's home with full participation from the individual, if possible.

(c) The supervisor of a service provider of habilitation must, in accordance with the *CLASS Provider Manual*, evaluate the performance of the service provider, in person, to ensure the needs of the individual are being met. The evaluation must occur annually.

§45.805. DSA: Service Delivery.

(a) A DSA must ensure that:

(1) each CLASS Program service is provided to an individual in accordance with:

(A) the individual's IPC; and

(B) the individual's IPP for that service; and

(2) an adaptive aid and minor home modification also meets the requirements described in Subchapter F of this chapter (relating to Adaptive Aids and Minor Home Modifications).

(b) A DSA must provide habilitation, respite, and an adaptive aid to an individual, even if not included on the individual's IPC, if a registered nurse determines that the service is necessary to prevent the individual's health and safety from being placed in immediate jeopardy. If a DSA provides a service under this subsection, the DSA must submit documentation to the CMA as required by §45.224(a) of this chapter (relating to Revised IPC and IPP for Services Provided to Prevent Immediate Jeopardy).

(c) A DSA must have a written process that ensures that staff persons are or can readily become familiar with individuals to whom they are not ordinarily assigned but to whom they may be required to provide a CLASS Program service.

(d) A DSA must ensure that a DSA staff person participates as a member of an individual's service planning team in accordance with this chapter and the *CLASS Provider Manual.*

(e) A DSA must inform the individual's case manager of changes needed to the individual's IPC or IPPs.

§45.806. Respite.

(a) An individual may receive no more than a total of 30 calendar days of respite per IPC period.

(b) A DSA must ensure that:

(1) in-home respite is provided in the individual's residence or the residence of a relative or friend that is not one of the settings listed in paragraph (2) of this subsection;

(2) out-of-home respite is provided in one of the following:

(A) an adult foster care home licensed by DADS in accordance with Chapter 48, Subchapter K of this title (relating to Minimum Standards for Adult Foster Care);

(B) a nursing facility licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an ICF/MR licensed in accordance with Texas Health and Safety Code, Chapter 252, or certified by DADS;

(D) an approved outdoor camp accredited by the American Camping Association; or

(E) the residence of another person receiving a Medicaid waiver service; and

(3) the setting in which out-of-home respite is provided is:

(A) acceptable to the individual or LAR; and

(B) an accessible, safe, and comfortable environment for the individual and promotes the individual's health and welfare.

(c) If a DSA provides out-of-home respite in a residence described in subsection (b)(2)(E) of this section, the DSA must:

(1) obtain written approval from each person residing in the residence who is receiving a Medicaid waiver service, or LAR, for the provision of respite in the residence; and

(2) ensure that no more than four persons receiving a Medicaid waiver service are residing in the residence.

§45.807. DSA: Systems and Recordkeeping.

(a) A DSA must maintain a separate record for each individual receiving CLASS Program services from the DSA. The individual's record must include:

(1) a copy of the individual's current IPC;

(2) a copy of the individual's current IPP;

(3) a copy of the individual's current Mental Retardation/Related Conditions (MR/RC) Assessment; and

(4) any other relevant documentation concerning the individual.

(b) A DSA must ensure that CLASS Program services are documented in the individual's record, including the progress or lack of progress in achieving goals or outcomes in observable, measurable terms that directly relate to the specific goal or objective addressed.

§45.808. DSA: Complaint Process.

A DSA must:

(1) have a written process by which complaints about the provision of CLASS Program services from the individual, LAR, or person actively involved with the individual are submitted to the DSA;

(2) allow complaints to be submitted either orally or in writing;

(3) on or before the provision of CLASS Program services to an individual, inform the individual, LAR, or person actively involved with the individual, in writing, of the process by which they may file a complaint regarding such services;

(4) obtain and maintain documentation of receipt of the complaint process by the individual or LAR;

(5) date-stamp a written complaint upon receipt;

(6) document receipt of an oral complaint, with the date of receipt and a narrative of the allegations;

(7) investigate each complaint and respond, in writing, to the complainant regarding the results of the investigation in a timely manner; and

(8) maintain a written log of complaints filed by individuals, LARs, or persons actively involved with the individual that contains the following information:

(A) the date the DSA received the complaint;

(B) the name of the person who filed the complaint;

(C) a description of the nature of the complaint;

(D) the name of the staff person who conducted the investigation of the complaint;

(E) the names of persons contacted during the investigation of the complaint;

(F) the outcome of the complaint; and

(G) the date final action was taken by the DSA in response to the 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 August 19, 2010.

TRD-201004790

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER I. FISCAL MONITORING

40 TAC §45.901, §45.902

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§45.901. Administrative Errors.

A recoupment of 12 percent of the paid unit rate is the administrative error exception for services billed. It represents the administrative portion of the rate. Administrative errors are applied to the documentation reviewed and are not extrapolated. Administrative errors include, but are not limited to, the items in paragraph (1) - (2) of this section:

(1) Administrative errors on documentation of services delivered form or the facsimile:

(A) The program provider leaves the month and year of service blank. DADS applies the error to the total number of units documented on the time sheet.

(B) The timekeeper fails to enter a date of signature to certify the total number of hours the attendant, nurse, or therapist worked. DADS applies the error to the total number of units documented on the time sheet.

(C) The timekeeper corrects the date of signature but fails to initial the correction. DADS applies the error to the number of units reimbursed after the earliest signature date.

(D) The timekeeper enters an illegible date of signature or makes an illegible correction to the date. DADS applies the error to the total number of units documented on the time sheet.

(E) The timekeeper enters a date of signature that is before the date of the last day services are delivered. DADS applies the error to the total number of units reimbursed after the signature date.

(F) The timekeeper fails to sign the time sheet. DADS applies the error to the total number of units documented on the time sheet.

(G) The timekeeper uses a signature stamp, but fails to initial the stamped signature. DADS applies the error to the total number of units documented on the time sheet.

(H) The attendant, nurse, therapist, other professional, or timekeeper uses liquid paper/correction fluid to correct an entry in the record of time, signature, or date portion of the time sheet. DADS applies the error to the total number of units documented on the time sheet. If the liquid paper/correction fluid is used only on a daily entry in the record of time, DADS applies the error only to the total number of units reimbursed for that day.

(I) The attendant, nurse, therapist, other professional, or timekeeper makes an illegible entry in or an illegible correction to any portion of the record of time column. DADS applies the error to the total number of units reimbursed for the days in which entries are illegible.

(J) The attendant fails to initial an increase in the daily time or the monthly total of hours for the pay period. DADS applies the error to the number of units reimbursed in excess of the original entry.

(K) The attendant, nurse, therapist, other professional, or other agency representative fails to sign the documentation of services delivered form or facsimile. DADS applies the error to the total number of units documented on the time sheet.

(L) DADS reimburses the program provider for nursing, therapies, psychological, habilitation, out-of-home respite, in-home respite, adaptive aids/vehicle modifications or home modifications but a valid authorization IPC form, pages 1-2 and all pertinent attachments signed by the case manager, are missing for the period reimbursed to the agency. DADS applies the error to the total number of units of nursing, psychological therapies, habilitation, out-of-home respite, in-home respite, and adaptive aids/vehicular modifications claimed and not covered by a valid IPC.

(M) DADS reimburses the program provider for nursing services, and there is no other documentation available that the nurse provided billable nursing services during the visit.

(2) The following items are administrative errors resulting in recoupment of the entire requisition fee.

(A) There is no CLASS Program documentation of completion of services delivered, but there is a receipt for the purchase of adaptive aids/vehicle modifications or the completion of the minor home modification.

(B) Bids were required for the purchase of an adaptive aid/vehicle modification or the completion of a minor home modification and bids were not solicited.

(C) DADS reimburses the program provider for the purchase of medical supplies, but there is no documentation available that price list/price quotes were obtained from three suppliers for the items for which the provider has been reimbursed or the price list/price quotes were obtained more than 12 months before the purchase.

(D) DADS reimburses the program provider for the purchase of adaptive aids, but there is no documentation available that price list/price quotes were obtained from three suppliers for the items for which the program provider has been reimbursed or there is no documentation available that the supplier selected on an annual basis to deliver the adaptive aids had the lowest prices for the main type of adaptive aids the agency has purchased.

(3) Administrative errors for the CMA include, but are not limited to, the following:

(A) The CMA does not provide a completed IPC and an updated IPP within seven days from an interdisciplinary team meeting which results in the DSA providing services that at a later date are

rejected because the CMA failed to submit the IPC for DADS authorization.

(B) The DSA has the case information form on record which indicates that the DSA had requested corrected service updates be made to the individual's IPC prior to providing the service and the CMA provided authorization for that service on the case information form but failed to submit a corrected IPC for DADS authorization.

§45.902. Financial Errors.

A reduction of 100 percent of the paid unit rate is the financial error exception. This exception is applied to the unit(s) of service on the documentation reviewed in the CLASS Program. This exception is not extrapolated. Financial errors include, but are not limited to, the following:

(1) DADS reimburses the program provider for services, but the CLASS Program documentation of services delivered form, or facsimile, is missing for the period for which services are reimbursed. DADS applies the error to the total number of units documented on the time sheet.

(2) The attendant, nurse, therapist, or other professional leaves the entire record of time section blank. DADS applies the error to the total number of units documented on the time sheet.

(3) DADS reimburses the program provider for hours that exceed the authorization given by DADS. DADS applies the error to the total number of units reimbursed in excess of the units authorized by DADS, unless purchased following emergency procedures.

(A) For nursing services, the maximum that may be reimbursed is the number of hours listed under "Nursing Services" in the IPC form.

(B) For habilitation services, the maximum that may be reimbursed for a month is the monthly amount authorized on the CLASS IPC/IPP plus any hours not used due to individual stay while in a hospital or in a rehabilitation hospital.

(4) DADS reimburses the program provider for any waiver service that is not identified on the individual's IPC form and attachments, unless the service was provided as a result of an emergency and is supported by back-up documentation within seven business days from the date the emergency was determined.

(5) DADS reimburses the program provider for hours that exceed the total number of hours recorded on the documentation of services delivered form or facsimile. DADS applies the error to the total number of units reimbursed in excess of the units recorded on the time sheet. If the sum of the daily total of hours does not equal what is written in the monthly total blank, the lesser of the two totals is used to calculate the total number of hours subject to the error.

(6) DADS reimburses the program provider for nursing, physical therapy, occupational therapy, or speech pathology services, but a valid physician's order is missing. DADS applies the error to the total number of units claimed and not covered by a valid order.

(7) DADS reimburses the program provider for a claim for service, other than the initial administrative fee, delivered prior to the eligibility effective date on the IPC form. DADS applies the error to the total number of units reimbursed for such services that were delivered before the effective date on the form.

(8) DADS reimburses the program provider for any hours that consisted of non-billable time and activities as identified in the *CLASS Provider Manual.*

(9) DADS reimburses the program provider for more than four hours of nursing used to decide whether to delegate to the direct services agency attendant. DADS applies the error to the total number of units reimbursed for such services.

(10) DADS reimburses the program provider for more than 10 hours during the individual's IPC year for nursing services being performed by a nurse to prevent service breaks caused by the attendant not being available to provide delegated nursing tasks. DADS applies the error to the total number of units reimbursed in excess of the 10 hour maximum for such services.

(11) DADS reimburses the program provider for an amount in excess of the amount documented on the invoice/receipt for adaptive aids/vehicle modifications or minor home modifications. DADS applies the error to the total number of dollars reimbursed in excess of the amount on the invoice/receipt, plus the appropriate dollar amount of the requisition fee, if applicable.

(12) If there is no invoice/receipt for the purchase of adaptive aids/vehicle modifications or for the completion of minor home modifications for which the provider has been reimbursed, DADS applies the error to the total dollar amount reimbursed for adaptive aids/vehicle modifications or minor home modifications in question, including the requisition fee.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004791
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

SUBCHAPTER C. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES (CLASS) PROGRAM

40 TAC §§48.2101 - 48.2106, 48.2109, 48.2111, 48.2113, 48.2115, 48.2117, 48.2119, 48.2121

(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 Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Subchapter C, Community Living Assistance and Support Services (CLASS) Program, consisting of §§48.2101 - 48.2106, 48.2109, 48.2111, 48.2113, 48.2115, 48.2117, 48.4119, and 48.2121 in Chapter 48, Community Care for Aged and Disabled.

BACKGROUND AND PURPOSE

The purpose of the repeal is to rewrite and reorganize CLASS Program rules in 40 TAC Chapter 45, proposed elsewhere in

this issue of the *Texas Register,* so that the rules are easier for CLASS Providers and the public to use and understand.

SECTION-BY-SECTION SUMMARY

The repeal of Subchapter C deletes the requirements regarding CLASS Program definitions, eligibility criteria, provider claims payment, an individual service plan, cost reports, an individual's right to a fair hearing, and denial, reduction, and suspension of an individual's CLASS Program services.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the changes are clarifications of existing rules.

PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, Deputy Commissioner for DADS, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the subchapter is to reorganize CLASS Program rules in Chapter 45, resulting in clearer, more up-to-date rules.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Patrick Koch at (512) 438-4553 in DADS' Provider Services. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-7R009, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 7R009" in the subject line.

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§48.2101. Introduction.

§48.2102. Community Living Assistance and Support Services (CLASS) Definitions.

§48.2103. Eligibility Criteria.

§48.2104. Client's Right To Appeal.

§48.2105. Provider Claims Payment.

§48.2106. Individual Service Plan.

§48.2109. Cost Report.

§48.2111. Circumstances Requiring Denial of Services with Advance Notice.

§48.2113. Circumstances Requiring Denial of Services and Medicaid Eligibility Without Advance Notice.

§48.2115. Circumstances Which May Result in Denial of Services and Require Advance Notice.

§48.2117. Crisis Intervention Requiring Immediate Suspension or Reduction of Services Without Advance Notice.

§48.2119. Immediate Suspension with Advance Notice.

§48.2121. Sanctions.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004794
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), in Subchapter C, Standards for Licensure, new §90.50, concerning emergency preparedness and response; in Subchapter D, General Requirements for Facility Construction, new §90.74, concerning safety operations; and the repeal of existing §90.74, in Chapter 90, Intermediate

Care Facilities for Persons with Mental Retardation or Related Conditions.

BACKGROUND AND PURPOSE

DADS' Regulatory Services Division proposes new sections and the repeal of an existing section in Chapter 90, relating to Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions (ICFs/MR). DADS initiated these changes in response to the experiences, challenges, and lessons learned during past hurricane seasons. The purpose of the proposal is to ensure the health, safety, and well-being of residents during and after a disaster, such as acts of nature, spills of chemical or hazardous materials, major equipment failure, and acts of terrorism.

Proposed new §90.50, regarding emergency preparedness and response, requires licensed and non-licensed ICFs/MR to develop emergency preparedness and response plans that address the core functions of emergency management and to designate an emergency preparedness coordinator, a facility staff person who has the authority to manage the facility's response to an emergency situation in accordance with the plan.

Proposed new §90.74 adds rules regarding inspection, testing, and maintenance of fire alarm and sprinkler systems and provides requirements for smoking policies.

SECTION-BY-SECTION SUMMARY

Proposed new §90.50 consists of definitions used in this section; administrative procedures regarding emergency preparedness and response; requirements for emergency preparedness and response plans, including eight core functions; staff training procedures; requirements for a fire safety plan; and procedures for reporting fires to DADS.

The proposed repeal of §90.74 deletes the current rules related to disaster planning and fire safety.

Proposed new §90.74 clarifies that inspection, testing, and maintenance requirements for the fire alarm and sprinkler systems must be in accordance with National Fire Protection Association standards; makes smoking-related requirements consistent with other program rules by prohibiting smoking in certain areas, requiring "No Smoking" signs in those areas, and requiring a specific type of ashtray and container into which ashtrays can be emptied in all areas where smoking is permitted; clarifies that the facility must inform parties of smoking policies through the distribution and posting of smoking policies; and reorganizes the remaining rules in the section to more clearly explain current requirements.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections and repeal are in effect, enforcing or administering the new sections and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections and repeal will not have an adverse economic effect on small businesses or micro-businesses, because ICFs/MR are currently required to have and follow a written disaster plan that contains procedures to be allowed in a disaster. No fiscal implications are expected in revising a facility's written disaster plan to comply with the new emergency preparedness and response rules in §90.50. The proposed new requirements are not expected to affect a facility's decision to evacuate or shelter-in-place during an emergency situation; therefore, the proposed new sections and repeal are not expected to increase a facility's costs associated with protecting residents and staff in an emergency situation.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the new sections and repeal are in effect, the public benefit expected as a result of enforcing the new sections and repeal is an increased level of detail for ensuring the safety, health, and well-being of facility residents during and after an emergency situation, including a fire.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the new sections and repeal. The new sections and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kim Lammons at (512) 438-2264 in DADS' Regulatory Services. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-6R043, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 6R043" in the subject line.

SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §90.50

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas

Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with mental retardation or related conditions.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§90.50. Emergency Preparedness and Response.

(a) Definitions. In this section:

(1) "emergency situation" means an impending or actual situation that:

(A) may interfere with normal activities of a facility or its residents;

(B) may cause:

(i) injury or death to a resident or staff member of the facility; or

(ii) damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage or interference; and

(D) does not include a situation that arises from the medical condition of a resident such as cardiac arrest, obstructed airway, or cerebrovascular accident;

(2) "plan" means a facility's emergency preparedness and response plan; and

(3) "receiving facility" means a facility that has agreed to receive the residents of another facility who are evacuated due to an emergency situation.

(b) Administration. A facility must:

(1) develop and implement a written plan as described in subsection (c) of this section;

(2) maintain a current written copy of the plan that is accessible to all staff at all times;

(3) evaluate the plan to determine if information in the plan needs to change:

(A) within 30 days after an emergency situation;

(B) due to remodeling or making an addition to the facility; and

(C) at least annually;

(4) revise the plan within 30 days after information in the plan changes; and

(5) maintain documentation of compliance with this section.

(c) Emergency Preparedness and Response Plan. A facility's plan must:

(1) include a risk assessment of potential internal and external emergency situations, including a fire, failure of heating and cooling systems, a power outage, an explosion, a hurricane, a tornado, a flood, extreme snow and ice conditions for the area, a wildfire, terrorism, or a hazardous materials accident;

(2) include a description of the facility's resident population;

(3) include a description of the services and assistance needed by the residents in an emergency situation;

(4) include a section for each core function of emergency management that complies with subsection (d) of this section and is based on a facility's decision to either shelter-in-place or evacuate during an emergency situation; and

(5) include a fire safety plan that complies with subsection (f) of this section.

(d) Plan Requirements Regarding Eight Core Functions of Emergency Management.

(1) Direction and control. A facility's plan must contain a section for direction and control that:

(A) identifies the emergency preparedness coordinator (EPC), who is the facility staff person with the authority to manage the facility's response to an emergency situation in accordance with the plan;

(B) identifies the alternate EPC, who is the facility staff person with the authority to act as the EPC if the EPC is unable to serve in that capacity; and

(C) documents the name and contact information for the local emergency management coordinator (EMC) for the area in which the facility is located, as identified by the office of the local mayor or county judge.

(2) Warning. A facility's plan must contain a section for warning that:

(A) describes how the EPC will be notified of an emergency situation;

(B) identifies who the EPC will notify of an emergency situation and when the notification will occur, including during off hours, weekends, and holidays; and

(C) ensures monitoring of local news and weather reports.

(3) Communication. A facility's plan must contain a section for communication that:

(A) identifies the facility's primary mode of communication and alternate mode of communication to be used in an emergency situation;

(B) includes procedures for maintaining a current list of telephone numbers for residents' responsible parties;

(C) includes procedures for maintaining a current list of telephone numbers for potential places to which to evacuate, such as hotels, motels, and other facilities licensed under this chapter or certified to participate in the Medicaid ICF/MR Program;

(D) includes procedures for maintaining a current list of telephone numbers for the facility's staff, by residence or unit, that identifies the facility's EPC and administrative staff;

(E) identifies the location of the lists described in subparagraphs (B) - (D) of this paragraph, which must be a place where facility staff can obtain the information quickly;

(F) includes procedures to notify:

(i) facility staff about an emergency situation;

(ii) a receiving facility about an impending or actual evacuation of residents; and

(iii) residents, legally authorized representatives, and other persons about an impending or actual evacuation;

(G) provides a method for persons to obtain resident information during an emergency situation; and

(H) includes procedures for the facility to maintain communication with:

(i) facility staff involved in an emergency situation;

(ii) a receiving facility, if applicable; and

(iii) the driver of a vehicle transporting residents, medications, records, food, water, equipment, or supplies during an evacuation.

(4) Sheltering Arrangements. A facility's plan must contain a section for sheltering arrangements that:

(A) includes procedures for implementing a decision to shelter-in-place that include:

(i) having access to medications, records, food, water, equipment and supplies; and

(ii) sheltering facility staff involved in responding to an emergency situation, and their family members, if necessary;

(B) includes procedures for notifying the DADS regional office for the area in which the facility is located by telephone immediately after a decision to shelter-in-place has been made; and

(C) includes procedures for accommodating evacuated residents, if the facility serves as a receiving facility for a facility that has evacuated.

(5) Evacuation. A facility's plan must contain a section for evacuation that:

(A) requires posting building evacuation routes prominently throughout the facility, except in small one-story buildings where all exits are obvious;

(B) includes procedures for implementing a decision to evacuate residents to a receiving facility in an emergency situation, if applicable;

(C) identifies evacuation destinations and routes and includes a map that shows the destinations and routes;

(D) includes a current copy of the agreement with a receiving facility, if the evacuation destinations identified in accordance with subparagraph (C) of this paragraph include a receiving facility that is not owned by the same entity as the facility;

(E) includes procedures for:

(i) ensuring that facility staff accompany evacuating residents;

(ii) ensuring that residents and facility staff present in the building have been evacuated;

(iii) accounting for residents after they have been evacuated;

(iv) accounting for residents absent from the facility at the time of the evacuation;

(v) releasing resident information in an emergency situation to promote continuity of a resident's care;

(vi) contacting the local EMC to find out if it is safe to return to the geographical area; and

(vii) determining if it is safe to re-enter and occupy the building after an evacuation;

(F) includes procedures for notifying the local EMC regarding an evacuation of the facility;

(G) includes procedures for notifying the DADS regional office for the area in which the facility is located by telephone immediately after a decision to evacuate is made; and

(H) includes procedures for notifying DADS regional office for the area in which the facility is located by telephone that residents have returned to the facility, within 48 hours of their return to the facility after an evacuation.

(6) Transportation. A facility's plan must contain a section for transportation that:

(A) provides for a sufficient number of facility-owned vehicles to evacuate all residents and for alternate transportation arrangements if the facility-owned vehicles are not available;

(B) includes procedures for safely transporting residents, facility staff involved in an evacuation and, if necessary, their family members, and the facility's and residents' pets during an evacuation; and

(C) includes procedures to safely transport and have timely access to oxygen, medications, records, food, water, equipment, and supplies needed during an evacuation.

(7) Health and Medical Needs. A facility's plan must contain a section for health and medical needs that:

(A) identifies all of the facility's residents with special medical needs; and

(B) ensures that the needs of those residents are met during an emergency situation.

(8) Resource Management. A facility's plan must contain a section for resource management that:

(A) includes procedures for maintaining accurate and detailed checklists of medications, records, food, water, equipment and supplies needed during an emergency situation;

(B) identifies facility staff who are assigned to locate and ensure the transportation of the items on the list described in subparagraph (A) of this paragraph during an emergency situation; and

(C) includes procedures to ensure that medications are secure and stored at the proper temperatures during an emergency situation.

(e) Training. A facility must:

(1) inform a facility staff member of the staff member's responsibilities under the plan within five working days after assuming job duties;

(2) re-train a facility staff member at least annually on the staff member's responsibilities under the plan and when the staff member's responsibilities under the plan change; and

(3) conduct unannounced, annual drills with facility staff for severe weather and other emergency situations identified by the facility as likely to occur, based on the results of the risk assessment required by subsection (c)(1) of this section.

(f) Fire Safety Plan. A facility's fire safety plan must:

(1) for a large facility, include the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 18 (for new healthcare occupancies) and Chapter 19 (for existing healthcare occupancies) concerning:

(A) use of alarms;

(B) transmission of alarm to fire department;

(C) response to alarms;

(D) isolation of fire;

(E) evacuation of immediate area;

(F) evacuation of smoke compartment;

(G) preparation of floors and building for evacuation; and

(H) extinguishment of fire;

(2) for a small facility, include the provisions described in the Operating Features section of the NFPA 101 Life Safety Code, 2000 Edition, Chapter 32 (for new residential board and care occupancies) and Chapter 33 (for existing residential board and care occupancies) concerning:

(A) use of alarms;

(B) staff response in the event of a fire;

(C) fire protection procedures for a resident;

(D) actions to take if the primary escape route is blocked; and

(E) specification of an assembly point after a resident evacuates from the facility; and

(3) include procedures for:

(A) rehearsing the fire safety plan at least once per quarter on each work shift;

(B) evacuating residents during at least one fire drill each year on each work shift;

(C) completing the form titled "DADS Fire Drill Report" for each fire drill conducted; and

(D) providing residents and facility staff with experience in egressing through all exits and means of escape.

(g) Reporting Fires. A facility must report a fire at the facility to DADS as follows:

(1) by calling 1-800-458-9858 within 24 hours after the fire; and

(2) by submitting a completed DADS form titled "Fire Report for Long Term Care Facilities" within 15 days after the fire.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004795
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER D. GENERAL REQUIREMENTS FOR FACILITY CONSTRUCTION

40 TAC §90.74

(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 Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with mental retardation or related conditions.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§90.74. Safety Operations.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004796
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

40 TAC §90.74

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with mental retardation or related conditions.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§90.74. Safety Operations.

(a) The facility must have a program to inspect, test, and maintain the fire alarm system and must execute the program at least once every three months for large facilities and at least once every six months for small facilities.

(1) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(2) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign, and date an inspection form similar to the inspection and testing form in National Fire Protection Association (NFPA) 72 for a service provided under the contract.

(3) The facility must ensure that fire alarm system components that require visual inspection are visually inspected in accordance with NFPA 72.

(4) The facility must ensure that fire alarm system components that require testing are tested in accordance with NFPA 72.

(5) The facility must ensure that fire alarm system components that require maintenance are maintained in accordance with NFPA 72.

(6) The facility must ensure that smoke dampers are inspected and tested in accordance with NFPA 101, 2000 Edition.

(7) The facility must maintain onsite documentation of compliance with this subsection.

(b) The facility must have a program to inspect, test, and maintain the sprinkler system and must execute the program at least once every three months for large facilities and at least once every six months for small facilities.

(1) The facility must contract with a company that is registered by the State Fire Marshal's Office to execute the program.

(2) The person who performs a service under the contract must be licensed by the State Fire Marshal's Office to perform the service and must complete, sign, and date an inspection form similar to the inspection and testing form in NFPA 25 for a service provided under the contract.

(3) The facility must ensure that sprinkler system components that require visual inspection are visually inspected in accordance with NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.

(4) The facility must ensure that sprinkler system components that require testing are tested in accordance with the NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.

(5) The facility must ensure that sprinkler system components that require maintenance are maintained in accordance with NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.

(6) The facility must ensure that individual sprinkler heads are inspected and maintained in accordance with NFPA 13, NFPA 13D, or NFPA 13R and in accordance with NFPA 25.

(7) The facility must maintain onsite documentation of compliance with this subsection.

(c) The facility must formulate, adopt, and enforce smoking policies.

(1) The facility's policies must comply with all applicable codes, regulations, and standards, including local ordinances.

(2) The facility must inform residents, staff, visitors, and other affected parties of smoking policies through the distribution and posting of policies.

(3) The facility must prohibit smoking in any room, ward, or compartment where flammable liquids, combustible gas, or oxygen is used or stored and in any other hazardous location. The facility must post a "No Smoking" sign in these areas.

(4) The facility must provide ashtrays of noncombustible material and safe design in all areas where smoking is permitted.

(5) The facility must provide a metal container with a self-closing cover device into which ashtrays can be emptied in all areas where smoking is permitted.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004797
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

SUBCHAPTER G. ABUSE, NEGLECT, AND EXPLOITATION; COMPLAINT AND INCIDENT REPORTS AND INVESTIGATIONS

40 TAC §90.211, §90.216

(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 Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §90.211, concerning definitions, and §90.216, concerning general provisions, in Chapter 90, Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions.

BACKGROUND AND PURPOSE

The purpose of the repeal is to eliminate rules that became unnecessary as a result of the transfer of responsibility for investigation of abuse, neglect, and exploitation in licensed intermediate care facilities for persons with mental retardation or related conditions, which was effective June 1, 2010. Relevant definitions and general provisions are included in the rules of the Department of Family and Protective Services (DFPS), which now conducts the investigations.

SECTION-BY-SECTION SUMMARY

The repeal of §90.211 deletes definitions related to investigation of abuse, neglect, and exploitation in licensed ICFs/MR.

The repeal of §90.216 deletes general provisions related to investigation of abuse, neglect, and exploitation in licensed ICFs/MR, including confidentiality, immunity, privileged communications, and maintenance of a central registry of reports.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will not have an adverse economic effect on small businesses or micro-businesses, because facilities will now refer to definitions used by DFPS, which will not present additional costs to facilities.

PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the repeal is in effect, the public benefit expected as a result of enforcing the repeal is to eliminate unnecessary rules from DADS' rule base.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the repeal. The repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal 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 Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kim Lammons at (512) 438-2264 in DADS' Regulatory Services. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-9R028, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R028" in the subject line.

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate intermediate care facilities for persons with mental retardation or related conditions.

The repeal implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§252.001 - 252.208.

§90.211. Definitions.

§90.216. General Provisions.

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

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004798
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: October 3, 2010
For further information, please call: (512) 438-4162

♦ ♦ ♦

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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.81

The Texas Ethics Commission withdraws the proposed new §12.81 which appeared in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5637).

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004799
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: August 19, 2010
For further information, please call: (512) 463-5800

♦ ♦ ♦

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 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 12. LOANS AND INVESTMENTS

SUBCHAPTER B. LOANS

7 TAC §12.33

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), adopts an amendment to §12.33, concerning debt cancellation contracts and debt suspension agreements, without changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5639). The amended rule is adopted to correct references to statutes that have been renumbered since the rule was adopted.

The amendment to §12.33 arises from the renumbering of sections of the Business and Commerce Code. Effective April 1, 2009, the Legislature repealed the Uniform Electronic Transactions Act (UETA), Business and Commerce Code Chapter 43, and recodified it as Business and Commerce Code Chapter 322. Section 12.33 refers to the UETA with its old statutory citation. The amendment updates the reference to the new chapter of the Business and Commerce Code.

The Department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §31.003, which authorizes the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Finance Code Chapters 11, 12, and 13.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004854
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

CHAPTER 15. CORPORATE ACTIVITIES

SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), adopts the repeal of §15.8, concerning corporate filings before January 1, 2010, and adopts amendments to §15.9, concerning corporate filings after January 1, 2010, without changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5640). The repealed and amended rules are adopted to eliminate transitional language no longer needed.

The repeal of §15.8 arises from the Legislature's 2003 enactment of the Texas Business Organizations Code (TBOC). Finance Code §32.008(a) makes the TBOC generally applicable to banking associations. The Commission adopted §15.8 pursuant to Finance Code §32.008(d), which authorized the Commission to establish rules permitting banking associations formed before the effective date of the TBOC, January 1, 2006, to choose to be governed by the former law until January 1, 2010. Finance Code §32.008(d) expired on January 1, 2010. The purpose of §15.8 was to clarify that until January 1, 2010, banking associations formed before January 1, 2006, were permitted to file corporate documents pursuant to the former law. Because January 1, 2010 has passed and the TBOC is therefore applicable to all banking associations, regardless of when formed, the transitional instructions in this section are no longer needed.

The amendments to §15.9 delete transition language related to that in §15.8, because, as described previously, the transition period has passed, and therefore the language is no longer needed.

The Department received no comments regarding the proposed amendments and repeal.

7 TAC §15.8

The repeal is adopted under Finance Code §31.003, which authorizes the Commission to adopt rules to accomplish the purposes of the banking statutes, and under Finance Code §32.008, which authorizes the Commission to adopt rules to limit or refine the applicability of general corporate laws to a state bank or to alter or supplement the procedures and requirements of those laws applicable to actions taken under Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004855

A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

7 TAC §15.9

The amendments are adopted under Finance Code §31.003, which authorizes the Commission to adopt rules to accomplish the purposes of the banking statutes, and under Finance Code §32.008, which authorizes the Commission to adopt rules to limit or refine the applicability of general corporate laws to a state bank or to alter or supplement the procedures and requirements of those laws applicable to actions taken under Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004856
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

CHAPTER 21. TRUST COMPANY CORPORATE ACTIVITIES
SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), adopts the repeal of §21.8, concerning corporate filings before January 1, 2010, and adopts amendments to §21.9, concerning corporate filings after January 1, 2010, without changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5641). The repealed and amended rules are adopted to eliminate transitional language no longer needed.

The repeal of §21.8 arises from the Legislature's 2003 enactment of the Texas Business Organizations Code (TBOC). Finance Code §182.009(a) makes the TBOC generally applicable to trust associations. The Commission adopted §21.8 pursuant to Finance Code §182.009(d), which authorized the Commission to establish rules permitting trust associations formed before the effective date of the TBOC, January 1, 2006, to choose to be governed by the former law until January 1, 2010. Finance Code §182.009(d) expired on January 1, 2010. The purpose of §21.8 was to clarify that until January 1, 2010, trust associations formed before January 1, 2006, were permitted to file corporate documents pursuant to the former law. Because January 1, 2010 has passed and the TBOC is therefore applicable to all trust associations, regardless of when formed, the transitional instructions in this section are no longer needed.

The amendments to §21.9 delete transition language related to that in §21.8, because, as described previously, the transition period has passed, and therefore the language is no longer needed.

The Department received no comments regarding the proposed amendments and repeal.

7 TAC §21.8

The repeal is adopted under Finance Code, §181.003, which authorizes the Commission to adopt rules to accomplish the purposes of Subtitle F.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004857
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

7 TAC §21.9

The amendments are adopted under Finance Code, §181.003, which authorizes the Commission to adopt rules to accomplish the purposes of Subtitle F.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004858
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

CHAPTER 35. CHECK VERIFICATION ENTITIES

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), adopts amendments to §§35.1, 35.13, 35.31, 35.52 - 35.57, 35.59, and 35.72, concerning check verification entities, without changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5643). The amended rules are adopted to correct references to statutes that have been renumbered since the rules were adopted.

All the adopted amendments to Chapter 35 arise from the renumbering of sections of the Business and Commerce Code. Effective April 1, 2009, the Legislature repealed Business and Commerce Code §35.595, and recodified it as Business and Commerce Code §523.052. Chapter 35 contains 25 references to

the old statutory sections. The adopted amendments update citations to refer to the new sections of the Business and Commerce Code.

The Department received no comments regarding the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §35.1

The amendments are adopted under Business and Commerce Code, §523.052(g), which provides that the Finance Commission may adopt rules to implement §523.052; Finance Code, §11.309, which requires the Commission to adopt rules relating to check verification; and Finance Code, §31.003, which allows the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Finance Code, Chapters 11, 12, and 13.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004859
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

SUBCHAPTER B. REGISTRATION OF CHECK VERIFICATION ENTITIES

7 TAC §35.13

The amendments are adopted under Business and Commerce Code, §523.052(g), which provides that the Finance Commission may adopt rules to implement §523.052; Finance Code, §11.309, which requires the Commission to adopt rules relating to check verification; and Finance Code, §31.003, which allows the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Finance Code, Chapters 11, 12, and 13.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004860
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

SUBCHAPTER C. RESPONSIBILITIES OF THE BANKING COMMISSIONER

7 TAC §35.31

The amendments are adopted under Business and Commerce Code, §523.052(g), which provides that the Finance Commission may adopt rules to implement §523.052; Finance Code, §11.309, which requires the Commission to adopt rules relating to check verification; and Finance Code, §31.003, which allows the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Finance Code, Chapters 11, 12, and 13.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004861
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

SUBCHAPTER D. PROCEDURE FOLLOWING A CUSTOMER REPORT OF AN OFFENSE UNDER SECTION 32.51, PENAL CODE

7 TAC §§35.52 - 35.57, 35.59

The amendments are adopted under Business and Commerce Code, §523.052(g), which provides that the Finance Commission may adopt rules to implement §523.052; Finance Code, §11.309, which requires the Commission to adopt rules relating to check verification; and Finance Code, §31.003, which allows the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Finance Code, Chapters 11, 12, and 13.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004862
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

SUBCHAPTER E. PROCEDURES WHEN INCORRECT INFORMATION IS REPORTED TO THE CHECK VERIFICATION ENTITY

7 TAC §35.72

The amendments are adopted under Business and Commerce Code, §523.052(g), which provides that the Finance Commission may adopt rules to implement §523.052; Finance Code, §11.309, which requires the Commission to adopt rules relating to check verification; and Finance Code, §31.003, which allows

the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Finance Code, Chapters 11, 12, and 13.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004863
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 475-1300

♦ ♦ ♦

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES
SUBCHAPTER G. EXAMINATIONS

7 TAC §84.708

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). The commission adopts the amendments without changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5645).

The commission received one written comment on the proposal from Nissan North America, Inc. The commenter wished to clarify that "this is simply an amendment for language that was mistakenly omitted when initially submitted to the Texas Register." The agency provided an email response, stating: "Your comment is correct in part as the proposed language had been mistakenly omitted during a submission to the *Texas Register;* however, it was not during the original submission but rather when the rules were subsequently amended." Additionally, the agency's response included a quotation of the purpose paragraph from the published preamble in order to provide further clarification.

The purpose of the amendments to 7 TAC §84.708 is to return inadvertently omitted language to the required account record information outlined in §84.708(e)(3)(A). When this rule was last amended by the commission in December 2009 (effective January 7, 2010), the commission intended on readopting the provisions in question without change, as included in the proposal published in September 2009. It was recently discovered that two lists concerning payment history information (subclauses (I) and (II) under §84.708(e)(3)(A)(iv)) and collection contact history (subclauses (I) - (IV) under §84.708(e)(3)(A)(vi)) were mistakenly omitted when submitting the full text of the rule as amended to the *Texas Register.* Thus, these amendments merely return this language, as had been previously published and adopted by the commission when the rule was first enacted in November 2008.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004868
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 90, §§90.104, 90.201 - 90.204, 90.301 - 90.304, 90.401 - 90.404, 90.501 - 90.503, 90.601 - 90.604, 90.701 - 90.703, and 90.706, concerning Chapter 342, Plain Language Contract Provisions. The proposed changes affect rules contained in Subchapter A, concerning General Provisions; Subchapter B, concerning Secured Consumer Installment Loans (Chapter 342, Subchapter E); Subchapter C, concerning Signature Loans (Chapter 342, Subchapter F); Subchapter D, concerning Second Lien Home Equity Loans (Chapter 342, Subchapter G); Subchapter E, concerning Second Lien Purchase Money Loans (Chapter 342, Subchapter G); Subchapter F, concerning Second Lien Home Improvement Contracts (Chapter 342, Subchapter G); and Subchapter G, concerning Spanish Disclosures. The commission adopts the amendments without changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5646).

The commission received no written comments on the notice of intention to review or on the proposal.

The purpose of the amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to implement technical corrections resulting from the commission's review of Chapter 90 under Texas Government Code, §2001.039.

Some of the corrections, including changes to three figures, relate to the removal of references to the Texas Residential Construction Commission (TRCC). The TRCC was abolished by the Sunset Commission and continued in existence until September 1, 2010, to conclude its business. Revisions related to the deletion of the TRCC disclosures are contained in §90.602(1)(N), (3)(V), and (5)(HH); §90.603(b)(14), (d)(22), and (f)(34); and the figures contained in §90.604(a)(12), (a)(14), and (a)(16). Additionally, appropriate renumbering or relettering of the surrounding provisions is also included in the adoption.

The remaining corrections relate to improvements in consistency, grammar, punctuation, and formatting. Additional

changes provide clarification and updated legal citations. With regard to consistency, the term "licensee" will be used throughout the rules in connection with compliance issues. The term "lender" will be used when necessary to maintain parallel language with the title of a model clause or frequent use within a model clause. Any Chapter 90 rule not included in this adoption will be maintained in its current form.

The rules contained in Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. For those licensees utilizing the model contracts, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until February 1, 2012, to deplete supplies of existing forms during a transition period after the effective date of the rules.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §90.104

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004869
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER B. SECURED CONSUMER INSTALLMENT LOANS (SUBCHAPTER E)

7 TAC §§90.201 - 90.204

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004870
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER C. SIGNATURE LOANS (SUBCHAPTER F)

7 TAC §§90.301 - 90.304

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004871
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER D. SECOND LIEN HOME EQUITY LOANS (SUBCHAPTER G)

7 TAC §§90.401 - 90.404

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004872
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER E. SECOND LIEN PURCHASE MONEY LOANS (SUBCHAPTER G)

7 TAC §§90.501 - 90.503

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004873
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER F. SECOND LIEN HOME IMPROVEMENT CONTRACTS (SUBCHAPTER G)

7 TAC §§90.601 - 90.604

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004874
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER G. SPANISH DISCLOSURES

7 TAC §§90.701 - 90.703, 90.706

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004875
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.19

The Texas Board of Chiropractic Examiners (Board) adopts new §71.19, concerning Criminal History Evaluation Letters, without changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6014) and will not be republished.

The new rule is adopted to comply with the requirements of House Bill 963, 81st Legislature, Regular Session, and will allow persons who are enrolled in chiropractic school or who are considering enrolling in a chiropractic school to request a letter from the Board concerning the possible effect of the person's criminal history on the person's ability to obtain a license after graduation.

No comments were received by the Board on the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, relating to rules, and pursuant to House Bill 963, 81st Legislature, Regular Session. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004891
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: September 12, 2010
Proposal publication date: July 9, 2010
For further information, please call: (512) 305-6716

♦ ♦ ♦

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.7

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.7, concerning Required Fees and Charges, without changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6015) and will not be republished.

The amendment sets a fee of $150 for the request of a criminal history evaluation letter, as authorized by House Bill 963, 81st Legislature, Regular Session. Persons who are enrolled in chiropractic school or who are considering enrolling in a chiropractic school can request a letter from the Board under §71.19 concerning the possible effect of the person's criminal history on the person's ability to obtain a license after graduation.

No comments were received by the Board on the proposed amendment.

The amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.153, relating to fees. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.153 grants the Board authority to establish by rule reasonable and necessary fees to cover the cost of regulating the practice of chiropractic. The amendment is also adopted under House Bill 963, 81st Legislature, Regular Session, which authorizes the Board to set a fee for the criminal history evaluation letters.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 23, 2010.

TRD-201004892
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: September 12, 2010
Proposal publication date: July 9, 2010
For further information, please call: (512) 305-6716

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT

28 TAC §§1.501 - 1.503, 1.507

The Commissioner of Insurance (Commissioner) adopts amendments to §§1.501 - 1.503 and 1.507, concerning fingerprint requirements for certain individuals related to the operation of discount health care programs pursuant to Chapters 7001 and 7002 of the Insurance Code. The amendments are adopted without changes to the proposed text published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4579).

REASONED JUSTIFICATION. House Bill (HB) 4341, 81st Legislature, Regular Session, transferred the regulation of discount health care programs from the Texas Department of Licensing and Regulation (TDLR) to the Texas Department of Insurance (Department) effective April 1, 2010. HB 4341 (i) amends the Insurance Code to add new Title 21, Chapter 7001, relating to the regulation of discount health care programs by the Department; (ii) amends the Insurance Code to add a new Chapter 562, relating to unfair methods of competition and unfair or deceptive acts or practices regarding discount health care programs, effective September 1, 2009, with the exception of Subchapter E, relating to the enforcement by the Attorney General, which took effect April, 1, 2010; and (iii) repeals Chapter 76 of the Health and Safety Code, relating to the regulation of discount health care programs by the TDLR, effective April 1, 2010.

Senate Bill (SB) 2423, 81st Legislature, Regular Session, effective September 1, 2009, amends the Insurance Code to add new Chapter 7002, relating to supplemental provisions regarding discount health care operators. Under §7002.001, for purposes of the Insurance Code Chapter 562 (relating to Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Regarding Discount Health Care Programs) and Chapter 7001 (relating to Registration of Discount Health Care Program Operators), consideration provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. Therefore, for example, such discount health care programs or program operators that do not charge fees for their programs, but that receive consideration in the form of access to patient information that is then transferred or sold, or that receive drug manufacturer rebates, that are then transferred or sold, are subject to the same regulation as those programs regulated under Chapter 7001 that do charge fees for their programs.

This adoption order is a complement to three other Department adoption orders to implement new Insurance Code Chapters 562, 7001 and 7002. The other three adoption orders are (i) new §19.1601 and §19.1602, relating to discount health care program registration and renewal requirements, and amendments to §19.802, relating to amount of fees; (ii) amendments to §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122, relating to insurance advertising, and new §§21.151 - 21.154, relating to discount health care program operator advertising; and (iii) new §§24.1 - 24.4, relating to discount health care program principles of regulation. Notice of these three adoption orders is also published in this issue of the *Texas Register.*

On September 14, 2009, the Department posted on its website informal drafts of these four rules for public comment. The Department held a stakeholder meeting on September 18, 2009, to discuss the informal draft rules prior to the informal comment period ending on September 24, 2009. The Department received comments on all four draft rules, including fingerprint requirements for certain individuals involved in operating discount health care programs, which the Department considered in preparing the proposal. The proposal was published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4579). The proposal comment period ended on July 5, 2010.

Effective Dates. Pursuant to SECTION 5(b) of HB 4341, a discount health care program operator that was registered with the TDLR on January 1, 2010, as required by Chapter 76 of the

Health and Safety Code, must file an application for renewal of registration with the Department under the Insurance Code Chapter 7001 not later than April 1, 2010. In order for any discount health care program regulated pursuant to the Insurance Code Chapters 7001 and 7002 to lawfully operate in Texas on or after April 1, 2010, the discount health care program operator must be registered with the Department.

Implementation of the Insurance Code Chapters 562, 7001 and 7002 and the Occupations Code Chapter 53. The amendments to §§1.501 - 1.503 and 1.507 are necessary to implement the Insurance Code Chapters 562, 7001 and 7002 and the Occupations Code Chapter 53. The Occupations Code Chapter 53 generally provides the procedures a licensing authority must implement when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration. The Occupations Code §53.021 authorizes a licensing authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the ground that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. Under HB 4341, the Commissioner is required to adopt rules as necessary to implement the Insurance Code Chapter 7001, which regulates the registration of discount health care program operators. Under SB 2423, discount health care programs or program operators that do not charge fees or other consideration for their programs as provided under Chapter 7002 of the Insurance Code, but that receive consideration in the form of access to patient information, are subject to the same regulation as those programs regulated under Chapter 7001 that do charge fees for their programs, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates.

Statutory Authority for Fingerprinting and Check of Criminal History Information. Only those individuals responsible for or involved with the operation of the discount health care programs regulated pursuant to Chapter 7001 of the Insurance Code whose biographical information is required to be filed with the Department and for whom the Commissioner may conduct a criminal background check pursuant to the Insurance Code §7001.008 will be subject to the Department's existing fingerprinting and criminal history review process.

The following statutes provide the authority for this requirement. The Insurance Code §801.056(b) provides that the Department may deny an application for authorization, such as a registration, if the applicant or a corporate officer of the applicant fails to provide a complete set of fingerprints on request by the Department. Further, the Occupations Code §53.021 authorizes the Department to disqualify a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. Additionally, the Government Code §411.087 and §411.106 authorize the Department to access an applicant's criminal history information from both the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI). Collectively, these statutes authorize the Department to determine an individual's fitness for registration or renewal of registration as a discount health care program operator, or a person's fitness to have the ability to control, direct, or manage the affairs of a registered discount health care program operator under the Insurance Code Chapter 7001 when that person has committed a criminal offense or has engaged in fraudulent or dishonest activity. The fitness of an applicant for registration as a discount health care program operator under Chapter 7001 and the fitness of those individuals specified in §7001.008, including the individuals responsible for conducting the program operator's affairs, governing board members, executive committee members, officers of the program operator, contracted management company personnel, and any person owning or having the right to acquire 10 percent or more interest of the voting securities of the program operator, are especially important because of the unique services offered and performed by discount health care programs. A discount health care program operator, in exchange for fees, dues, charges, or other consideration with its members, operates a discount health care program and contracts with providers, provider networks, or other discount health care program operators to offer access to health care services at a discount. As such, discount health care program operators determine the charge for the program services provided to its Texas members. The Insurance Code §7002.001, as enacted by SB 2423, provides that for the purpose of the Insurance Code Chapter 562 (relating to Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Regarding Discount Health Care Programs) and Chapter 7001 (relating to Registration of Discount Health Care Program Operators), consideration provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. The nature of the interaction between discount health care program operators, Texas consumers, and the general public requires trust and reliance upon these discount health care program operators. Therefore, the Department considers the determination of the honesty, trustworthiness, and reliability of each individual whose biographical information is required to be filed with the Department and each individual for whom the Commissioner may conduct a criminal background check under Chapter 7001 to be an essential regulatory function. Applying the Department's current fingerprinting and criminal history review process to such individuals promotes stability, uniformity, and consistency in Department regulation. Additionally, the amendments to §§1.501 - 1.503 and 1.507 will help maintain effective regulation of the discount health care program industry by ensuring that persons registering to operate such a program and persons having the ability to control, direct, or manage the affairs of a registered discount health care program operator under the Insurance Code Chapter 7001 are honest, trustworthy, and reliable. Under these amendments, and in the manner prescribed by existing rules in Chapter 1, Subchapter D, the Department will consider, in determining an applicant's fitness for registration to operate a discount health care program, and the fitness of each person having the ability to control, direct, or manage the affairs of a registered discount health care program operator, the criminal history information of each such person. The Department has determined, for the following reasons, that fingerprint checks provide the most effective method of identifying an individual's criminal history information. First, fingerprint checks prevent individuals with a criminal history in another state from attempting to evade detection by simply moving to Texas. Second, fingerprint collection by an independent third party vendor allows for independent verification of the identity of the individual being fingerprinted and increases confidence in the review process. Third, improvements in electronic fingerprint technology have increased the accuracy of fingerprint capture and have substantially reduced the time frame for processing the fingerprint to obtain the criminal history information.

Fingerprint Format and Application Requirements. The amendments to §§1.501 - 1.503 and 1.507 are necessary to apply the Department's existing fingerprint rule requirements to certain individuals affiliated with discount health care programs as specified in the Insurance Code §7001.008. Section 7001.008 provides that the Department may conduct a criminal background check on certain statutorily specified individuals who are responsible for or involved with the operation of a discount health care program. The Insurance Code §7001.009(a)(5) and (6) authorize the Department to deny a registration application or take any action authorized under the Insurance Code Chapters 82, 83, and 84, if the Department determines that the applicant or registered discount health care program operator, individually or through an officer, director, or shareholder, has engaged in fraudulent or dishonest acts or practices or has been convicted of a felony.

These amendments apply to the individuals for whom the Department may conduct a criminal background check as provided in the Insurance Code §7001.008. An applicant for registration or renewal as a discount health care program operator is required to submit biographical information to the Department for these same individuals under the Insurance Code §7001.005(a)(2). These individuals are: (i) the individuals responsible for conducting the discount health care program operator's affairs; (ii) each member of the board of directors, board of trustees, executive committee, or other governing board or committee; (iii) the officers of the program operator; (iv) any contracted management company personnel; and (v) any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator.

Under the amendments, these individuals will be required to comply with the fingerprint requirements in existing §1.504 and to follow the fingerprint format and application procedure in existing §1.509, unless such individuals are exempt from the fingerprint requirements pursuant to §1.504(b). These exemptions may include an individual, or the entity with which the individual is associated, that is renewing an unexpired license, certification, registration, or authorization. As required in existing §1.509, those individuals who are not exempt pursuant to §1.504(b) will be required to submit an electronic set of fingerprints or a fingerprint card. As provided in existing procedures under §1.509(a), individuals subject to the fingerprint requirement may have a complete set of their fingerprints captured by (i) an electronic fingerprint vendor acceptable to the Texas Department of Public Safety; (ii) the Department's examination vendor; or (iii) a criminal law enforcement agency, including a sheriff's office or police department. Pursuant to §1.509(b), those individuals who opt to have their fingerprints captured by a vendor acceptable to the Texas Department of Public Safety (DPS) will be required to pay, in a manner acceptable to the vendor, all fingerprint capture and processing fees directly to the vendor at the time the fingerprints are captured or at such time as is acceptable to the vendor. Existing §1.509(d)(1) requires individuals who choose to have their fingerprints captured by a criminal law enforcement agency to pay that agency any associated charges that may apply to the capture of their fingerprints in a manner acceptable to that agency. Existing §1.509(d)(2) requires that such individuals submit payment to the Department for all applicable fingerprint processing fees in the amount and in the manner set forth on the Department's application or biographical submission form. Section 1.509(d)(2) further provides that payment to the Department may be made as otherwise posted by the Department if the individual is not using a Department form. Those individuals who will be required to submit their fingerprints will also be allowed to submit, in lieu of electronic fingerprints, a fingerprint card as provided under existing §1.509(e) and (f). Section 1.509(e) provides contact information for obtaining fingerprint cards. Section 1.509(f) requires individuals who submit fingerprint cards to submit legible fingerprint impressions that are suitable for use by the DPS and the Federal Bureau of Investigation (FBI). Under the Department's existing process, the individual's fingerprints will either be submitted directly to DPS, if captured by the DPS electronic vendor, or to the Department, and then to DPS, if captured on paper. Both electronic and paper fingerprint submissions will be processed through the DPS and the FBI. In addition, as provided in existing §1.509(g), individuals will be required to submit their fingerprints within the time frame indicated on the specific application or biographical submission form. These individuals, however, may request an extension by contacting the division of the Department that will process the application or biographical submission.

Exemptions to the Fingerprint Requirement. Under the amendments, each individual whose biographical information under the Insurance Code §7001.005(a)(2) is required to be filed with the Department and each individual for whom the Commissioner may conduct a criminal background check under the Insurance Code §7001.008, may qualify for a discretionary exemption to the fingerprint requirement under existing §1.504(b). For example, those individuals who are renewing an unexpired registration for a discount health care program may qualify for an exemption under §1.504(b)(4). Section 1.504(b)(4) provides that the individual is exempt from the fingerprint requirement if the individual, or the entity with which the individual is associated, is renewing an unexpired license, certification, registration, or authorization. HB 4341 provides that a program operator that was registered with the TDLR on January 1, 2010, as required by the Health and Safety Code Chapter 76, shall file an application for renewal of registration with the Department under the Insurance Code Chapter 7001 not later than April 1, 2010. Therefore, the Department has the discretion to exempt from the fingerprinting requirement a program operator that was registered with the TDLR on January 1, 2010, and renewed with the Department not later than April 1, 2010. This exemption may also apply to any individual who is responsible for or involved with the operation of a discount health care program that was registered with the TDLR on January 1, 2010, and renewed with the Department not later than April 1, 2010, and whose biographical information is required to be filed with the Department under the Insurance Code §7001.005(a)(2) and any individual for whom the Commissioner may conduct a criminal background check under the Insurance Code §7001.008. Such exemption, or any other exemptions allowed under §1.504(b), however, would not extend to individuals who assume such positions after the discount health care program operator registers or renews their registration with the Department. Existing §1.504(e) provides that the Department's fingerprint rules, including §1.504(b) exemptions, do not limit the Department's authority to require the submission of fingerprints or obtain criminal history information. In addition, under §1.507, the Commissioner has discretionary authority to waive the fingerprint requirement for certain individuals if the individual, or the entity with which the individual is associated, is not domiciled in Texas. For example, the Commissioner has discretion to waive the fingerprint requirement for nonresidents who have been fingerprinted in another state for the purpose of registering a discount health care program in that other state.

Section-by-Section Summary. The amendment to §1.501(b) is necessary to add paragraph (6) to include within the purpose and application of existing §1.502, relating to licensing of persons with criminal backgrounds, each individual whose biographical information is required to be filed with the Department under the Insurance Code §7001.005(a)(2) (relating to Application for Registration and Renewal of Registration) and each individual for whom the Commissioner may conduct a criminal background check under §7001.008 (relating to Criminal Background Check). The amendment to §1.502(a) includes discount health care programs in the existing rules that address the Department's guidelines for licensing persons with criminal backgrounds. The amendment to §1.503, relating to the application of the fingerprint requirement, is necessary to add new paragraph (5) to require that each individual whose biographical information is required to be filed with the Department under the Insurance Code §7001.005(a)(2) and each individual for whom the Commissioner may conduct a criminal background check under §7001.008, comply with the Department's fingerprint requirement. The amendment to §1.507 includes within the Commissioner's discretionary authority the authority to waive the fingerprint requirements for those individuals whose biographical information is otherwise required to be filed with the Department under the Insurance Code §7001.005(a)(2) and for whom the Commissioner may conduct a criminal background check under §7001.008 if the individual, or the entity with which the individual is associated, is not domiciled in Texas.

The amendments are further necessary to update obsolete statutory citations to the Insurance Code in §1.501(b)(2)(A) - (C) as a result of the enactment of the non-substantive revision of the Insurance Code. The Insurance Code Article 5.43-1, which is referenced in §1.501(b)(2)(A); the Insurance Code Article 5.43-2, which is referenced in §1.501(b)(2)(B); and the Insurance Code Article 5.43-3, which is referenced in §1.501(b)(2)(C), were repealed in the non-substantive Insurance Code revision, Acts 2007, 80th Leg., Ch. 730, §1J.001, effective April 1, 2009. The Insurance Code Article 5.43-1 was readopted without substantive change as the Insurance Code Chapter 6001 in the same non-substantive Insurance Code revision. The Insurance Code Article 5.43-2 was readopted without substantive change as the Insurance Code Chapter 6002 in the same non-substantive Insurance Code revision. The Insurance Code Article 5.43-3 was readopted without substantive change as the Insurance Code Chapter 6003 in the same non-substantive Insurance Code revision.

HOW THE SECTIONS WILL FUNCTION.

§1.501. Purpose and Application. Section 1.501 adds new paragraph (b)(6) to include within the purpose and application of existing §1.502, relating to licensing of persons with criminal backgrounds, each individual whose biographical information is required to be filed with the Department under the Insurance Code §7001.005(a)(2) (relating to Application for Registration and Renewal of Registration) and each individual for whom the Commissioner may conduct a criminal background check under §7001.008 (relating to Criminal Background Check). Section 1.501 further updates obsolete statutory citations to the Insurance Code in §1.501(b)(2)(A) - (C) as a result of the enactment of the non-substantive revision of the Insurance Code.

§1.502. Licensing Persons with Criminal Backgrounds. Section 1.502(a) states that the special nature of the relationship between licensees, insurance companies, other insurance-related entities, discount health care programs, and the public with respect to insurance and related businesses regulated by the Department requires that the public place trust in and reliance upon such persons due to the complex and varied nature of insurance, insurance-related products, and discount health care programs.

§1.503. Application of Fingerprint Requirement. Section 1.503 adds new paragraph (5) to require that each individual whose biographical information is required to be filed with the Department under the Insurance Code §7001.005(a)(2) and each individual for whom the Commissioner may conduct a criminal background check under §7001.008 to comply with the fingerprint requirement in §1.504(a) of this subchapter (relating to Fingerprint Requirement).

§1.507. Other Licensees and Registrants. Section 1.507 states that the Commissioner may waive the requirement in §1.504 of this subchapter (relating to Fingerprint Requirement) for individuals listed under §1.503(1), (2), (4) and (5) of this subchapter (relating to Application of Fingerprint Requirement) if the individual, or the entity with which the individual is associated, is not domiciled in Texas.

SUMMARY OF COMMENTS. The Department did not receive any timely filed comments on the published proposal.

STATUTORY AUTHORITY. The amendments are adopted under the Occupations Code, the Government Code and the Insurance Code. The Occupations Code Chapter 53 generally provides the procedures a licensing authority must implement when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration. The Occupations Code §53.021 authorizes a licensing authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the ground that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. The Government Code §411.106 permits the Department to obtain criminal history record information from the DPS that relates to a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the Department. The Government Code §411.087 permits the Department to obtain through the FBI criminal history record information maintained or indexed by the FBI that pertains to that person or to obtain from any other criminal justice agency in this state the criminal history record information maintained by that criminal justice agency that relates to that person. The Insurance Code §801.056(b) provides that the Department may deny an application for an authorization if the applicant or a corporate officer of the applicant fails to provide a set of fingerprints on request of the Department. The Insurance Code §7001.003 requires the Commissioner to adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement this chapter. The Insurance Code §7001.008 provides that the Department may conduct a criminal background check on certain individuals. The Insurance Code §7001.005(a)(2) requires that biographical information be filed with the Department for these same individuals. These individuals are (i) the individuals responsible for conducting the discount health care program operator's affairs; (ii) each member of the board of directors, board of trustees, executive committee, or other governing board or committee; (iii) the officers of the program operator; (iv) any contracted management company personnel; and (v) any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator. The Insurance Code §7001.009(a)(5) and (6) provide that the Department may deny a registration ap-

plication or take any action authorized under the Insurance Code Chapters 82, 83, and 84, if the Department determines that the applicant or registered discount health care program operator, individually or through an officer, director, or shareholder, has engaged in fraudulent or dishonest acts or practices, or has been convicted of a felony. The Insurance Code §7002.001 provides that, for purposes of Chapters 562 and 7001 of the Insurance Code, consideration provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004803
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 8, 2010
Proposal publication date: June 4, 2010
For further information, please call: (512) 463-6327

♦ ♦ ♦

CHAPTER 19. AGENTS' LICENSING

The Commissioner of Insurance (Commissioner) adopts amendments to §19.802, concerning the registration and renewal fees for discount health care program operators, and new Subchapter Q, §§19.1601 - 19.1606, concerning the registration and renewal requirements for discount health care program operators. The amendments and new sections are adopted without changes to the proposed text published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4591).

REASONED JUSTIFICATION. The amendments and new sections are necessary to implement (i) House Bill (HB) 4341, 81st Legislature, Regular Session, relating to the regulation of discount health care programs by the Texas Department of Insurance (Department); and (ii) Senate Bill (SB) 2423, 81st Legislature, Regular Session, relating to the transfer or sale of patient information or prescription drug history by discount health care programs.

HB 4341 transferred the regulation of discount health care programs from the Texas Department of Licensing and Regulation (TDLR) to the Department effective April 1, 2010. HB 4341 (i) amends the Insurance Code to add new Title 21, Chapter 7001, relating to the regulation of discount health care programs by the Department, effective September 1, 2009; (ii) amends the Insurance Code to add a new Chapter 562, relating to unfair methods of competition and unfair or deceptive acts or practices regarding discount health care programs, effective September 1, 2009, with the exception of Subchapter E, relating to the enforcement by the Attorney General, which took effect April 1, 2010; and (iii) repeals Chapter 76 of the Health and Safety Code, relating to the regulation of discount health care programs by the TDLR, effective April 1, 2010.

SB 2423, 81st Legislature, Regular Session, effective September 1, 2009, amends the Insurance Code to add new Chapter 7002, relating to supplemental provisions regarding discount health care operators. Under §7002.001, for purposes of the Insurance Code Chapter 562 and Chapter 7001, consideration provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. Therefore, for example, such discount health care programs or program operators that do not charge fees for their programs, but that receive consideration in the form of access to patient information that is then transferred or sold, or that receive drug manufacturer rebates, that are then transferred or sold, are subject to the same regulation as those programs regulated under Chapter 7001 that do charge fees for their programs.

This adoption order is a complement to three other Department adoption orders to implement new Insurance Code Chapters 562, 7001 and 7002. The other three adoption orders are (i) amendments to §§1.501 - 1.503 and 1.507, concerning fingerprint requirements for certain individuals related to the operation of discount health care programs; (ii) amendments to §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122, relating to insurance advertising; and new §§21.151 - 21.154, relating to discount health care program advertising; and (iii) new §§24.1 - 24.4, relating to discount health care program principles of regulation. Notice of these three adoption orders are also published in this issue of the *Texas Register.*

On September 14, 2009, the Department posted on its website informal drafts of these four rules for public comment. The Department held a stakeholder meeting on September 18, 2009, to discuss the informal draft rules prior to the informal comment period ending on September 24, 2009. The Department received comments on all four draft rules, including the registration and renewal fees for discount health care program operators, and the registration and renewal requirements for discount health care program operators, which the Department considered in preparing the proposal. The proposal was published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4591). The proposal comment period ended on July 5, 2010.

The Insurance Code §7001.003 requires the Commissioner to adopt rules as necessary to implement the Insurance Code Chapter 7001 for the registration of discount health care program operators. The Insurance Code §7001.004 further provides that a discount health care program operator may not offer a discount health care program in the state of Texas unless the program operator is registered with the Department. However, the Insurance Code §7001.002 provides that new Chapter 7001 does not apply to a program operator who is an insurer and who holds a certificate of authority under Title 6. Therefore, a program operator who is an insurer and who holds a certificate of authority under Title 6 is exempt from the discount health care program operator registration requirements as provided by the Insurance Code §7001.002.

The new sections are necessary to establish the registration and renewal requirements for discount health care programs at the Department. The Insurance Code §562.002(3) and §7001.001(2) define a "discount health care program operator" as a person who, in exchange for fees, dues, charges, or other

consideration, operates a discount health care program and contracts with providers, provider networks, or other discount health care program operators to offer access to health care services at a discount. The Insurance Code §562.002(7) defines a "person" to mean an individual, corporation, association, partnership, or other legal entity. Therefore, an individual or a legal entity may apply for registration, or apply to renew registration, with the Department as a discount health care program operator.

Effective Dates. HB 4341, SECTIONS 3 and 6(b), repeals the Health and Safety Code Chapter 76 provisions concerning discount health care programs under the regulation of the TDLR, to take effect on April 1, 2010. Pursuant to SECTION 5(b) of HB 4341, a discount health care program operator that was registered with the TDLR on January 1, 2010, as required by Chapter 76 of the Health and Safety Code, must file an application for renewal of registration with the Department under the Insurance Code Chapter 7001 not later than April 1, 2010. In order for any discount health care program regulated pursuant to the Insurance Code Chapters 7001 and 7002 to lawfully operate in Texas on or after April 1, 2010, the discount health care program operator must be registered with the Department.

Amendments to §19.802(a) delete "or" and add "or registration or renewal of registration" after "examination" and adds "or registrant" after "licensee." These changes are necessary as a result of the requirement for a discount health care program operator to pay an initial registration fee and an annual renewal fee as required by the Insurance Code §7001.006. These changes further reflect that fees required by the Department including registration, are not limited to licensing fees. Pursuant to the Insurance Code §7001.006, new §19.802(b)(24)(A) requires a discount health care program operator to pay an initial registration fee of $1,000 and an annual renewal registration fee of $500. New §19.802(b)(24)(B), requiring an annual renewal fee in the amount of $500, is necessary to maintain effective regulation of the discount health care program registrants by establishing an annual renewal registration fee sufficient to cover Department administration costs, including registration, enforcement, processing intake of renewal applications, creating and maintaining a database for storage and retrieval of required information about registrants, creating and maintaining a database for the storage and retrieval of information related to the list of marketers that the registrants are required to provide to the Department, and personnel time to manage the processes.

New "Subchapter Q. Discount Health Care Program Registration and Renewal Requirements," §§19.1601 - 19.1606, is necessary to implement the Insurance Code Chapter 7001 by establishing the registration requirements of discount health care program operators. The Insurance Code §7001.003 provides that the Commissioner is required to adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement Chapter 7001.

HOW THE SECTIONS WILL FUNCTION.

§19.802. Amount of Fees. Section 19.802(a) provides that with each application for original license or renewal, notice of appointment, request for qualifying examination, or registration or renewal of registration, the applicant, licensee, or registrant shall submit the amount shown in this section. The fees for qualifying examinations and reexaminations only apply if the Texas Department of Insurance does not contract with a testing service for the provisions of these examinations. Section 19.802(b)(24) adds the amount of fees required for a discount health care program operator registration or renewal of registration. Section 19.802(b)(24)(A) provides that the amount of an initial registration fee for a discount health care program operator is $1,000. Section 19.802(b)(24)(B) provides that the amount of a renewal registration fee for a discount health care program operator is $500.

§19.1601. Definitions. Section 19.1601(1) defines "individuals responsible for conducting the program operator's affairs" to mean individuals with the power to direct or cause the direction of the management and policies of a discount health care program, whether directly or indirectly. Section 19.1601(2) defines "person" to mean an individual, corporation, association, partnership, or other legal entity as provided by the Insurance Code §562.002(7).

§19.1602. Registration Requirement. Section 19.602(a) provides that an applicant for registration to offer a discount health care program in this state is required to submit all of the following to the Department: (i) the initial registration fee of $1,000 as provided in the Insurance Code §7001.006 and §19.802 of this chapter (relating to Amount of Fees) that is nonrefundable and nontransferable; (ii) a complete application for registration which contains all the information required by the Insurance Code §7001.005 and this section, including the applicant's full legal name and federal employer identification number or social security number; daytime telephone number with extension; toll free telephone number; internet website address; physical address, including city, state, and ZIP code; mailing address, including the city, state, and ZIP code; a contact person's name, including the title, telephone number, and email address; the applicant's agent for service of process, including the physical address, city, state, and ZIP code; identification of whether the applicant is a corporation, association, limited partnership, limited liability company, limited liability partnership, sole proprietorship, or other legal entity; any and all assumed names to be used by the applicant in operating a discount health care program. If a filing is required under the Assumed Business or Professional Name Act pursuant to the Texas Business and Commerce Code, or any similar statute, the discount health care program operator applicant for registration shall provide the Department with a copy of the assumed name certificate reflecting the registration of each assumed name used by the discount health care program operator applicant; a statement generally describing the applicant, its facilities, personnel, and the health care services or products for which a discount will be made available under its discount health care programs; a copy of the form of all contracts made or to be made between the applicant and any providers or provider networks regarding the provision of health care services or products to members; a copy of the applicant's charter, certificate of authority, or registration obtained from the Texas Secretary of State's office; if the applicant is an entity subject to the bank or farm credit administration, a copy of the documentation issued by a federal or Texas state agency authorizing the entity to do business in Texas; an original surety bond payable to the Department for the use and benefit of members in the principal amount of $50,000, as required by the Insurance Code §562.1034(f)(1) and §19.1603 of this subchapter (relating to Financial Responsibility Requirement), except that an insurer that holds a certificate of authority under the Texas Insurance Code Title 6 is not required to maintain the surety bond; lists of marketers, both entities and individuals, separated as follows: a list of the marketers, both entities and individuals, authorized to sell or distribute the program operator's programs under the program operator's name; and a list of the marketers, both

entities and individuals, authorized to private label the program operator's programs; a certification in writing to the Department that its programs comply with the requirements of the Insurance Code Chapters 7001 and 562; a list of names, addresses, official positions, and biographical information of the individuals responsible for conducting the applicant's affairs; each member of the board of directors, board of trustees, executive committee, or other governing board or committee; the officers; any contracted management company personnel; and any person owning or having the right to acquire 10 percent or more of the voting securities of the applicant; a complete biographical certificate concerning each individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and this section, including, the identification of the individual's relationship to the applicant; the name of the applicant; the full name, title, social security number, date of birth, mailing address, including the city, state, and ZIP code; telephone number, fax number, and email address of the individual; excluding traffic violations and a first DWI offense, a response to the following questions: whether the individual has any pending misdemeanor or felony charges by indictment, information or any other instrument filed in Texas or in any other state or by the federal government; whether the individual has ever been convicted of any misdemeanor or felony offense in Texas, in any other state, or by the federal government; whether the individual has ever had deferred adjudication on any misdemeanor or felony charge or offense in Texas, in any other state, or by the federal government; and whether the person has ever served any period of probation for any misdemeanor or felony offense in Texas, in any other state, or by the federal government; if the response is positive to any question under clause (iv)(I) - (IV) of this subparagraph, the applicant for registration as a discount health care program operator is required to provide to the Department original certified copies of the charging document, indictment, information, or any other charging document, any judgment of conviction, deferred adjudication order, or probation order, and any order terminating probation, community supervision certificate, or parole certificate for each offense. If the court does not maintain the record, the submission of a letter on the court's letterhead will be required. If the arrest did not result in a prosecution, the submission of a records search from the appropriate jurisdiction indicating a final disposition will be required. A statement describing the circumstances leading to the offense and the individual's age at the time of the offense will be required. Letters of recommendation from any person aware of a particular criminal history may be provided; and a response to the question whether the individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and this section, or any entity in which the individual served as a director, officer, shareholder, manager, member or partner, has ever been the subject of an administrative or legal action filed by the department, or any other insurance department, financial regulatory agency, or of an action filed on behalf of the State of Texas or any other state or by the federal government based on alleged violations of state or federal insurance, securities or financial regulatory laws that the individual has not previously reported to the department. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the Department a description of the circumstances regarding the administrative or legal action and a copy of any document sent to the individual to commence the administrative or legal action that described the nature of the action; a response to the question whether the individual, whose biographical information is required under the Insurance Code §7001.005(a)(2) and this section, is indebted to any discount health care program operator, policyholder, insurance or reinsurance company, insurance agency, general agent, managing general agency, premium finance company or court appointed liquidator for membership refunds, premiums collected or commissions retained, or have any claims or judgments filed against the individual for membership refunds, retaining premiums or commissions. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the Department a description of the circumstances regarding the indebtedness including the name and contact information of the person or entity to whom the individual is indebted; and a response to the question whether the individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and this section, has ever had a discount health care program contract cancelled for cause, such as for misrepresentation or misappropriation. If the response is positive, the applicant for registration as a discount health care program operator is required to provide to the Department a description of the circumstances regarding the cancellation including the name and contact information of the individual or entity that cancelled the contract; a copy of a fingerprint receipt from the state authorized fingerprint collection vendor for each individual that uses the electronic fingerprint process; an acknowledgment from each individual whose biographical information is required under the Insurance Code §7001.005(a)(2) and this section, that the fingerprints provided will be used to check criminal history records of the Texas Department of Public Safety and the Federal Bureau of Investigation; and. compliance with the requirements of Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct) relating to fingerprint requirements for a criminal background check under the Insurance Code §7001.008. Section 19.1602(b) states that the discount health care program operator registration application forms are available at http://www.tdi.state.tx.us and at the Texas Department of Insurance, Licensing Division, 333 Guadalupe, Austin, Texas 78701. Section 19.1602(c) states that the following requirements apply to the submission of discount health care program operator registration application forms: (i) except for the list of marketers required under the Insurance Code §7001.005(a)(4) and this section, a discount health care program operator shall submit the registration application forms by mail, to the Texas Department of Insurance, Licensing Division, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104; fax, to (512) 490-1052; e-mail, to TDI-DiscountHealth@tdi.state.tx.us; or in other formats that are acceptable to the Department including an electronic format; (ii) a discount health care program operator shall submit the list of the marketers in the format found on the Department's website via email to TDI-DiscountHealth@tdi.state.tx.us; and (iii) assistance with applying for registration as a discount health care program operator is available at the Department's Licensing Division Customer Service phone line at (512) 322-3503, email address at License@tdi.state.tx.us. and the Department's web site at www.tdi.state.tx.us. Section 19.1602(d) states that the registration is valid for one year from the date issued by the department and is required to be renewed annually.

§19.1603. Financial Responsibility Requirement. Section 19.1603(a) provides that as required by the Insurance Code §562.103(f)(1), a discount health care program operator, as a condition of being registered and continuing such registration, shall maintain a surety bond payable to the department, for the use and benefit of members, in the principal amount of $50,000, except that a discount health care program operator that is

an insurer that holds a certificate of authority under Title 6 is not required to maintain the surety bond. Section 19.1603(b) provides that each discount health care program operator is required to obtain separate proof of financial responsibility and may not rely on the bond of any other discount health care program operator to demonstrate proof of financial responsibility. Section 19.1603(c) states that the discount health care program operator applicant or registrant is required to demonstrate proof of financial responsibility by providing to the Department the original surety bond upon application, renewal, or replacement of the bond. Section 19.1603(d) states that a surety bond used to maintain and demonstrate proof of financial responsibility under this section is required to: (i) be issued by a company authorized, or eligible, to do business as a surety in the State of Texas; (ii) be in compliance with all applicable provisions of the Insurance Code and applicable Department rules; (iii) be on a form filed with and approved by the Department; (iv) be consistent with the Insurance Code §562.103(f), to be payable to the Texas Department of Insurance for the use and benefit of members on the determination by the Department that funds are necessary for the payment of such claims following compliance with all applicable provisions of the Insurance Code and applicable rules of the Department; or upon final judgment against the Principal arising from such a claim; (v) provide that the issuing company will provide the Department and the registrant at least 30 days prior written notice of its intent to cancel the bond; (vi) be effective for the entire time period of the registration; (vii) be separate from any other financial obligation; and (viii) not be used to demonstrate professional responsibility for any other registration or individual or entity. Section 19.1603(e) states that the Department may make claims against the bond for one year after the program operator ceases to be registered in the state, or for one year after the bond is terminated, based on actions within the registration and bond period. The aggregate liability of the surety shall be limited to the penal sum of the bond. Section 19.1603(f) states that the failure to maintain the bond for the entire period required by this section and the Insurance Code §562.103(f)(1) will be cause for the Department to institute action pursuant to Chapters 82, 83, and 84 of the Insurance Code.

§19.1604. Renewal. Section 19.1604(a) provides that not later than 60 days before the date a person's registration as a discount health care program operator expires, the Department shall send a written registration renewal notice to the discount health care program operator's last known mailing address according to the Department's records. Section 19.1604(b) states that in the absence of the submission of a written request to change the mailing address of a registered discount health care program operator as required by the Insurance Code §7001.005(a)(1) and §19.1605 of this subchapter (relating to Requirements Related to Discount Health Care Program Information), the discount health care program operator's current address is presumed to be the address provided on the most recent registration application or renewal of registration application. Section 19.1604(b) further provides that such address shall be considered the discount health care program operator's last known mailing address for the purpose of the Department sending a registration renewal notice to the discount health care program operator. Section 19.1604(c) states that a discount health care program operator may renew a registration to offer a discount health care program in this state by: (i) returning the payment coupon attached to the registration renewal notice sent by the Department to the discount health care program operator with a check made payable to the Department in the amount of $500 as required by the Insurance Code §7001.006 and §19.802 of this chapter (relating to Amount of Fees). A renewal fee paid under this section is nonrefundable and nontransferable. The discount health care program operator may submit the renewal notice and payment to the Texas Department of Insurance, Licensing Division, MC-9999, P.O. Box 149104, Austin, Texas 78714-9104; and (ii) certifying in writing to the Department that its programs comply with the requirements of the Insurance Code Chapters 7001 and 562. Section 19.1604(d) states that a discount health care program operator renewing a registration shall submit a written communication to the department of any information provided to the Department that has changed since the initial registration or subsequent renewals as provided in the Insurance Code §7001.005(a) and §19.1605 of this subchapter. Section 19.1604(e) provides that the renewal of the registration is valid for one year from the date issued by the Department and is required to be renewed annually. Section 19.1604(f) states that, except as provided by the Occupations Code §55.003 (relating to Extension of Certain Deadlines for Active Duty Military Personnel), a discount health care program operator whose registration has been expired may not renew the registration. The discount health care program operator may obtain a new registration by complying with the registration requirements as provided by the Insurance Code §7001.005(a) and §19.1602 of this subchapter (relating to Registration Requirement).

§19.1605. Requirements Related to Discount Health Care Program Information. Section 19.1605(a) provides that, except for changes in the form of contracts as provided in the Insurance Code §7001.005(b) and subsection (b) of this section, a registered discount health care program operator whose registration or renewal information has changed since the initial registration or renewal pursuant to the Insurance Code §7001.005(a) and this section shall notify the Department in writing of a change not later than the 30th day after the effective date of the change by: (i) mail, to the Texas Department of Insurance, Licensing Division, MC-107-1A, P.O. Box 149104, Austin, Texas 78714-9104; (ii) fax, to (512) 490-1052; (iii) e-mail, to TDI-DiscountHealth@tdi.state.tx.us; or (iv) in other formats that are acceptable to the Department, including an electronic format. Section 19.1605(b) states that after the initial registration, if the form of a contract described by the Insurance Code §7001.005(a)(5) and §19.1602(a)(2)(C) of this subchapter (relating to Registration Requirement) changes, the program operator is required to file the modified contract with the Department before it may be used. Section 19.1605(c) states that after the initial registration, a discount health care program operator shall comply with the requirements of the Insurance Code §7001.005(a)(4) and this section to submit to the department on a quarterly basis, not later than each June 30, September 30, December 31 and March 31, lists of marketers, both entities and individuals, separated as follows:

(i) a list of the marketers, both entities and individuals, authorized to sell or distribute the program operator's programs under the program operator's name; and (ii) a list of the marketers and individuals authorized to private label the program operator's programs. Section 19.1605(d) states that a discount health care program operator shall submit the quarterly list of the marketers to TDI-DiscountHealth@tdi.state.tx.us. Section 19.1605(e) provides that assistance with notifying the Department in writing of a change in information or with submitting the quarterly list of marketers is available at the Licensing Division Customer Service phone line at (512) 322-3503, email address

at License@tdi.state.tx.us, and the Department's web site at www.tdi.state.tx.us.

§19.1606. Severability. Section 19.1606 provides that if a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this subchapter shall remain in effect.

SUMMARY OF COMMENTS. The Department did not receive any timely filed comments on the published proposal.

SUBCHAPTER I. LICENSING FEES

28 TAC §19.802

STATUTORY AUTHORITY. The amendments and new sections are adopted pursuant to the Family Code Chapter 231, including §231.302, and the Insurance Code Chapters 201, 562, 7001, and 7002, including §§201.054(b); 562.103(f)(1); 7001.003; 7001.004; 7001.005(a) - (c); 7001.006; 7001.008; 7001.009; 7002.001; and 36.001. The Family Code §231.302 provides that for the purpose of assisting in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act, 42 U.S.C. §§601 - 617 and 651 - 669, each licensing authority is required to request and each applicant for a license is required to provide the applicant's Social Security number. The Insurance Code §201.054(b) provides that the Department is required to maintain a record of the federal identification number of each entity subject to regulation under the Insurance Code or another insurance law of this state and is further required to include the appropriate number in any communication to or information shared with the Comptroller relating to that entity. The Insurance Code §562.053 provides that the Commissioner may impose on a person operating a discount health care program for the person's failure to register or renew registration as required under Chapter 7001 any remedy that the Commissioner is authorized to impose under Chapter 101 for the unauthorized business of insurance. The Insurance Code §562.103(f)(1) provides that a program operator shall maintain a surety bond, payable to the Department for the use and benefit of members in a manner prescribed by the Department, in the principal amount of $50,000, except that a program operator that is an insurer that holds a certificate of authority under Title 6 is not required to maintain the surety bond. The Insurance Code §7001.003 provides that the Commissioner shall adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement Chapter 7001. The Insurance Code §7001.004 provides that a discount health care program operator may not offer a discount health care program in this state unless the program operator is registered with the Department. The Insurance Code §7001.005(a) provides that an applicant for registration under Chapter 7001 or an applicant for renewal of registration under Chapter 7001 whose information has changed shall submit a completed registration application on the form prescribed by the Department indicating the program operator's name, physical address, and mailing address and its agent for service of process; a list of names, addresses, official positions, and biographical information of the individuals responsible for conducting the program operator's affairs, including each member of the board of directors, board of trustees, executive committee, or other governing board or committee; the officers of the program operator; any contracted management company personnel; and any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator; a statement generally describing the applicant, its facilities and personnel, and the health care services or products for which a discount will be made available under its discount health care programs; a statement generally describing the applicant, its facilities and personnel, and the health care services or products for which a discount will be made available under its discount health care programs; a list of the marketers authorized to sell or distribute the program operator's programs under the program operator's name, a list of the marketing entities authorized to private label the program operator's programs, and other information about the marketers and marketing entities considered necessary by the Commissioner; and a copy of the form of all contracts made or to be made between the program operator and any providers or provider networks regarding the provision of health care services or products to members. The Insurance Code §7001.005(b) provides that after the initial registration, if the form of a contract described by Subsection (a)(5) changes, the program operator must file the modified contract form with the Department before it may be used. The Insurance Code §7001.005(c) provides that as part of the registration required under Subsection (a), and annually thereafter, the program operator shall certify in writing to the Department that its programs comply with the requirements of Chapter 7001 and Chapter 562. The Insurance Code §7001.006 provides that a discount health care program operator is required to pay the Department an initial registration fee of $1,000 and an annual renewal fee in the amount set by the Commissioner not to exceed $500. The Insurance Code §7001.008 provides that the Department may conduct a criminal background check on the individuals responsible for conducting the program operator's affairs, each member of the board of directors, board of trustees, executive committee, or other governing board or committee; the officers of the program operator; any contracted management company personnel; and any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator. The Insurance Code §7001.009(a) provides that the Department may deny a registration application or take any action authorized under the Insurance Code Chapters 82, 83, and 84 if the Department determines that the applicant or registered discount health care program operator, individually or through an officer, director, or shareholder: (i) has willfully violated a provision of this code or an order or rule of the Commissioner; (ii) has intentionally made a material misstatement in the registration application; (iii) has obtained or attempted to obtain a registration by fraud or misrepresentation; (iv) has misappropriated, converted to the applicant's or registration holder's own use, or illegally withheld money belonging to a member of a discount health care program; (v) has engaged in fraudulent or dishonest acts or practices; or (vi) has been convicted of a felony. The Insurance Code §7001.009(b) provides that the Government Code, Chapter 2001, applies to an action taken under this section. The Insurance Code §7002.001 provides that for purposes of the Insurance Code Chapters 562 and 7001, "consideration" provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history information provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004804
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 8, 2010
Proposal publication date: June 4, 2010
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER Q. DISCOUNT HEALTH CARE PROGRAM REGISTRATION AND RENEWAL REQUIREMENTS

28 TAC §§19.1601 - 19.1606

STATUTORY AUTHORITY. The amendments and new sections are adopted pursuant to the Family Code Chapter 231, including §231.302, and the Insurance Code Chapters 201, 562, 7001, and 7002, including §§201.054(b); 562.103(f)(1); 7001.003; 7001.004; 7001.005(a) - (c); 7001.006; 7001.008; 7001.009; 7002.001; and 36.001. The Family Code §231.302 provides that for the purpose of assisting in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act, 42 U.S.C. §§601 - 617 and 651 - 669, each licensing authority is required to request and each applicant for a license is required to provide the applicant's Social Security number. The Insurance Code §201.054(b) provides that the Department is required to maintain a record of the federal identification number of each entity subject to regulation under the Insurance Code or another insurance law of this state and is further required to include the appropriate number in any communication to or information shared with the Comptroller relating to that entity. The Insurance Code §562.053 provides that the Commissioner may impose on a person operating a discount health care program for the person's failure to register or renew registration as required under Chapter 7001 any remedy that the Commissioner is authorized to impose under Chapter 101 for the unauthorized business of insurance. The Insurance Code §562.103(f)(1) provides that a program operator shall maintain a surety bond, payable to the Department for the use and benefit of members in a manner prescribed by the Department, in the principal amount of $50,000, except that a program operator that is an insurer that holds a certificate of authority under Title 6 is not required to maintain the surety bond. The Insurance Code §7001.003 provides that the Commissioner shall adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement Chapter 7001. The Insurance Code §7001.004 provides that a discount health care program operator may not offer a discount health care program in this state unless the program operator is registered with the Department. The Insurance Code §7001.005(a) provides that an applicant for registration under Chapter 7001 or an applicant for renewal of registration under Chapter 7001 whose information has changed shall submit a completed registration application on the form prescribed by the Department indicating the program operator's name, physical address, and mailing address and its agent for service of process; a list of names, addresses, official positions, and biographical information of the individuals responsible for conducting the program operator's affairs, including each member of the board of directors, board of trustees, executive committee, or other governing board or committee; the officers of the program operator; any contracted management company personnel; and any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator; a statement generally describing the applicant, its facilities and personnel, and the health care services or products for which a discount will be made available under its discount health care programs; a statement generally describing the applicant, its facilities and personnel, and the health care services or products for which a discount will be made available under its discount health care programs; a list of the marketers authorized to sell or distribute the program operator's programs under the program operator's name, a list of the marketing entities authorized to private label the program operator's programs, and other information about the marketers and marketing entities considered necessary by the Commissioner; and a copy of the form of all contracts made or to be made between the program operator and any providers or provider networks regarding the provision of health care services or products to members. The Insurance Code §7001.005(b) provides that after the initial registration, if the form of a contract described by Subsection (a)(5) changes, the program operator must file the modified contract form with the Department before it may be used. The Insurance Code §7001.005(c) provides that as part of the registration required under Subsection (a), and annually thereafter, the program operator shall certify in writing to the Department that its programs comply with the requirements of Chapter 7001 and Chapter 562. The Insurance Code §7001.006 provides that a discount health care program operator is required to pay the Department an initial registration fee of $1,000 and an annual renewal fee in the amount set by the Commissioner not to exceed $500. The Insurance Code §7001.008 provides that the Department may conduct a criminal background check on the individuals responsible for conducting the program operator's affairs, each member of the board of directors, board of trustees, executive committee, or other governing board or committee; the officers of the program operator; any contracted management company personnel; and any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator. The Insurance Code §7001.009(a) provides that the Department may deny a registration application or take any action authorized under the Insurance Code Chapters 82, 83, and 84 if the Department determines that the applicant or registered discount health care program operator, individually or through an officer, director, or shareholder: (i) has willfully violated a provision of this code or an order or rule of the Commissioner; (ii) has intentionally made a material misstatement in the registration application; (iii) has obtained or attempted to obtain a registration by fraud or misrepresentation; (iv) has misappropriated, converted to the applicant's or registration holder's own use, or illegally withheld money belonging to a member of a discount health care program; (v) has engaged in fraudulent or dishonest acts or practices; or (vi) has been convicted of a felony. The Insurance Code §7001.009(b) provides that the Government Code, Chapter 2001, applies to an action taken under this section. The Insurance Code §7002.001 provides that for purposes of the Insurance Code Chapters 562 and 7001, "consideration" provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history information provided by members, if the entity engages in the

transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004805
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 8, 2010
Proposal publication date: June 4, 2010
For further information, please call: (512) 463-6327

♦ ♦ ♦

CHAPTER 21. TRADE PRACTICES
SUBCHAPTER B. ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION

The Commissioner of Insurance (Commissioner) adopts amendments to §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122, concerning insurance advertising, certain insurance trade practices, and insurance solicitations, and new §§21.151 - 21.154, concerning discount health care program advertising. The amendments and new sections are adopted without changes to the proposed text published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4602).

REASONED JUSTIFICATION. The amendments and new sections are necessary to implement (i) House Bill (HB) 4341, 81st Legislature, Regular Session, relating to the regulation of discount health care programs by the Texas Department of Insurance (Department); and (ii) Senate Bill (SB) 2423, 81st Legislature, Regular Session, relating to the transfer or sale of patient information or prescription drug history by discount health care programs. The amendments are necessary to: (i) divide subchapter B of this chapter into Division 1 for insurance advertising and Division 2 for discount health care program advertising; (ii) update obsolete statutory citations to the Insurance Code; (iii) correct rule citation references; and (iv) make nonsubstantive revisions to internal references. New Division 2, consisting of §§21.151 - 21.154, is necessary to implement Chapter 562 of the Insurance Code, enacted by HB 4341, 81st Legislature, Regular Session, which regulates trade practices in the business of discount health care programs by: (1) defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices; and (2) prohibiting those unfair or deceptive trade practices.

HB 4341 transferred the regulation of discount health care programs from the Texas Department of Licensing and Regulation (TDLR) to the Department effective April 1, 2010. HB 4341 (i) amends the Insurance Code to add new Title 21, Chapter 7001, relating to the regulation of discount health care programs by the Department, effective September 1, 2009; (ii) amends the Insurance Code to add new Chapter 562, relating to unfair methods of competition and unfair or deceptive acts or practices regarding discount health care programs, effective September 1, 2009, with the exception of Subchapter E, relating to the enforcement by the Attorney General, which took effect April 1, 2010; and (iii) repeals Chapter 76 of the Health and Safety Code, relating to the regulation of discount health care programs by the TDLR, effective April 1, 2010.

SB 2423, 81st Legislature, Regular Session, effective September 1, 2009, amends the Insurance Code to add new Chapter 7002, relating to supplemental provisions regarding discount health care operators. Under §7002.001, for purposes of the Insurance Code Chapter 562 and Chapter 7001, consideration provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. Therefore, for example, such discount health care programs or program operators that do not charge fees for their programs, but that receive consideration in the form of access to patient information that is then transferred or sold, or that receive drug manufacturer rebates, that are then transferred or sold, are subject to the same regulation as those programs regulated under Chapter 7001 that do charge fees for their programs.

This adoption order is a complement to three other Department adoption orders to implement new Insurance Code Chapters 562, 7001 and 7002. The other three adoption orders are: (i) amendments to §§1.501 - 1.503, and 1.507, concerning fingerprint requirements for certain individuals related to the operation of discount health care programs; (ii) new §19.1601 and §19.1602, relating to discount health care program registration and renewal requirements, and amendments to §19.802, relating to amount of fees; and (iii) new §§24.1 - 24.4, relating to discount health care program principles of regulation. Notice of these three adoption orders are also published in this issue of the *Texas Register.*

On September 14, 2009, the Department posted on its website informal drafts of these four rules for public comment. The Department held a stakeholder meeting on September 18, 2009, to discuss the informal draft rules prior to the informal comment period ending on September 24, 2009. The Department received comments on all four draft rules, including discount health care program advertising requirements, which the Department considered in preparing the proposal. The proposal was published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4602). The proposal comment period ended on July 5, 2010.

Effective Dates. Pursuant to SECTION 5(b) of HB 4341, a discount health care program operator that was registered with the TDLR on January 1, 2010, as required by Chapter 76 of the Health and Safety Code, must file an application for renewal of registration with the Department under the Insurance Code Chapter 7001 not later than April 1, 2010. In order for any discount health care program regulated pursuant to the Insurance Code Chapters 7001 and 7002 to lawfully operate in Texas on or after April 1, 2010, the discount health care program operator must be registered with the Department.

Section-by-Section Summary. The following paragraphs provide a brief summary as well as an analysis of the reasons for the amendments and new sections.

Chapter 21, Subchapter B Reorganization. Amendments to this subchapter add new Division 1, Insurance Advertising, which includes existing §§21.101 - 21.122, and new Division 2, Discount Health Care Program Advertising, which includes new §§21.151

- 21.154. These amendments are necessary to provide the advertising requirements for discount health care programs. "Insurance" is deleted from the title of this subchapter to better reflect the fact that Subchapter B is not limited to insurance advertising requirements. A division of Subchapter B is necessary to distinguish the advertising requirements for discount health care programs from the advertising requirements for insurance because regulatory requirements governing insurance and discount health care program advertisements and solicitations differ.

Division 1. The amendments to Division 1, §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122 are necessary to (i) update obsolete statutory citations to the Insurance Code; (ii) correct rule citation references; and (iii) make nonsubstantive revisions to internal references.

Division 2. New Division 2, §§21.151 - 21.154, is necessary to implement the Insurance Code Chapter 562 by establishing advertising requirements to assure that the public receives truthful and adequate information to facilitate informed purchasing decisions concerning discount health care programs. The stated purpose of the Insurance Code Chapter 562, as provided by the Insurance Code §562.001, is to regulate trade practices in the business of discount health care programs by defining or providing for the determination of trade practices in the State of Texas that are unfair methods of competition or unfair or deceptive acts or practices and prohibiting those unfair or deceptive trade practices by discount health care programs. Under the Insurance Code §562.052, it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, solicitation, or marketing material containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the discount health care program. Further, the Insurance Code §562.005 provides that new Chapter 562 shall be liberally construed and applied to promote the underlying purposes of regulating trade practices in the business of discount health care programs as provided by the Insurance Code §562.001.

New §21.151 is necessary to state the purpose and scope of Division 2 and to provide that an insurer or a health maintenance organization is required to comply with this adoption and the applicable statutes in its capacity as a discount health care program operator pursuant to the Insurance Code §562.004.

New §21.152 is necessary to provide the meaning of the terms "advertisement", "discount health care program", and "discount health care program operator" in accordance with meanings assigned by the Insurance Code.

Further, new §21.153 is necessary to provide the requirements for the content of advertisements. New §21.153(a), which requires that an advertisement identify the discount health care program operator offering the discount health care program that is the subject of the advertisement, is necessary for the Department to monitor discount health care program operator compliance with the Insurance Code Chapter 562. The Insurance Code §562.104 requires a discount health care program operator to approve in writing before their use all advertisements, solicitations, or other marketing materials and all discount cards used by marketers to market, promote, sell, or distribute the discount health care program. In addition, new §21.153(a) is necessary to inform Texas consumers which discount health care program operator is responsible for the particular discount health care program being advertised. The Texas Department of Licensing and Regulation (TDLR), which regulated the discount health care program industry from September 1, 2008 through March 31, 2010, reported that Texas consumers are confused concerning the entity responsible for the discount health care program if the advertisement reveals no name or only the name of the discount health care program marketer.

HOW THE SECTIONS WILL FUNCTION.

Division 1. The amendments to Division 1, §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122 (i) update obsolete statutory citations to the Insurance Code; (ii) correct rule citation references; and (iii) make nonsubstantive revisions to internal references.

§21.101. Purpose. Amendments to §21.101 delete "these sections define and state" to replace it with "this division defines and states"; delete "these sections prohibit" to replace it with "this division prohibits," delete "prevent" to replace it with "prevents," and delete "these sections are" to replace it with "this division is."

§21.102. Scope. An amendment to §21.102(4) deletes "these sections" to replace it with "this division." Amendments to §21.102(6) - (7) delete "subchapter" to replace it with "division."

§21.103. Required Form and Content of Advertisements. An amendment to §21.103(c) deletes "these sections" to replace it with "this division." Amendments to §21.103(c)(1) - (5) delete "subchapter" to replace it with "division."

§21.108. Use of Statistics and Citations. An amendment to §21.108 deletes "subchapter" to replace it with "division."

§21.112. General Prohibition. Amendments to §21.112 delete "title" to replace it with "division"; delete "and Certain Trade Practices, and Solicitation" after "Advertising" to reflect the amendment to the title of Subchapter B; and delete "these sections" to replace it with "this division."

§21.113. Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising. An amendment to §21.113(b) deletes the obsolete statutory reference of "Article 21.20-2 §1" to replace it with the correct statutory reference of "Chapter 1214." The amendment to §21.113(d)(17) deletes "subchapter" to replace it with "division." The amendments to §21.113(j) add a title to the subsection for conformity with *Texas Register* requirements; delete "these sections" to replace it with "this division"; and delete "sections" to replace it with "division." The amendment to §21.113(k)(3)(A) deletes "subchapter" to replace it with "division."

§21.114. Rules Pertaining Specifically to Life Insurance and Annuity Advertising. The amendments to §21.114(6) delete "these sections" to replace it with "this division" and deletes "title" to replace it with "division."

§21.116. Special Enforcement Procedures for Rules Governing Advertising and Solicitation of Insurance. The amendments to §21.116(b) delete "these sections" in two places to replace it with "this division."

§21.117. Conflict with and Affect on Other Regulations. The amendment to §21.117 deletes "these sections are" to replace it with "this division" is." The amendment to §21.117 further deletes the following sentences: "It is intended that these sections become effective at the exact time of the effective date of the repeal of existing Rules 059.21.21.001, .009, and .010. Therefore, the

existing sections remain in effect until these sections become effective."

§21.118. Severability. The amendment to §21.118 deletes "these sections" to replace it with "this division."

§21.119. Savings Clause. The amendments to §21.119 delete "these sections become" to replace it with "this division becomes." The amendments to §21.119 further deletes "these sections" in two places to replace it with "this division."

§21.120. Filing for Review. The amendment to §21.120(d) deletes "subchapter" to replace it with "division." The amendment to §21.120(e)(4) is necessary to update an obsolete citation reference to §11.602 and replace it with §11.603.

§21.121. Lead Solicitations. The amendment to §21.121 deletes "subchapter" to replace it with "division."

§21.122. System of Control and Home Office Approval of Advertising Material Naming an Insurer. The amendments to §21.122 delete "title" and replaces it with "division" in §21.122(a)(1) - (4).

Division 2. New Division 2, §§21.151 - 21.154, implements the Insurance Code Chapter 562 by establishing advertising requirements to assure that the public receives truthful and adequate information to facilitate informed purchasing decisions concerning discount health care programs. The stated purpose of the Insurance Code Chapter 562, as provided by the Insurance Code §562.001, is to regulate trade practices in the business of discount health care programs by defining or providing for the determination of trade practices in the State of Texas that are unfair methods of competition or unfair or deceptive acts or practices and prohibiting those unfair or deceptive trade practices by discount health care programs. Under the Insurance Code §562.052, it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, solicitation, or marketing material containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the discount health care program. Further, the Insurance Code §562.005 provides that new Chapter 562 shall be liberally construed and applied to promote the underlying purposes of regulating trade practices in the business of discount health care programs as provided by the Insurance Code §562.001.

§21.151. Purpose and Scope. Section 21.151(a) provides that the purpose of Division 2 is to establish advertising requirements necessary to assure that the public receives truthful and adequate information to facilitate informed purchasing decisions concerning discount health care programs. Section 21.151(b) provides that a discount health care program operator, including the operator of a freestanding discount health care program or a discount health care program operated and marketed by an insurer or a health maintenance organization, is required to comply with Division 2.

§21.152. Definitions. Section 21.152(a) provides that the definition of "advertisement" in Division 2 has the meaning assigned to the term "advertisement, solicitation, or marketing material" by the Insurance Code §562.002. The Insurance Code §562.002(1)(A) - (F) provides that "advertisement, solicitation, or marketing material" means material made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication; in a notice, circular, pamphlet, letter, or poster; over a radio or television station; through the Internet; in a telephone sales script; or in any other manner. Section 21.152(b) provides that the meanings assigned by the Insurance Code §562.002 and §7001.001 define "discount health care program" and "discount health care program operator." The Insurance Code §562.002(2) and §7001.001(1) provide that "discount health care program" means a business arrangement or contract in which an entity, in exchange for fees, dues, charges, or other consideration, offers its members access to discounts on health care services provided by health care providers. The term does not include an insurance policy, certificate of coverage, or other product otherwise regulated by the Department or a self-funded or self-insured employee benefit plan. The Insurance Code §562.002(3) and §7001.001(2) provide that a "discount health care program operator" means a person, who, in exchange for fees, dues, charges, or other consideration, operates a discount health care program and contracts with providers, provider networks, or other discount health care program operators to offer access to health care services at a discount and determines the charges to members.

§21.153. Content of Advertisement. Section 21.153(a) provides that an advertisement is required to identify the discount health care program operator offering the discount health care program that is the subject of the advertisement. Section §21.153(a) further provides that it is sufficient to state the full registered name of the discount health care program operator or an assumed name filed with the Department pursuant to §19.1602 of this title (relating to Registration Requirement). Section 21.153(b) states that the format and content of an advertisement of a discount health care program is required to be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive.

§21.154. Severability. Section 21.154 provides that if a court of competent jurisdiction holds that any provision of Division 2 is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this division shall remain in effect.

SUMMARY OF COMMENTS. The Department did not receive any timely filed comments on the published proposal.

DIVISION 1. INSURANCE ADVERTISING

28 TAC §§21.101 - 21.103, 21.108, 21.112 - 21.114, 21.116 - 21.122

STATUTORY AUTHORITY. The amendments and new sections are adopted pursuant to the Insurance Code §§541.401; 562.001; 562.004; 562.005; 562.051 - 562.052; 562.054; 562.101; 562.104(a) - (c); 562.106; 7002.001; and 36.001. Section 541.401(a) authorizes the Commissioner to adopt and enforce reasonable rules the Commissioner determines necessary to accomplish the purposes of Chapter 541. Section 562.001 provides that the purpose of the Insurance Code, Chapter 562 is to regulate trade practices in the business of discount health care programs by defining or providing for the determination of trade practices in the state that are unfair methods of competition or unfair or deceptive acts or practices in this state, and prohibiting those unfair or deceptive trade practices.

Section 562.004 provides that except as otherwise provided by Chapter 562, a program operator, including the operator of a free-standing discount health care program or a discount health care program marketed by an insurer or a health maintenance

organization, shall comply with Chapter 562. Section 562.005 provides that Chapter 562 shall be liberally construed and applied to promote the underlying purposes as provided by the Insurance Code §562.001. Section 562.051 provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to: (i) misrepresent the price range of discounts offered by the discount health care programs; (ii) misrepresent the size or location of the program's network of providers; (iii) misrepresent the participation of a provider in the program's network; (iv) suggest that a discount card offered through the program is a federally approved Medicare prescription discount card; (v) use the term "insurance," except as a disclaimer of any relationship between the discount health care program and insurance, or a description of an insurance product connected with a discount health care program; or (vi) use the term "health plan," "coverage," "copay," "copayments," "deductible," "preexisting conditions," "guaranteed issue," "premium," "PPO," or "preferred provider organization," or another similar term, in a manner that could reasonably mislead an individual into believing that the discount health care program is health insurance or provides coverage similar to health insurance. Section 562.052 provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care program to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, solicitation, or marketing material, containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the discount health care program. Section 562.054 provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to misrepresent a discount health care program by: (i) making an untrue statement of material fact; (ii) failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made; (iii) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact; (iv) making a material misstatement of law; or (v) failing to disclose a matter required by law to be disclosed, including failing to make an applicable disclosure required by the Insurance Code.

Section 562.101 provides that a person may not engage in this state in a trade practice that is defined in Chapter 562 as or determined under Chapter 562 to be an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs. Section 562.104(a) provides that a discount health care program operator may market directly or contract with marketers for the distribution of the program operator's discount health care program. Section 562.104(b) provides that a discount health care program operator is required to enter into a written contract with a marketer before the marketer begins marketing, promoting, selling, or distributing the program operator's discount health care program. The contract must prohibit the marketer from using an advertisement, solicitation, or other marketing material or a discount card that has not been approved in advance and in writing by the program operator. Section 562.104(c) provides that the discount health care program operator must approve in writing before their use all advertisements, solicitations, or other marketing materials and all discount cards used by marketers to market, promote, sell, or distribute the discount health care program. Section 562.106 provides that if the Commissioner reasonably believes that a program operator or a marketer may not be operating in compliance with this chapter, the Commissioner by order may require the program operator or the marketer to submit to the Commissioner any advertisement, solicitation, or marketing material, disclosure material, discount card, agreement, or other document requested by the Commissioner. Section 7002.001 provides that, for purposes of the Insurance Code Chapters 562 and 7001, "consideration" provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history information provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacture rebates. 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 August 19, 2010.

TRD-201004806
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 8, 2010
Proposal publication date: June 4, 2010
For further information, please call: (512) 463-6327

DIVISION 2. DISCOUNT HEALTH CARE PROGRAM ADVERTISING

28 TAC §§21.151 - 21.154

STATUTORY AUTHORITY. The amendments and new sections are adopted pursuant to the Insurance Code §§541.401; 562.001; 562.004; 562.005; 562.051 - 562.052; 562.054; 562.101; 562.104(a) - (c); 562.106; 7002.001; and 36.001. Section 541.401(a) authorizes the Commissioner to adopt and enforce reasonable rules the Commissioner determines necessary to accomplish the purposes of Chapter 541. Section 562.001 provides that the purpose of the Insurance Code, Chapter 562 is to regulate trade practices in the business of discount health care programs by defining or providing for the determination of trade practices in the state that are unfair methods of competition or unfair or deceptive acts or practices in this state, and prohibiting those unfair or deceptive trade practices.

Section 562.004 provides that except as otherwise provided by Chapter 562, a program operator, including the operator of a free-standing discount health care program or a discount health care program marketed by an insurer or a health maintenance organization, shall comply with Chapter 562. Section 562.005 provides that Chapter 562 shall be liberally construed and applied to promote the underlying purposes as provided by the Insurance Code §562.001. Section 562.051 provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to: (i) misrepresent the price range of discounts offered by the discount health care programs; (ii) misrepresent the size or location of the program's network of providers; (iii) misrepresent the participation of a provider in the program's network; (iv) suggest that a discount card offered through the program is a federally ap-

proved Medicare prescription discount card; (v) use the term "insurance," except as a disclaimer of any relationship between the discount health care program and insurance, or a description of an insurance product connected with a discount health care program; or (vi) use the term "health plan," "coverage," "copay," "copayments," "deductible," "preexisting conditions," "guaranteed issue," "premium," "PPO," or "preferred provider organization," or another similar term, in a manner that could reasonably mislead an individual into believing that the discount health care program is health insurance or provides coverage similar to health insurance. Section 562.052 provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care program to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, solicitation, or marketing material, containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the discount health care program. Section 562.054 provides that it is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to misrepresent a discount health care program by: (i) making an untrue statement of material fact; (ii) failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made; (iii) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact; (iv) making a material misstatement of law; or (v) failing to disclose a matter required by law to be disclosed, including failing to make an applicable disclosure required by the Insurance Code.

Section 562.101 provides that a person may not engage in this state in a trade practice that is defined in Chapter 562 as or determined under Chapter 562 to be an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs. Section 562.104(a) provides that a discount health care program operator may market directly or contract with marketers for the distribution of the program operator's discount health care program. Section 562.104(b) provides that a discount health care program operator is required to enter into a written contract with a marketer before the marketer begins marketing, promoting, selling, or distributing the program operator's discount health care program. The contract must prohibit the marketer from using an advertisement, solicitation, or other marketing material or a discount card that has not been approved in advance and in writing by the program operator. Section 562.104(c) provides that the discount health care program operator must approve in writing before their use all advertisements, solicitations, or other marketing materials and all discount cards used by marketers to market, promote, sell, or distribute the discount health care program. Section 562.106 provides that if the Commissioner reasonably believes that a program operator or a marketer may not be operating in compliance with this chapter, the Commissioner by order may require the program operator or the marketer to submit to the Commissioner any advertisement, solicitation, or marketing material, disclosure material, discount card, agreement, or other document requested by the Commissioner. Section 7002.001 provides that, for purposes of the Insurance Code Chapters 562 and 7001, "consideration" provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history information provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacture rebates. 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 August 19, 2010.

TRD-201004807
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 8, 2010
Proposal publication date: June 4, 2010
For further information, please call: (512) 463-6327

CHAPTER 24. DISCOUNT HEALTH CARE PROGRAM PRINCIPLES OF REGULATION

SUBCHAPTER A. DISCOUNT HEALTH CARE PROGRAM PRINCIPLES OF REGULATION

28 TAC §§24.1 - 24.4

The Commissioner of Insurance (Commissioner) adopts new Chapter 24, §§24.1 - 24.4, concerning the principles of conduct for how entities and individuals within the discount health care program industry must conduct their business practices. The new sections are adopted without changes to the proposed text published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4611).

REASONED JUSTIFICATION. The new sections are necessary to implement SECTIONS 1 and 2 of House Bill (HB) 4341, 81st Legislature, Regular Session, and Senate Bill (SB) 2423, 81st Legislature, Regular Session. HB 4341 transferred the regulation of discount health care programs from the Texas Department of Licensing and Regulation (TDLR) to the Texas Department of Insurance (Department) effective April 1, 2010. HB 4341: (i) amends the Insurance Code to add new Title 21, Chapter 7001, relating to the regulation of discount health care programs by the Department, effective September 1, 2009; (ii) amends the Insurance Code to add a new Chapter 562, relating to unfair methods of competition and unfair or deceptive acts or practices regarding discount health care programs, effective September 1, 2009, with the exception of Subchapter E, relating to the enforcement by the Attorney General, which took effect April 1, 2010; and (iii) repeals Chapter 76 of the Health and Safety Code, relating to the regulation of discount health care programs by the TDLR, effective April 1, 2010.

SB 2423, 81st Legislature, Regular Session, effective September 1, 2009, amends the Insurance Code to add new Chapter 7002, relating to supplemental provisions regarding discount health care operators. Under §7002.001, for purposes of the Insurance Code, Chapter 562 (relating to Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Regarding Discount Health Care Programs) and Chapter 7001 (relating to Registration of Discount Health Care Program Operators), consideration provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information,

patient prescription drug history, or drug manufacturer rebates. Therefore, for example, such discount health care programs or program operators that do not charge fees for their programs, but that receive consideration in the form of access to patient information that is then transferred or sold, or that receive drug manufacturer rebates, that are then transferred or sold, are subject to the same regulation as those programs regulated under Chapter 7001 that do charge fees for their programs.

This adoption order is a complement to three other Department adoption orders to implement new Insurance Code Chapters 562, 7001 and 7002. The other three adoption orders are: (i) amendments to §§1.501 - 1.503 and 1.507, concerning fingerprint requirements for certain individuals related to the operation of discount health care programs; (ii) new §19.1601 and §19.1602, relating to discount health care program registration and renewal requirements, and amendments to §19.802, relating to amount of fees; and (iii) amendments to §§21.101 - 21.103, 21.108, 21.112 - 21.114, and 21.116 - 21.122, relating to insurance advertising; and proposed new §§21.151 - 21.154, relating to discount health care program advertising. Notice of these three adoption orders is also published in this issue of the *Texas Register*.

On September 14, 2009, the Department posted on its website informal drafts of these four rules for public comment. The Department held a stakeholder meeting on September 18, 2009, to discuss the informal draft rules prior to the informal comment period ending on September 24, 2009. The Department received comments on all four draft rules, including the principles of conduct for how entities and individuals within the discount health care program industry must conduct their business practices, which the Department considered in preparing the proposal. The proposal was published in the June 4, 2010, issue of the *Texas Register* (35 TexReg 4611). The proposal comment period ended on July 5, 2010.

Effective Dates. Pursuant to SECTION 5(b) of HB 4341, a discount health care program operator that was registered with the TDLR on January 1, 2010, as required by Chapter 76 of the Health and Safety Code, must file an application for renewal of registration with the Department under the Insurance Code, Chapter 7001, not later than April 1, 2010. In order for any discount health care program regulated pursuant to the Insurance Code, Chapter 7001 and 7002, to lawfully operate in Texas on or after April 1, 2010, the discount health care program operator must be registered with the Department.

The new sections state certain principles that are of prime importance in the discount health care program industry. The Department's purpose in adopting principles-based regulations is to reduce unnecessary regulatory and administrative burdens by allowing the regulated individual or entity to determine the most appropriate manner by which they should operate their businesses to achieve the stated outcomes. Principles-based regulation aims to ensure that the enforcement of the principles is proportionate to the anticipated outcomes stated by the principles. The Department believes that this regulatory approach is reasonable, necessary and appropriate to benefit the needs of the consumers of discount health care programs.

Principles-based regulation originated in the United Kingdom with the Financial Services Authority. The aim of the Department is to adopt principles that should result in better protection for consumers and others interacting with discount health care professionals by providing a concise point of reference for business conduct. While this adoption states certain principles for the conduct of the discount health care program industry, it does not exhaust the legal or ethical requirements that govern their actions.

HOW THE SECTIONS WILL FUNCTION.

§24.1. Purpose, Scope, and Construction. New §24.1(a) explains the purpose of the chapter. New §24.1(b) provides that a program operator, including the operator of a freestanding discount health care program, or a discount health care program operated and marketed by an insurer or a health maintenance organization, shall comply with this chapter. New §24.1(c) provides that this chapter construes and applies the principles of conduct embodied in the Insurance Code, Chapter 562, for the regulation of trade practices in the business of discount health care programs; Chapter 7001 for the registration of discount health care program operators; and Chapter 7002 for the supplemental provisions relating to discount health care program operators.

§24.2. Definitions. New §24.2(1) references the Insurance Code §562.002 and §7001.001 to provide the definition of "discount health care program." The Insurance Code §562.002(2) and §7001.001(1) define a "discount health care program" as a business arrangement or contract in which an entity, in exchange for fees, dues, charges, or other consideration, offers its members access to discounts on health care services provided by health care providers. The term does not include an insurance policy, certificate of coverage, or other product otherwise regulated by the Department or a self-funded or self-insured employee benefit plan. New §24.2(2) references the Insurance Code, §562.002 and §7001.001, to provide the definition of "discount health care program operator." The Insurance Code, §562.002(3) and §7001.001(2), define a "discount health care program operator" to mean a person who, in exchange for fees, dues, charges, or other consideration, operates a discount health care program and contracts with providers, provider networks, or other discount health care program operators to offer access to health care services at a discount and determines the charges to members. New §24.2(3) references the Insurance Code, §562.002 and §7001.001, to provide the definition of "member." The Insurance Code, §562.002(6) and §7001.001(5), define a "member" to mean a person who pays fees, dues, charges, or other consideration for the right to participate in a discount health care program. Proposed new §24.2(4) references the Insurance Code, §562.002 and §7001.001, to provide the definition of "provider." The Insurance Code §562.002(9) and §7001.001(7) define "provider" to mean a person who is licensed or otherwise authorized to provide health services in the state of Texas.

§24.3. Principles. New §24.3 provides the principles of conduct by which a discount health care program operator must act. Specifically, new §24.3 provides that a discount health care program operator shall: (i) comply with all applicable statutes of the State of Texas and with all applicable Department rules, including amendments to Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct); new Chapter 19, Subchapter Q of this title (relating to Discount Health Care Program Registration); the amendment to §19.802 of this title (relating to Amount of Fees); and new Chapter 21, Subchapter B, Division 2 of this title (relating to Discount Health Care Program Advertising); (ii) lawfully conduct its business with integrity and diligence; (iii) organize and control its affairs responsibly and effectively, with adequate risk management systems; (iv) maintain adequate financial resources to enable it to satisfy its obligations as they are

incurred or become due; (v) pay due regard to the interests of its prospective members, members, and providers by treating them fairly; (vi) pay due regard to the needs of its prospective members, members, and providers by communicating information to them in a way that is clear, fair and not misleading; (vii) manage conflicts fairly, between, as applicable, the discount health care program operator and its members; the discount health care program operator and its providers; and members and providers; and (viii) interact with the Commissioner in an open and cooperative way and promptly disclose to the Commissioner any significant information relating to its ability to continue as a going concern or as a registered discount health care program operator and to its continued financial stability.

§24.4. Severability. New §24.4 provides that if a court of competent jurisdiction holds that any provision of this chapter is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this chapter will remain in effect.

SUMMARY OF COMMENTS. The Department did not receive any timely filed comments on the published proposal.

STATUTORY AUTHORITY. The new sections are adopted pursuant to the Insurance Code Chapters 562, 7001, and 7002, including §§562.001, 562.004, 562.005, 7001.003, 7002.001, and 36.001. Section 562.001 provides that the purpose of the Insurance Code, Chapter 562, is to regulate trade practices in the business of discount health care programs by defining or providing for the determination of trade practices in the state that are unfair methods of competition or unfair or deceptive acts or practices in this state, and prohibiting those unfair or deceptive trade practices. Section 562.004 provides that except as otherwise provided by this chapter, a program operator, including the operator of a freestanding discount health care program or a discount health care program marketed by an insurer or a health maintenance organization, shall comply with this chapter. Section 562.005 provides that Chapter 562 shall be liberally construed and applied to promote the underlying purposes as provided by the Insurance Code, §562.001. Section 7001.003 requires the Commissioner to adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement this chapter. Section 7002.001 provides that for purposes of the Insurance Code Chapters 562 and 7001, "consideration" provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates. 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 August 19, 2010.

TRD-201004808

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 8, 2010
Proposal publication date: June 4, 2010
For further information, please call: (512) 463-6327

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (Board) adopts the repeal of Chapter 375, §§375.1 - 375.4, 375.11 - 375.21, 375.31 - 375.42, 375.51 - 375.53, 375.61, 375.62, 375.71 - 375.73, 375.81 - 375.87, 375.101 - 375.105, 375.201, 375.211 - 375.214, 375.221, 375.222, 375.301, 375.302, 375.325 - 375.329, 375.350 - 375.363, and 375.400 - 375.408, concerning Clean Water State Revolving Fund (CWSRF). The repeal is adopted without changes to the proposal as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5747).

The Board adopts the repeal and new Chapter 375. The new Chapter 375 is adopted elsewhere in this issue of the *Texas Register.*

Background and Justification

The Board adopts the repeal of Chapter 375 because the Board is adopting a new chapter for the CWSRF. The repealed rules contained information relating solely to the internal workings of the agency; they also contained outdated sections relating to capitalization grants. Further, the rules were repealed to improve organization so that similar information is located in one rule. Finally, the repealed rules did not afford the Board sufficient flexibility to respond to annual changes in federal appropriations laws containing substantive directives in administering the CWSRF. Therefore, the Board determined that a repeal of the chapter was necessary to provide greater flexibility to respond to federal directives, to provide more clarity and ease of use and to eliminate unnecessary internal operating procedures.

Comments

The Board did not receive any comments on the proposed repeal.

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §§375.1 - 375.4

STATUTORY AUTHORITY

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004819
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §§375.11 - 375.21

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004820
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 3. APPLICATIONS FOR ASSISTANCE

31 TAC §§375.31 - 375.42

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004821
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 4. BOARD ACTION ON APPLICATIONS

31 TAC §§375.51 - 375.53

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004822
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 5. ENGINEERING REQUIREMENTS

31 TAC §375.61, §375.62

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004823
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 6. PREREQUISITES TO RELEASE OF FUNDS

31 TAC §§375.71 - 375.73

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004824
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 7. BUILDING PHASE

31 TAC §§375.81 - 375.87

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004825
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 8. POST BUILDING PHASE

31 TAC §§375.101 - 375.105

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004826
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER B. PROVISIONS RELATING TO USE OF CAPITALIZATION GRANT FUNDS

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §375.201

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004827
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §§375.211 - 375.214

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004828
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 3. PREREQUISITES TO RELEASE OF FUNDS

31 TAC §375.221, §375.222

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004829

Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER C. NONPOINT SOURCE POLLUTION CONTROL PROJECT AND ESTUARY MANAGEMENT FINANCIAL ASSISTANCE PROGRAMS

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §375.301, §375.302

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004830
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 2. NONPOINT SOURCE POLLUTION LOAN AND ESTUARY MANAGEMENT PROGRAM

31 TAC §§375.325 - 375.329

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004831
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 3. NONPOINT SOURCE POLLUTION LINK DEPOSIT PROGRAM

31 TAC §§375.350 - 375.363

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004832
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER D. PROVISIONS RELATING TO APPLICATIONS FOR FINANCIAL ASSISTANCE FILED IN RESPONSE TO SPECIAL CAPITALIZATION GRANTS; EXPEDITED REVIEW, PROCESSING AND LOAN CLOSING REQUIREMENTS

31 TAC §§375.400 - 375.408

The repeal is adopted pursuant to the Board's rulemaking authority in Texas Water Code §15.6041(a) relating to the manner in which financial assistance shall be provided; §15.605 relating to rules necessary to carry out Subchapter J of Chapter 15; and §15.609 relating to authority to charge 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 August 19, 2010.

TRD-201004833
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (Board or TWDB) adopts new Chapter 375, §§375.2, 375.10, 375.12, 375.13, 375.15

- 375.19, 375.30 - 375.33, 375.40 - 375.44, 375.50, 375.52 - 375.56, 375.60 - 375.70, 375.80. 375.82, 375.83, 375.90, 375.92, 375.93, 375.100 - 375.110, and 375.200 - 375.214, relating to the Clean Water State Revolving Fund (CWSRF), without changes to the proposed text as published the July 2, 2010, issue of the *Texas Register* (35 TexReg 5752). Sections 375.1, 375.11, 375.14, 375.51, 375.81, and 375.91 are adopted with changes to the proposed text as published.

BACKGROUND AND SUMMARY OF THE BASIS FOR THE ADOPTED RULES.

The Board adopts new Chapter 375 relating to the Clean Water State Revolving Fund to provide greater flexibility to adapt to changing federal program requirements, to streamline and reorganize the rules for ease of use. The Board has changed certain definitions, including the definition of disadvantaged community to provide more flexibility to fund infrastructure projects for applicants not otherwise able to afford a revolving fund loan. The new chapter contains nine subchapters as proposed.

Subchapter A relating to General Program Requirements is adopted with a change to the definition of "disadvantaged community" to ensure that the Board may consider factors and parameters outside and in addition to the previous formulaic definition. This change will allow the Board to consider more factors relevant to the ability to afford a loan and should be beneficial to small communities facing significant problems. This subchapter now contains all of the information relating to entities and activities eligible for assistance and the consolidation of this information is for ease of use and clarity.

Subchapter B relating to Financial Assistance is adopted with changes to the proposed text. This subchapter now contains all information relating to the types of loans available under the program. There are substantial changes to the types of loans which now include separate loans for planning, acquisition and design and for construction. These options provide the Board with the ability to minimize the amount of unliquidated obligations that resulted from loans for construction that were close well before construction amounts were known. This change allows the Board to more efficiently allocate the limited available funds. Additionally, the rules now allow for more flexibility in interest rates, which will be specifically stated in the intended use plan. This allows the Board to better manage the fund by ensuring that rates may be adjusted based on the applicant's financial status and is particularly relevant given increased federal emphasis on subsidies to disadvantaged communities.

Subchapter C relating to Intended Use Plan is adopted without changes to the proposed text. This subchapter is a significant change that places greater emphasis on the Intended Use Plan (IUP) and less on the rules. These changes allow the Board to be more responsive to changing requirements in federal capitalization grants.

Subchapter D relating to Application for Assistance is adopted without changes to the proposed text. This subchapter consolidates all requirements for an application for financial assistance and makes it easier for applicants to provide all required information. Other significant changes include stricter timelines for submission of required and requested information. This allows the Board to efficiently distribute funds instead of spending many months waiting for application information.

Subchapter E relating to Environmental Reviews and Determinations is adopted with a change to the proposed text of §375.51(c)(1) to delete a reference to the National Environmental Policy Act (NEPA) because that section relates only to state funded projects. This subchapter results from a re-write of federal requirements for better organization and for clarity.

Subchapter F relating to Engineering Review and Approval is adopted with changes to the proposed text. The sections within this subchapter have been re-organized and rewritten for ease of use. The requirements are substantively the previous rules. However certain information will now appear in the Board's guidance documents instead of in this subchapter.

Subchapter G relating to Loan Closings and Availability of Funds is adopted with minor typographical changes to the text and with the addition of the words "investment pool" to clarify that an "investment pool" is an acceptable alternative to use of a trust or escrow account. This subchapter now requires draws of loan funds on a regular basis and at closing to ensure that the Board spends the federal funds in a more expeditious manner and to ensure that applicants do not lose the ability to fully utilize their debt authority under the Depository Trust Company rules.

Subchapter H relating to Construction and Post Construction Requirements is adopted without changes to the proposed text. This subchapter details the Board's authority to monitor the project's construction throughout the construction phase and to iterate the Board's continuing authority to monitor the project and the environmental mitigation measures after the construction is complete. Additionally, this subchapter provides distinct restrictions on the use of surplus funds; this allows the Board to better manage loan funds and assists applicant by providing clarity about acceptable uses of surplus funds.

Subchapter I relating to Nonpoint Source Pollution Linked Deposits Program is adopted without changes to the proposed text. This subchapter is unchanged from the previous subchapter. It relates to a program that allows local banking institutions to provide loans to control nonpoint source pollution.

PUBLIC COMMENTS.

General Comments.

The Board received a comment relating to the use of alternative methods of project delivery, including construction manager at risk and design-build. The commenter asked that the Board recognize that comments submitted on the Board's rules for the Drinking Water State Revolving Fund (DWSRF) rules at 31 TAC Chapter 371 are also applicable to these proposed rules. (CDM)

Response: The Board appreciates the commenter's efficiency in bringing these concerns to the Board's attention without resubmittal of the same comments. The Board acknowledges that the same concerns exist regarding the use of alternative methods of project delivery in the Clean Water program as they did in the Drinking Water program. The Board intends to work closely with stakeholders in developing guidance that will facilitate the use of alternative methods of project delivery in both state revolving fund programs. Therefore, the Board is deleting the proposed language at §375.14(b) and is adding language to §375.81(d) relating to alternative methods of project delivery. The new subsection states that combinations of financial assistance may be available for alternative methods of project delivery and that the executive administrator will provide written guidance regarding such combinations and other modifications of current Board practices to accommodate different procurement methods. The Board will seek input from all interested stakeholders regarding the guidance.

§375.1. Definitions.

Comment: Regarding the definition of 'disadvantaged community,' one commenter suggests listing other factors or providing examples 'as determined by the Board.' (Brazoria County FWSD #2).

Response: Other factors and examples will be included in Board policy and published on the agency's web site prior to the next solicitation for projects. The examples requested by the commenter include, for example, a community that is at 78% of median household income instead of the rule's 75% language.

Another example is a community that has disproportionately high household cost factors although the median household income may be higher than 75%. This flexibility allows the Board to consider additional factors or current factor extremes to provide financial assistance to communities that cannot otherwise afford an SRF loan when they cannot meet the numerical criteria of the definition.

Comment: A commenter requests that the definition of "disadvantaged community" be revised to be consistent with other state agencies, such as the Texas Department for Rural Affairs, for defining low to moderate income and also allow the service area to be specific to the benefit area of distinct projects rather than the full political subdivision. (City of Houston)

Response: The Board agrees with the commenter that the definition of "disadvantaged community" should be modified to allow disadvantaged funding for a defined portion of a service area. The Board is amending the definition at §375.1 to provide for a finding that a portion of a service area may be considered "disadvantaged." The Board declines to make other changes to the definition for two reasons. First, the proposed definition is consistent with the definition for "disadvantaged" in other Board loan programs that provide the same opportunities for disadvantaged communities regardless of the source of loan funding. Second, the Board may, pursuant to the availability of funds and demonstrated need, consider additional factors or current factor extremes in the definition of "disadvantaged" as appropriate to ensure that the federally required subsidy amounts are met and to provide financial assistance to communities that otherwise cannot afford an SRF loan. The Board's discretion to consider additional factors or current factor extremes in the definition of "disadvantaged" also allows the Board to consider other current state and federal program definitions of "disadvantaged." Therefore, the Board is not making any other changes based on these comments.

§375.12. Planning, Acquisition, and Design Funding.

Comment: One commenter comments that segregating financing for Planning, Acquisition, and Design Funding (PAD) from construction will create substantial costs. This commenter indicates that its multiple projects within each regional system are planned and designed as separate projects each year and these multiple projects have their respective schedules and timelines for completion of design and are advertised for bids at different time intervals. The commenter suggests that segregating PAD from construction will increase the number of loans; costs and administration of the multiple loans will increase. (TRA)

This commenter further stated that proposed rule changes set the stage for separate loans for construction of projects only when they are ready to proceed that creating multiple loans at various times during each calendar year. The commenter indicates that multiple loans will create a tremendous amount of additional expense and accounting procedures. (TRA)

Response: Regarding the concern that the proposed rule will require multiple loans, the Board believes that current practices need not be impacted as suggested by this comment. For example, an entity that is planning for numerous separate projects simultaneously may submit a project information form that requests financing for planning, acquisition and design for one project and construction funds for a separate project. Thus, the number of loans necessary to proceed on several projects simultaneously will not be increased when, for example, a project information form requests funding for a construction project that is ready to proceed and funding for planning, acquisition and design of an additional project is also needed. The Board is not making any changes based on this comment.

Comment: Citing numerous examples, a commenter suggests that §375.12(b) will have the effect of making the borrower reapply through the IUP process without any assurance that funds will be available and possibly saddling the borrower with a loan without construction funding. According to this commenter, this leaves the borrower with a huge risk that, with changes in federal funding mandates or changes in the EPA guidance, the TWDB will not have the authority to give "priority" to construction projects that have gone through the PAD process or that funding is not available.

Regarding the planning, acquisition and design funding, this commenter suggests that the risk to borrowers is significant since they will have contracted a debt for the PAD without having the assurance that the improvements will be built and in certain cases this could impact the credit rating of the borrower. The commenter suggested that should the PAD be part of the alternatives available to borrowers, it should be offered with the understanding that construction funding is not guaranteed and there is a risk that funding may not be available when construction is ready to proceed.

This commenter further stated there is no discussion on how priorities will be established. This commenter suggest that if an applicant has to come back for a second ranking in a subsequent IUP, other projects may rank higher and funding for construction may never be available or, conversely, if the initial borrower receives an automatic priority in a subsequent IUP, those applicants rated above that priority project can be bypassed and potentially not receive funding. This commenter also indicates that this is a significant interest rate risk in using the two step process since there is no way to lock in an interest rate until some point in the future. The commenter also suggested that if funding is not secured at the initial application stage there is the risk that a future Congress or the EPA will change priorities and a borrower may not be able to access funding for construction.

This commenter expresses concern that the proposed rules will result in making it more difficult to access and use the program and increase the risk of higher interest rates. This commenter recommends that if the goal of the two step process is to speed up the spending of federal funds, a more feasible approach would be to include in the guidance document greater flexibility to phase projects so that portions of the projects can be constructed earlier in the process. (Naismith)

Response: The Board interprets the federal statutory authority as allowing the Board to set priorities in the IUP in addition to any varying priorities set annually by federal appropriations laws. Neither the Clean Water Act, 33 U.S.C. §1383 relating to water pollution control revolving funds nor the implementing regulations at 40 CFR Part 35, Subpart K relating to State Water Pollution Revolving Funds limits the Board's ability to establish

priorities and adopt policies regarding the types of activities that will receive assistance. See 40 CFR §35.3150 relating to the Intended Use Plan; this rule allows the Board to "describe the criteria and methods established for the distribution of the SRF funds." Therefore, the Board is not making a change based on this concern because the Board's experience and federal law indicate that the Board will continue to maintain discretion in prioritizing projects.

The amount of available funding already varies from year to year depending on federal requirements. However, the Board may determine, for example, that in one year only ready to proceed construction projects will be funded while in another year priority is given to impact on certain impaired bodies of water by funding planning, acquisition and design. The Board's flexibility under these rules will allow it to be more responsive to funding needs as they arise.

The manner in which funding is prioritized may be adjusted annually and the ability to bypass projects is just as likely to favor funding construction as to favor other types of funding. Although the interest rates may vary from year to year, the program still offers below market interest rates. The Board is unable to control other conditions that impact interest rates and notes that open market interest rates are subject to the same variables as Board interest rates. The Board does intend to allow greater flexibility to phase projects by allowing one loan for planning of a project and for construction of a different project if the applicant so requests in the project information form. The Board is not making any changes based on this comment.

§375.15. Lending Rates.

Comment: A commenter suggests that these provisions appear to provide uncertainty of the amount of the subsidy that precludes the traditional planning for determining the benefit of use of SRF funds. (TRA)

Response: The Board understands the concern about increased flexibility in setting interest rates. The Board has a fiduciary duty to ensure the existence of the clean water revolving fund in perpetuity and thus must be able to adapt to changing market conditions, maintain acceptable levels of debt service cash flow and comply with applicable tax laws. Therefore, the flexibility in setting lending rates is necessary to ensure the most effective, efficient use of available funds and no change is being made based on this comment.

§375.14. Pre-Design Funding.

Comment: One commenter stated that it appears that the Board intends to phase out the pre-design funding option which may conflict with the use of alternative methods of project delivery. The commenter indicates that the PAD process will be extremely difficult if not impossible to use a design-build or construction manager at risk approach. (Naismith)

Response: The Board's current position is that the revolving fund will be more efficiently managed if the funds are disbursed sooner and for more limited periods of time. However, the Board disagrees that funding a PAD project alone will make using alternative methods of project delivery impossible. The Board will work with stakeholders to ensure that appropriate flexibility in release of funds is available to allow PAD funding for different methods of project delivery. Additionally, some alternative delivery projects may be able to proceed as construction projects while continuing design. The Board is amending §375.81 by adding new subsection (d) relating to Alternative Methods of Project Delivery. This new subsection provides that the executive administrator will develop guidance to ensure that the terms of financial assistance and the Board's procedures and policies are adaptable to the needs of applicants who use such alternative methods.

Comment: Regarding §375.14, a commenter stated that the pre-design funding option would eventually be phased out in favor of two separate loans, requiring two loan closings, with increases in preliminary engineering, legal and financial advisory costs. According to this commenter, small communities, with relative small dollar projects, are less able to finance these increased costs due to a relatively small customer base. The commenter adds that small projects tend to be more clearly defined in the beginning, making a two step loan process less necessary. This commenter adds that the two step loan process introduces uncertainty about actually receiving the construction phase funding and that the two step loan process also introduces delays in funding of construction which may subject the community to inflation increases in construction costs. Based on the reasons provided, the commenter encourages the TWDB to not phase out the pre-design funding option for small communities with clearly defined projects. (Hayter Engineering)

Response: Although the Board believes that it can achieve better fund management by increasing debt service cash flow and by decreasing unliquidated obligations, the Board also strives to meet the needs of all Texans by minimizing adverse impact to state waters. The commenter's concern about actually receiving construction funds is understandable; however, under current practice construction funds are committed before planning and design. This creates situations where the pre-design estimate is too low and the entity may not have enough funds to actually finish construction. On the other hand where the estimate is too high, the Board has tied up funds that could be used for a project that is ready to proceed to construction. The Board is attempting to balance its fiduciary duties with the needs of applicants. The Board is committed to providing financial assistance to small communities and Board staff will provide consultation and assistance to ensure that small communities are able to afford a state revolving fund loan. The fees and costs associated with loans are generally related to the amount of money borrowed and therefore the total costs should not be significantly different where two loans are utilized. Additionally, smaller projects that move quickly may be able to receive a construction loan with reimbursement for planning and design costs, therefore allowing for only one step in the funding process. The Board is not making any changes based on this comment.

§375.17. Term of Loan.

Comment: According to one commenter, the 10-year loan term for PAD of an eligible project presents problems. This commenter indicates this will increase the cost by accelerating the debt service payments that are to be paid by its customers. The commenter indicates that under the proposed rules, it will have loans that are based on a 10-year amortization and loans for construction based on 20 or 30 years. (TRA)

Response: The shorter amortization for PAD provides overall interest cost savings to the borrower. An entity may choose to fund the PAD from monies other than a Board loan so that PAD costs may be reimbursed under a construction loan when the project is ready to proceed to construction. Therefore, the Board is not making any changes to the proposed rule based on this comment.

Comment: A commenter comments that this proposed rule is onerous in that it accelerates debt service to the borrower, effectively negating the benefit of the interest rate subsidy provided by the capitalization grant. This commenter suggests that if a borrower were to use the open market, the bond holders would view the project as a package including the planning, acquisition, design and construction for the project and allow for the repayment over the entire term of the bonds. This commenter further suggests that this provision could have an impact on larger projects that have significant planning, acquisition and design costs. Also, if construction funding is not from the SRF the applicant is stuck with a shorter term loan. (Naismith)

Response: The shorter amortization for PAD provides overall interest cost savings to the borrower. The Board intends to structure loans in a manner that best meets the needs of the Board to adequately manage the state revolving loan fund and to address the ability of the entity to repay the loan. The Board does not agree that a longer term loan provides greater benefits to the extent suggested by the commenter. The requirement to begin drawing funds and making repayments is not so significantly different that it will necessarily adversely affect the benefit derived from a below market interest rate. The Board is not making any changes based on this comment.

§375.18. Subsidies.

Comment: One commenter recommends adding the phrase "an entity identified as having an emergency health issue and/or currently in litigation." (Brazoria County FWSD #2)

Response: The authorized subsidies are primarily based on the applicant's ability to afford a state revolving fund loan. The Board has discretion to adjust affordability criteria to address communities that have emergency public health issues pursuant to §375.31(a). Currently, entities in litigation or under enforcement action (court order, EPA or TCEQ order) receive a point and therefore a preference as part of the project rating for the project priority list. The Board is not making any change based on this comment.

§375.31. Rating Process.

Comment: One commenter recommends adding to the process whether documented community health issues exist. (Brazoria County FWSD #2)

Response: For publically owned treatment works, projects, the Board's rating process includes a criterion that assigns points for projects in unserved areas that have a documented nuisance dangerous to public health and safety pursuant to §375.31(a)(7), which provides that the Board may use any other factors. Additionally, to the extent that the health issue is caused by a non-point source problem, the Board specifically considers public health under proposed §371.31(c)(1). The Board is not making any changes to this rule based upon this comment.

§375.44. Board Approval of Funding.

Comment: According to one commenter, the 12-month expiration for a financial assistance commitment that includes PAD and construction will create additional financial burden. The commenter also notes that the current rule allows for expiration at the end of two (2) years. (TRA)

Response: The Board has limited the viability of a commitment to ensure that unliquidated obligations do not adversely affect the Board's ability to properly manage the revolving fund program. The Board has experienced unacceptably high unliquidated obligations due to the failure to close loans in a timely manner and therefore is not making a change based on this comment.

§375.51. Environmental Review Process.

Comment: A commenter notes that the effect of the changes to this section appear to federalize all environmental review to be in NEPA compliance based on the need to have the ability to more effectively use federal funds. This commenter comments that while the cost of federalizing environmental reviews is higher than the current state review, this seems to be a reasonable and prudent requirement in order to take advantage of funding opportunities. (Naismith)

Response: The Board appreciates this comment and the Board is making a change based upon this comment. The Board did not intend to state that the state funded projects would be required to undergo a full NEPA review. Therefore, the Board is amending §375.51(c)(1) to eliminate the phrase "consistent with the National Environmental Policy Act."

§375.56. Use of Environmental Determination Prepared by Other Entities.

Comment: A commenter comments that this provision seems to create potential double jeopardy situation for the borrower if the TWDB is required to reevaluate previous findings by other federal and/or state agencies. This commenter suggests that as worded, this rule appears to put the TWDB in the position of reopening permits or of vetoing valid permits and agency environmental findings by denying financing and will also needlessly duplicate efforts between agencies in making environmental determinations. (Naismith)

Response: This section is not substantively different from present Board rules which provide that environmental reviews of a project conducted by other entities will be reviewed by the Board. The purpose of this proposed rule is to ensure that the project proposed for Board funding is not substantially different from the project that was previously reviewed. The re-evaluation referred to in §375.56 is solely to ensure that the project, as defined in the project information form and the application for financial assistance, meets program requirements. The U.S. Environmental Protection Agency requires the Board to conduct certain environmental reviews on each proposed project. No permits or environmental findings issued by other agencies will be vetoed or re-opened if they remain valid and relevant to the projects presented for financial assistance.

General Comments:

Comment: One commenter stated the new proposed rules will increase internal costs necessary to administer and manage multiple loans received from the Texas Water Development Board. This commenter indicates that the new proposed rules will not be beneficial and will affect its decision to pursue SRF loans in the future. (TRA)

Response: The Board appreciates these concerns; however, the Board suggests that entities pursuing multiple projects simultaneously need not necessarily increase the number of loans. The applicants may, through the project information forms required by §376.30, request funds for different phases of different projects at the same time. Therefore, the Board is not making any change based on this comment.

Comment: One commenter expresses concern that replacing formal rule making with instructions in the IUP will not allow for public review or input on the new IUP instructions. This com-

menter suggested that it is possible that using the flexibility to change the IUP without public input will trigger unintended consequences that could adversely impact those that use the program. (Naismith)

Response: The Board provides for public review and comment on the IUP whenever an IUP is proposed or amendments thereto are proposed pursuant to §375.32 relating to Public Notice. Additionally, the Board conducts a public hearing prior to adoption of an IUP. Therefore, it is unlikely that significant changes will occur without public input and no changes are made based on this comment.

Comment: A commenter expresses support for the TWDB's decision to provide guidance documents regarding alternative project delivery methods such as design-build and construction manager-at-risk. This commenter provided comments to the TWDB's DWSRF proposed rules regarding alternative project delivery methods, in which the TWDB's response in the adoption of the DWSRF rules is to develop guidance documents. This commenter's understanding is that the TWDB's intent with the CWSRF program is the same as the DWSRF program and therefore offers its services and assistance as a stakeholder during the development of these guidance documents. (CDM)

Response: The Board appreciates this commenter's statements and the Board is adding a new subsection (d) to §375.81 to reiterate the executive administrator's development of policy and guidance to adapt the Board's policies and procedures to alternative methods of project delivery.

Comment: According to one commenter, the proposed new rules appear to make it difficult for entities to follow the IUP schedule. Specifically, entities will have to perform the required environmental work without knowing whether the projects will qualify for funding. This means additional cost to the entity, and projects will need to be farther along in the development process before submission to the IUP. (SAWS)

Response: The Board's staff has and will continue to work with potential applicants to discuss project eligibility. The pre-application conference and informal communications regularly occur and will continue so that entities can have greater confidence about project eligibility. The Board also notes that environmental review is often required for projects funded in the open market or in other governmental programs. The IUP process is expected to be more efficient and only projects seeking construction funding will need to be farther along in the process and at that time the cost estimates are more realistic.

Comment: A commenter stated that the proposed rules appear to favor smaller communities, at the expense of entities serving larger communities. According to this commenter, the rules specifying that 30% of funds are set aside for disadvantaged communities, and 15% of funds set aside for treatment works serving less than 10,000 persons, will exclude most of the larger communities in Texas. The 30% amount is set by the latest federal appropriations law and is not within the control of the Board. These unpredictable congressional changes are one reason the Board is seeking greater flexibility in these rules. This commenter suggests that the funding limit of 15% of total funds for individual entities, and the elimination of population categories, also favors smaller communities. The commenter further noted that the larger communities include most of the population and contribute most of the treated wastewater to the environment and excluding these communities seems to be at odds with the Clean Water program.

Response: Disadvantaged community assistance is no longer limited to small population systems, therefore the rules allow for all sizes of systems to be considered for disadvantaged assistance. The Board believes that allowing up to 85% of the federal capitalization grant and state funds to larger communities is a fair distribution of limited funds. Although larger communities contribute a larger volume of wastewater, the cumulative effect of wastewater discharges from numerous smaller entities may still have a significant adverse impact on receiving waters. Therefore, the Board is retaining the 15% set aside for smaller communities that are often those most in need of the subsidized loans provided by the fund. Additionally, a 15% limit on funds for an individual project is not part of the proposed rules, but is set by the IUP. Therefore, the proportional share may change from year to year providing the Board with the flexibility needed to best meet the needs of eligible applicants.

In addition to the adopted amendment associated with this rule-making, various stylistic non-substantive changes are included to update rule language to current Texas Register style and format requirements such as removing an extraneous word in §375.11(b)(1), modifying §375.91, and adding "investment pool" in subsection (b)(2)(A) to clarify the availability of an alternative to an escrow account. Other changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

Comments were received from Brazoria County FWSD #2, Camp Dresser & McKee, Inc., Hayter Engineering, Inc., the City of Houston, Naismith Engineering, Inc., the San Antonio Water System, and the Trinity River Authority of Texas.

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §375.1, §375.2

The new sections are adopted under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.605 which authorizes the Board to adopt rules necessary to carrying out its authority relating to Clean Water State Revolving Fund.

Cross reference to statute: Texas Water Code Chapter 15, Subchapter J, §§15.6041(a), 15.605, and 15.609.

§375.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Chapter 15 of the Texas Water Code, and not defined here shall have the meanings provided by the chapter or subchapter as appropriate.

(1) Act--The Federal Water Pollution Control Act, as amended, 33 U.S.C.A. 1251 et. seq., as amended.

(2) Applicant--The entity applying for financial assistance, the entity receiving financial assistance, and the entity owning the project funded under this chapter or an entity authorized to act on behalf of another eligible Applicant.

(3) Application--The forms provided by the executive administrator that must be completed for consideration for financial assistance.

(4) Authorized representative--The person authorized by the Applicant and directed by the Applicant's governing body to file

the application and to sign documents relating to the project, on behalf of the Applicant.

(5) Board--The Texas Water Development Board.

(6) Bonds--All bonds, notes, certificates of obligation, book-entry obligations, and debt obligations authorized to be issued by any political subdivision.

(7) Capitalization grant--The federal grant awarded annually by the EPA to the State to fund the CWSRF.

(8) Clean Water State Revolving Fund (CWSRF)--The financial assistance program authorized by Texas Water Code, Chapter 15, Subchapter J.

(9) Closing--The exchange of the Applicant's approved debt instruments or loan agreement in return for CWSRF financial assistance.

(10) Commission--The Texas Commission on Environmental Quality or TCEQ.

(11) Commitment--An action of the Board, evidenced by a resolution, approving a request for financial assistance pursuant to this chapter.

(12) Construction--The erection, acquisition, alteration, remodel, rehabilitation, improvement or extension of wastewater facilities.

(13) Construction fund--A dedicated source of funds, created and maintained by the Applicant at a designated state depository institution, used solely for a Board approved project.

(14) Construction contract documents--The engineering drawings, maps, technical specifications, design reports, instructions and other contract terms, conditions and forms developed in sufficient detail to allow contractors to bid on the work.

(15) Davis Bacon Act--The federal statute at 40 U.S.C.A. §3141 et seq., as amended and in conformance with the U.S. Department of Labor regulations at 29 CFR Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction) and 29 CFR Part 3 (Contractors and Subcontractors on Public Work Financed in Whole or in Part by Loans or Grants from the United States).

(16) Debt--All bonds or other documents issued by any political subdivision to be used to pledge repayment of the Board's financial assistance.

(17) Design phase--The project phase during which the Applicant prepares the project design documents including surveys, plans, working drawings, specifications and any procedures and protocols to be used during the design of the project.

(18) Disadvantaged community--The service area or portion of a service area that has an adjusted median household income that is no more than 75% of the state median household income for the most recent year for which statistics are available; and if the service area is not charged for sewer services, has a household cost factor for water rates that is greater than or equal to one percent; or if the service area is charged for water and sewer services, has a combined household cost factor for water and sewer rates that is greater than or equal to two percent. The Board may alter or add to these cost factors to provide financial assistance to an entity that cannot otherwise afford a state revolving fund loan.

(19) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, other public calamity requiring emergency action, or energy emergency as defined in Texas Government Code §418.004.

(20) Eligible applicant--A waste treatment management agency including any interstate agencies, or any city, commission, county, district, river authority, or other public body created by or pursuant to state law that has authority to dispose of sewage, industrial wastes, or other waste; or an authorized Indian tribal organization; or any person applying for financial assistance to build a nonpoint source pollution control project pursuant to the Act, §319; or any person applying for financial assistance for an estuary management project pursuant to the Act, §320.

(21) Engineering feasibility report--Those necessary plans and studies that directly relate to the project and that are needed in order to assure compliance with the enforceable requirements of the Act and state statutes. The engineering feasibility data should consist of a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic, and institutional characteristics of the area that is also demonstrated to be cost-effective.

(22) Environmental affirmation--The Board's acceptance of the environmental determination made prior to the release of design or construction funds for federally funded pre-design financial assistance.

(23) EPA--The United States Environmental Protection Agency.

(24) Escrow--The transfer of funds to an eligible state depository institution until such funds are eligible for release.

(25) Escrow agent--The state depository institution appointed to hold the funds that are not eligible for release to the Applicant.

(26) Estuary management plan--A plan for the conservation and management of an estuary of national significance as described in the Act, §320.

(27) Estuary management project--A project to develop or implement an estuary management plan.

(28) Executive administrator--The executive administrator of the Board or a designated representative.

(29) Financial assistance--Loans, including principal forgiveness and negative interest loans as well as grants to eligible Applicants.

(30) Federally funded loans--Financial Assistance funded in whole or in part from the federal funds portion of the CWSRF; also known as equivalency or Tier III loans.

(31) Force majeure--Acts of god, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

(32) Fund--The CWSRF created pursuant to the Texas Water Code, Subchapter J, Chapter 15.

(33) Green project--A project or project components that, when implemented, will result in energy efficiency, water efficiency, green infrastructure or environmental innovation and that are characterized as green projects either categorically or by utilizing a business case approved by the executive administrator.

(34) Green project reserve--A federal directive requiring a specified portion of the capitalization grant to be used for green projects.

(35) Intended use plan--A document prepared annually by the Board, subject to public review and comment that identifies the intended uses of all CWSRF program funds and describes how those uses support the goals of the CWSRF.

(36) Investment pool--An entity created under the Public Funds Investment Act, Chapter 2256, Government Code, as amended, to invest public funds jointly on behalf of the entities that participate in the pool and whose investment objectives in order of priority are:

(A) preservation and safety of principal;

(B) liquidity; and

(C) yield.

(37) Lending rate--The rate of interest applicable to a particular CWSRF loan.

(38) Market interest rate--Interest rates comparable to those attained for municipal securities in an open market offering.

(39) Municipality--A city, town, county, district, association or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, municipal and industrial wastes, or other wastes or an approved management agency under the Act.

(40) Nonpoint source pollution plan--A plan for managing nonpoint source pollution as described in the Act, §319. Nonpoint source pollution is any source of water pollution that does not enter water from a point source and includes pollution generally resulting from land runoff, precipitation, atmospheric deposition, drainage, seepage or hydrologic modification.

(41) Nonpoint source pollution project--A project implemented pursuant to a nonpoint source pollution plan.

(42) Permit--Any permit, license, registration and other legal document required from any local, regional, state or federal government for construction of the project.

(43) Person--An individual, corporation, partnership, association, State, municipality, commission or political subdivision of the State, or any interstate body.

(44) Point source--Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

(45) Priority list--The section of the IUP that lists projects ranked according to priority order based on criteria described within the applicable IUP.

(46) Private Placement Memorandum--A document functionally similar to an official statement used in connection with an offering of municipal securities in a private placement.

(47) Project--The planning, acquisition of land and permits, environmental review, design, construction and other activities designed to improve, extend, rehabilitate and construct wastewater treatment facilities and nonpoint source or national estuary program projects.

(48) Project engineer--The engineer retained by the Applicant to provide professional engineering services during any phase of a project.

(49) Project information form--The Board form that must be submitted by Applicants invited to apply for funding from the CWSRF.

(50) Ready to proceed--A project that has obtained all permits, legally required authorizations, and all land, and has complied with all engineering and environmental planning review requirements and other Board requirements and design is complete.

(51) Release--The time at which financial assistance funds are made available to the loan recipient.

(52) State--The State of Texas.

(53) State depository institution--A state or national bank designated by the comptroller in accordance with the Local Government Code, Chapter 404, Subchapter C, as amended.

(54) State funded loans--Financial assistance funded solely from the state funds portion of the CWSRF; also known as non-equivalency or Tier II loans.

(55) Subsidy--Any special financial terms and conditions available including loan forgiveness, negative interest rates, grants or other financial incentives as detailed in an IUP.

(56) Treatment works--Any devices, facilities and systems that are used in the storage, treatment, recycling, and reclamation of waste or that are necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of, or used in connection with, the treatment process (including land used for the storage of treated water in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment; or facilities to provide for the collection, control, and disposal of waste. The term also means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff; and waste combined in storm water and sanitary sewer systems, the type of projects that often arise in response to emergency events.

(57) Trustee--The person holding the property in trust including an original, additional or successor trustee, whether or not the person is appointed or confirmed by a court.

(58) Trust and agency certificate--The instrument executed between the executive administrator and a home-rule municipality with a population of more than 1,000,000 whose charter provides for an elected comptroller, auditor or treasurer governing the management of CWSRF loan and grant proceeds.

(59) Trust institution--A bank, credit union, foreign bank, savings association, savings bank or trust company that is authorized by its charter to conduct trust business.

(60) Water conservation plan--A report outlining the methods and means by which water conservation may be achieved within a particular facilities planning area.

(61) Water conservation program--A comprehensive water conservation program with a schedule and description of the methods and means to be used to implement and enforce a water conservation plan.

(62) Water quality management plan--A plan prepared and updated annually by the state and approved by the Environmental Protection Agency that determines the nature, extent, and causes of water quality problems in various areas of the state and identifies cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004809
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §§375.10 - 375.19

The new sections are adopted under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.605 which authorizes the Board to adopt rules necessary to carrying out its authority relating to Clean Water State Revolving Fund.

Cross reference to statute: Texas Water Code Chapter 15, Subchapter J, §§15.6041(a), 15.605, and 15.609.

§375.11. Refinancing.

(a) The executive administrator may accept applications to refinance existing debt for eligible projects when sufficient funds are available. If refinancing funds are available in an IUP, then the eligible Applicant shall describe the water quality need for construction of the eligible project and provide other specific information detailed in the project information form.

(b) An application for refinancing of existing debt shall be the same as an application for financial assistance under this chapter. The executive administrator may consider an application for refinancing when:

(1) the project meet all of the requirements for a federally funded project under this chapter, including information evidencing that the environmental review and engineering criteria considered by the original lender shall meets the criteria required under this chapter and law for the same or similar projects; and

(2) the federal tax regulations allow such refinancing if Board bond proceeds will be used to refinance.

§375.14. Pre-Design Funding.

Description. This type of financial assistance is available for the planning, design, acquisition and construction of a project. The funds for the construction phase of a project will be released only when construction contracts have been executed and the project is ready to proceed. This option is available only when the executive administrator recommends it to the Board based on a preliminary determination that there are no significant permitting, social, contractual, environmental, engineering or financial issues that would make a finding unavailable.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004810
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER C. INTENDED USE PLAN

31 TAC §§375.30 - 375.33

The new sections are adopted under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.605 which authorizes the Board to adopt rules necessary to carrying out its authority relating to Clean Water State Revolving Fund.

Cross reference to statute: Texas Water Code Chapter 15, Subchapter J, §§15.6041(a), 15.605, and 15.609.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004811
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §§375.40 - 375.44

The new sections are adopted under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.605 which authorizes the Board to adopt rules necessary to carrying out its authority relating to Clean Water State Revolving Fund.

Cross reference to statute: Texas Water Code Chapter 15, Subchapter J, §§15.6041(a), 15.605, and 15.609.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004812

Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS
DIVISION 1. STATE PROJECTS

31 TAC §§375.50 - 375.56

The new sections are adopted under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.605 which authorizes the Board to adopt rules necessary to carrying out its authority relating to Clean Water State Revolving Fund.

Cross reference to statute: Texas Water Code Chapter 15, Subchapter J, §§15.6041(a), 15.605, and 15.609.

§375.51. Environmental Review Process.

(a) Policy and purpose. This subchapter governs the environmental review of projects funded in whole or in part by the CWSRF. The Board will consider environmental, social, and economic impact as relevant in any hearing or matter in which the Board is directed by law to consider information or to determine whether and how any proposed project affects the quality of the natural and human environment. Environmental review of all proposed infrastructure projects is a condition of the use of CWSRF funds. This subchapter follows the procedures approved by EPA for implementing the state's CWSRF alternative state environmental review process set forth at 40 CFR Part 35.3140(c). The environmental review must be completed prior to the release of funds for design and construction and is subject to public comment. The Applicant, at all times throughout the design, construction, and operation of the project, shall comply with the determinations resulting from the environmental review.

(b) Types of environmental determinations. An environmental determination is issued by the executive administrator at the culmination of the process described in this subchapter. After gathering and reviewing relevant information and data, soliciting comments from state and federal agencies and receiving and analyzing public comments, the executive administrator will issue one of the following determinations:

(1) a Categorical Exclusion (CE), based on submission of information from the Applicant; or

(2) a full review.

(c) General review by Executive Administrator.

(1) The executive administrator shall conduct an inter-disciplinary, inter-agency and public review. This purpose of this review is to ensure that the proposed project will comply with the applicable local, state, and federal laws and regulations relating to the identification of the environmental impacts of a proposed project and the necessary steps required to avoid, minimize and, if necessary, mitigate such impacts. The scope of the environmental review will depend upon the type of proposed action, the reasonable alternatives and the type of environmental impacts.

(2) For all environmental determinations that are five years old or older, and for which the proposed infrastructure project has not yet been implemented, the executive administrator must re-evaluate the proposed financial assistance application as well as the environmental conditions and public comment to determine whether to conduct a supplemental environmental review in compliance with the NEPA, or to reaffirm the original determination. If there has been substantial change in the proposed infrastructure project that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns, the executive administrator must conduct a supplemental environmental review and complete an appropriate determination in compliance with the National Environmental Policy Act. The executive administrator may consider environmental determinations issued by other entities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004813
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

DIVISION 2. FEDERAL PROJECTS

31 TAC §§375.60 - 375.70

The new sections are adopted under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.605 which authorizes the Board to adopt rules necessary to carrying out its authority relating to Clean Water State Revolving Fund.

Cross reference to statute: Texas Water Code Chapter 15, Subchapter J, §§15.6041(a), 15.605, and 15.609.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004814
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §§375.80 - 375.83

The new sections are adopted under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.605 which authorizes the Board to adopt rules necessary to carrying out its authority relating to Clean Water State Revolving Fund.

Cross reference to statute: Texas Water Code Chapter 15, Subchapter J, §§15.6041(a), 15.605, and 15.609.

§375.81. Engineering Feasibility Report.

(a) The Applicant shall submit an engineering feasibility report signed and sealed by a professional engineer registered in the State of Texas. The report, based on guidelines provided by the executive administrator, shall provide:

(1) a description and purpose of the project;

(2) the names of the entities to be served, current population and projections of future population;

(3) the cost of the project;

(4) a description of the alternatives considered and reasons for selecting the proposed project;

(5) sufficient information to evaluate the engineering feasibility and biddability and constructability;

(6) maps and drawings as necessary to locate and describe the project area;

(7) sufficient detail to document that the project will remedy the issues and problems that were evaluated for rating on the IUP;

(8) documentation of the project's cost effectiveness; projects implementing new systems or significantly altering current systems may require a detailed cost-effective analysis, including detailed operation and maintenance costs, to document program eligibility;

(9) a discussion of any known permitting, social, economic and cultural impacts that could result from project construction and implementation; and

(10) any other information or data necessary to evaluate the proposed project. The Applicant must submit any additional information requested by the executive administrator to document the project's eligibility for funding by the program.

(b) Approval of Engineering Feasibility Report. The executive administrator will approve the engineering feasibility report when:

(1) the items listed in subsection (a) of this section have been completed, including any submission of documents in response to requests for additional information or data;

(2) the appropriate environmental determinations have been completed in accordance with Subchapter E of this chapter and the Applicant has agreed to incorporate into project documents, including contracts, and all mitigation measures as a result of the environmental review;

(3) the project and alternatives to the project have been analyzed and the proposed project is cost effective.

(c) Request for project change. A request for a change, after the approval of the engineering feasibility report, to a project shall be granted only if the project remains consistent with the original project and if it will remedy the problems and issues identified in the project information form. Significant changes in a project require previous approval by the executive administrator and the Applicant shall:

(1) provide a description of and the need for changes;

(2) submit additional engineering or environmental information as requested by the executive administrator;

(3) provide an estimate of any increase or decrease in total project costs resulting from the proposed change; and

(4) certify that the proposed changes will not significantly alter the purpose of the project.

(d) Alternative methods for project delivery. Design build, construction manager at risk and other alternative methods of project delivery are eligible for available financial assistance, including combinations of planning, design and construction funding, in accordance with programmatic requirements. The executive administrator will provide written guidance regarding modifications of the type of financial assistance, and the review, approval and release of funds processes for alternative delivery projects.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004815
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§375.90 - 375.93

The new sections are adopted under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.605 which authorizes the Board to adopt rules necessary to carrying out its authority relating to Clean Water State Revolving Fund.

Cross reference to statute: Texas Water Code Chapter 15, Subchapter J, §§15.6041(a), 15.605, and 15.609.

§375.91. Loans Secured by Bonds or Other Authorized Securities.

(a) Disbursement required. No loan shall close unless the Applicant provides an outlay report requesting a disbursement at least seven days prior to the loan closing date.

(b) Instruments needed for closing. The documents that shall be required at the time of closing shall include the following:

(1) evidence that applications have been filed for all licenses, permits, registrations, and other authorizations required by local, state and federal laws and rules that are necessary for planning, design, acquisition and construction of the authorized project;

(2) a certified copy of the ordinances or resolutions adopted by the governing body authorizing the issuance of debt sold to the Board that has received prior approval by the executive administrator and that shall have sections providing as follows:

(A) that an escrow or trust account shall be created that shall be separate from all other funds and as follows:

(i) the account shall be maintained at a designated state depository institution; a properly chartered and licensed trust institution or an investment pool approved by the executive administrator;

(ii) funds shall not be released from the escrow or trust account or investment pool without approval of the executive administrator who shall issue written authorization for the release of the funds;

(iii) escrow account, trust account and investment pool account statements shall be provided on a monthly basis to the executive administrator;

(iv) the investment of any loan or grant proceeds deposited into an approved escrow or trust account, including any proceeds invested with an investment pool, shall be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code, Chapter 2256 as amended; and

(v) the escrow or trust account shall be adequately collateralized in a manner sufficient to protect the Board's interest in the Project in a manner that complies with the Public Funds Collateral Act; Texas Government Code, Chapter 2257, as amended;

(B) that a home rule municipality with a population of more than 1,000,000 persons whose charter provides for an elected comptroller, auditor or treasurer may execute a Trust and Agency Certificate in lieu of establishing an escrow account or trust account in accordance with the Local Government Code, Chapter 104, as amended;

(C) that a construction fund shall be created at a designated state depository institution that shall be kept separate from all other funds of the Applicant;

(D) that the Applicant fix and maintain rates, in accordance with state law, and to collect charges to provide adequate operation and maintenance of the project;

(E) the use of a book-entry-only system;

(F) the use of a paying agent/registrar that is a Depository Trust Company (DTC) participant;

(G) the payment all DTC closing fees assessed by the Board's custodian bank be directed to the Board's custodian bank by the Applicant;

(H) evidence that one fully registered bond has been sent to the DTC or to the Applicant's paying agent/registrar prior to closing;

(I) the initial payment made to the Board be paid via wire transfer at no cost to the Board;

(J) the partial redemption of bonds or other authorized securities be made in inverse order of maturity;

(K) that insurance coverage be obtained and maintained in an amount sufficient to protect the Board's interest in the project;

(L) that the Applicant, or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the Applicant's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis as required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the Board and the beneficial owner of the political subdivision's obligations, if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12. The ordinance or resolution shall also contain any other requirements of the SEC or the IRS relating arbitrage, private activity bonds or other relevant requirements regarding the securities held by the Board;

(M) the maintenance of current, accurate and complete records and accounts in accordance with generally accepted accounting standards to demonstrate compliance with requirements in the loan documents;

(N) the Applicant shall annually submit an audit, prepared by a certified public accountant in accordance with generally accepted auditing standards;

(O) the Applicant shall submit a final accounting at the final release of retainage;

(P) the Applicant shall document the adoption of a water conservation program and the implementation of an approved water conservation program for the duration of the loan;

(Q) the Applicant's agreement to comply with special environmental conditions specified in the Board's environmental determination as well as with any applicable Board laws or rules relating to use of the loan funds;

(R) that the Applicant shall establish a dedicated source of revenue for repayment of the financial assistance;

(S) that interest payments shall commence no later than 1 year after the date of closing and annual principal payments will commence either one year after completion of project construction; and

(T) any other recitals mandated by the executive administrator;

(3) unqualified approving opinions of the attorney general of Texas and, if bonds or other authorized securities are issued, a certification from the comptroller of public accounts that such debt has been registered in that office;

(4) an unqualified approving opinion by a recognized bond attorney;

(5) assurances that the Applicant will comply with any special conditions specified by the Board's environmental determination until all financial obligations to the state have been discharged;

(6) a private placement memorandum containing a detailed description of the issuance of debt to be sold to the Board. The Applicant shall submit a draft private placement memorandum at least 30 days prior to loan closing; a final electronic version of the memorandum shall be submitted no later than seven days before closing; and

(7) any additional information specified in writing by the executive administrator.

(c) Certified transcript. Within sixty (60) days of closing the loan, the Applicant shall submit a transcript of proceedings relating to the debt purchased by the Board that shall contain those instruments normally furnished by a purchaser of debt.

(d) Phased closing. The executive administrator may determine that closing a loan in phases is appropriate when:

(1) the project has distinct phases for planning, design, acquisition and for construction or if any one of the phases can be logically and practically divided into discrete sections;

(2) the project utilizes the design-build or construction manager-at-risk process or any process wherein there is simultaneous design and construction;

(3) there are limitations on the availability of funds;

(4) additional oversight is required due to the financial condition of the Applicant or the complexity of the project; or

(5) due to any unique facts arising from the particular transaction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004816
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER H. CONSTRUCTION AND POST CONSTRUCTION REQUIREMENTS

31 TAC §§375.100 - 375.110

The new sections are adopted under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.605 which authorizes the Board to adopt rules necessary to carrying out its authority relating to Clean Water State Revolving Fund.

Cross reference to statute: Texas Water Code Chapter 15, Subchapter J, §§15.6041(a), 15.605, and 15.609.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004817
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER I. NONPOINT SOURCE POLLUTION LINKED DEPOSITS PROGRAM

31 TAC §§375.200 - 375.214

The new sections are adopted under the authority of Texas Water Code, Chapter 15, Subchapter J, §15.605 which authorizes the Board to adopt rules necessary to carrying out its authority relating to Clean Water State Revolving Fund.

Cross reference to statute: Texas Water Code Chapter 15, Subchapter J, §§15.6041(a), 15.605, and 15.609.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004818
Kenneth Petersen
General Counsel
Texas Water Development Board
Effective date: September 8, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7686

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.369

The Comptroller of Public Accounts adopts new §3.369, concerning sales tax holiday--certain energy star products, without changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5786). The new section implements House Bill 3693, 80th Legislature, 2007, which adds Tax Code, §151.333 regarding exemption for certain Energy Star qualified products sold during a three day period in May. The new section also implements certain existing sections of the Tax Code to provide policy for tax treatment of items set out in §151.333.

No comments were received regarding adoption of the new section.

The new section is adopted under Tax Code, §111.002 which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §§151.0047, 151.0048, 151.005, 151.007, 151.009, 151.010, 151.0101, 151.051, 151.056, 151.101 and 151.333.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2010.

TRD-201004865
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: September 9, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.17

The Texas Board of Criminal Justice adopts the amendments to §159.17, concerning Employment Referral Services for Offenders--Memorandum of Understanding, without changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5798) and will not be republished.

The amendments are necessary to remove the Windham School District and substitute the Texas Department of Criminal Justice (TDCJ) Reentry and Integration Division as the TDCJ division responsible for coordinating the Project for Reintegration of Offenders within the TDCJ.

No comments were received regarding the proposal.

The amendments are adopted under Texas Government Code §501.095 and Texas Labor Code §§306.004 - 306.005.

Cross Reference to Statutes: Texas Government Code §492.001 and §§771.001 - 771.010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2010.

TRD-201004739
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Effective date: September 5, 2010
Proposal publication date: July 2, 2010
For further information, please call: (936) 437-6003

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER A. GENERAL RULES

40 TAC §101.109

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts the proposed amendments to the DARS rules in Title 40, Part 2, Chapter 101, Administrative Rules and Procedures, Subchapter A, General Rules, §101.109, Complaints, without changes to the proposed text as published in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5184) and will not be republished.

DARS adopts amendments to §101.109, Complaints, to make a grammatical change and to add a subsection that notifies the public of where to locate DARS rules on complaints related to the Division for Blind Services, Blind Children's Vocational Discovery and Development Program.

No comments were received regarding adoption of the rule as amended.

The amendment is adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.033(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004800
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: September 8, 2010
Proposal publication date: June 18, 2010
For further information, please call: (512) 424-4050

♦ ♦ ♦

CHAPTER 106. DIVISION FOR BLIND SERVICES

SUBCHAPTER I. BLIND CHILDREN'S VOCATIONAL DISCOVERY AND DEVELOPMENT PROGRAM

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts the proposed amendments to the DARS rules in Title 40, Part 2, Chapter 106, Division for Blind Services, Subchapter I, Blind Children's Vocational Discovery and Development (BCVDD) Program, Division 1, General Information, §106.1403, Public Access to Information, Forms, and Documents; and adopts new Division 7, Complaint Resolution Process, and therein, new rules §106.1531, Authority; §106.1533, Definitions; §106.1535, BCVDD Complaint Resolution Process; §106.1537, Requesting an Informal Review Process by the Field Director; §106.1539, Before the Informal Review; §106.1541, During the Informal Review; §106.1543, After the Informal Review; §106.1545, Resolution of the Informal Review Process; §106.1547, Requesting a Review by the Assistant Commissioner; §106.1549, Resolution by the Assistant Commissioner; and §106.1551, Contacting the Consumer Assistance Line. The rules are adopted without changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5508) and will not be republished.

Specifically, DARS adopts amendments to §106.1403, Public Access to Information, Forms, and Documents, in order to provide the means for public access to the forms and documents used in the administration of the Division for Blind Services, BCVDD Program and notice that Division for Blind Services rules may be viewed on the DARS internet website. In addition, DARS adopts new Division 7, Complaint Resolution Process, and, therein, new rules §§106.1531, 106.1533, 106.1535, 106.1537, 106.1539, 106.1541, 106.1543, 106.1545, 106.1547, 106.1549, and 106.1551, to create a complaint resolution process for the BCVDD Program.

No comments were received regarding adoption of the rules as amended.

DIVISION 1. GENERAL INFORMATION

40 TAC §106.1403

The adopted amendment is authorized by the Texas Human Resources Code, Chapters 91 and 117.

The amendment is adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.033(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004801
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: September 8, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 424-4050

♦ ♦ ♦

DIVISION 7. COMPLAINT RESOLUTION PROCESS

40 TAC §§106.1531, 106.1533, 106.1535, 106.1537, 106.1539, 106.1541, 106.1543, 106.1545, 106.1547, 106.1549, 106.1551

The adopted new rules are authorized by the Texas Human Resources Code, Chapters 91 and 117.

The new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.033(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 19, 2010.

TRD-201004802
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: September 8, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 424-4050

♦ ♦ ♦

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

♦ ♦ ♦

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts proposes to review Texas Administrative Code, Title 34, Part 1, Chapter 17, Payment of Fees, Taxes, and Other Charges to State Agencies by Credit, Charge, and Debit Cards; Chapter 18, Tobacco Settlement Permanent Trust Account; Chapter 19, State Energy Conservation Office; and Chapter 20, Texas Procurement and Support Services. This review is being conducted in accordance with Government Code, §2001.039. The review will include, at the minimum, whether the reasons for readopting continue to exist.

The comptroller will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register.*

Comments pertaining to this review may be directed accordingly:

Chapter 17. Payment of Fees, Taxes, and Other Charges to State Agencies by Credit, Charge, and Debit Cards

Tom Smelker, Director

Treasury Operations

208 E. 10th Street, Room 636, Austin, Texas 78701

Chapter 18. Tobacco Settlement Permanent Trust Account

Marianne Dwight, General Counsel

Texas Treasury Safekeeping Trust Company

208 E. 10th Street, Austin, Texas 78701

Chapter 19. State Energy Conservation Office

Dub Taylor, Manager

State Energy Conservation Office

111 East 17th Street, Room 114, Austin, Texas 78774

Chapter 20. Texas Procurement and Support Services

David Duncan, Deputy General Counsel

General Counsel Division

P.O. Box 13528, Austin, Texas 78711-3528

TRD-201004835
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: August 20, 2010

State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning September 2010, will review and consider for readoption, revision, or repeal Chapter 101, General Administration; Chapter 103, Rulemaking Procedure; and Chapter 104, Procedure for Review of Applications, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are located in Title 7, Part 7 of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting these chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register,* to Marlene Sparkman, Assistant General Counsel, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to Ms. Sparkman at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-201004839
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: August 20, 2010

♦ ♦ ♦

Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 355, Research and Planning Funding, 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

355 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-201004943
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: August 25, 2010

♦ ♦ ♦

The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 357, Regional Water Planning Guidelines, 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 357 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-201004944
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: August 25, 2010

♦ ♦ ♦

The Texas Water Development Board will review 31 Texas Administrative Code, Part 10, Chapter 358, State Water Planning Guidelines, 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 358 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-201004945
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: August 25, 2010

♦ ♦ ♦

Adopted Rule Reviews

Texas Board of Chiropractic Examiners

Title 22, Part 3

Following the publication of the notice of intent to review in the December 4, 2009, issue of the *Texas Register* (34 TexReg 8807), the Texas Board of Chiropractic Examiners ("Board") has reviewed and considered for readoption, revision, or repeal, all sections of Chapters 71 (Applications and Applicants), 73 (Licenses and Renewals), 74 (Chiropractic Facilities), 75 (Rules of Practice), 76 (Formal SOAH Proceedings), 77 (Advertising and Public Communication), 78 (Chiropractic Radiologic Technologists), 79 (Licensure of Certain Out-of-State Applicants), and 80 (Professional Conduct) of Title 22, Texas Administrative Code, Part 3. This review was done pursuant to Texas Government Code §2001.039.

No comments were received on the proposed rule review.

The Board considered, among other things, whether the reasons for the adoption of these rules continue to exist. During its review, the Board determined that the agency rulemaking authority remains in effect and the necessity of these rules continues to exist. Therefore, the above-listed Chapters are readopted without change. This completes the Board's review of the above-listed Chapters of Title 22, Texas Administrative Code, Part 3.

TRD-201004890
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Filed: August 23, 2010

♦ ♦ ♦

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions, comprised of §§90.101 - 90.105, 90.201 - 90.204, 90.301 - 90.304, 90.401 - 90.404, 90.501 - 90.504, 90.601 - 90.604, and 90.701 - 90.706, pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC Part 5, Chapter 90 was published in the *Texas Register,* as required, on May 28, 2010 (35 TexReg 4477). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission proposed amendments to 7 TAC Chapter 90 in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5646). The amendments to the affected sections within Chapter 90 are being concurrently adopted and published elsewhere in this issue of the *Texas Register.*

Subject to the adopted amendments to Chapter 90, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Part 5, Chapter 90.

TRD-201004876
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 20, 2010

♦ ♦ ♦

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice (Board) has completed its review of §159.17, concerning Employment Referral Services for Offenders--

Memorandum of Understanding, in accordance with the requirements of Texas Government Code §2001.039.

Notice of the review was published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5917). No comments were received as a result of that notice.

As a result of the rule review, the Texas Department of Criminal Justice published proposed amendments to §159.17 in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5798). The Board adopted the amended rule on August 16, 2010, and the adoption notice is published in this issue of the *Texas Register.*

TRD-201004740
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: August 16, 2010

♦ ♦ ♦

Texas Water Development Board

Title 31, Part 10

Pursuant to the notice of proposed rule review published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5917), the Texas Water Development Board (board) has reviewed and considered for readoption, revision, or repeal Title 31, Texas Administrative Code, Part 10, Chapter 377, Hydrographic Survey Program, in accordance with Texas Government Code §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the rule review, the board determined that the reasons for initially adopting the rules in Chapter 377 continue to exist and readopts the rules. This completes the board's review of Chapter 377, Hydrographic Survey Program.

TRD-201004941
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: August 25, 2010

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5917), the Texas Water Development Board (board) has reviewed and considered for readoption, revision, or repeal Title 31, Texas Administrative Code, Part 10, Chapter 384, Rural Water Assistance Fund, in accordance with Texas Government Code §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the rule review, the board determined that the reasons for initially adopting the rules in Chapter 384 continue to exist and readopts the rules. This completes the board's review of Chapter 384, Rural Water Assistance Fund.

TRD-201004942
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: August 25, 2010

♦ ♦ ♦

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 §25.2(c)

Model Waiver of Right to Cancel in English.

To use this form: You must reproduce this form on ONE PAGE. The caption in this form is in Arial 14pt, the narrative paragraphs are in Times 12pt, and the consumer inquires and complaints disclosure is in Arial 9pt fonts.

Waiver of Right to Cancel
(For Prepaid Funeral Benefit Contracts)

Name of Purchaser: _____

Contract Number: _____

Seller: _____

1. I am the purchaser of the Contract listed above. By signing my name below, I am waiving my right to cancel the Contract, as permitted by the Texas Finance Code, Section 154.155.

2. I understand that I will **NOT** be able to cancel the Contract and receive any refund from the Seller in the future **even if I move out of the community in which I currently live or change my mind.**

_____	_____
Signature of Purchaser	Acknowledgement of Seller (Or Seller's Agent)
Date Signed: _____	Date Signed: _____

The Seller is required to deliver a copy of this signed Waiver to the Purchaser.

The Texas Department of Banking regulates the sale of prearranged funeral contracts and has approved the form of this Waiver. You can file a consumer complaint with the Department by calling (877) 276-5554 (a toll free call). The Department's website address is http:\\www.dob.texas.gov. If you have questions or would like additional information on prepaid funeral contracts, visit www.prepaidfunerals.texas.gov.

[Form # 10/09 Waiver]

Figure: 7 TAC §25.3(k)(1)

Complaint Disclosure.

To use this form: You must reproduce the narrative of this form exactly as written and place it on the bottom of the Required Signatures and Notices Section on the contract. The form is in Times 9pt fonts.

For Insurance-Funded Contracts:

Inquiries should be directed as below. All complaints must be in writing.

Concerning the Prepaid Contract:	**Concerning the funeral service or funeral director:**	**Concerning the Insurance Policy:**
Texas Department of Banking	Texas Funeral Service Commission	Texas Department of Insurance
2601 N. Lamar,	P. O. Box 12217,	P. O. Box 149194,
Austin, Texas 78705	Austin, Texas 78711	Austin, Texas 78714
1-877-276-5554 (toll free)	1-888-667-4881 (toll free)	1-800-252-3439 (toll free)
www.dob.texas.gov	www.tfsc.state.tx.us	www.tdi.state.tx.us

For Trust-Funded Contracts:

Inquiries should be directed as below. All complaints must be in writing.

Concerning the Prepaid Contract:	**Concerning the funeral service or funeral director:**
Texas Department of Banking	Texas Funeral Service Commission
2601 N. Lamar,	P. O. Box 12217,
Austin, Texas 78705	Austin, Texas 78711
1-877-276-5554 (toll free)	1-888-667-4881 (toll free)
www.dob.texas.gov	www.tfsc.state.tx.us

Figure: 7 TAC §83.802(c)

CHAPTER 342, SUBCHAPTER E TANGIBLE PERSONAL PROPERTY INSURANCE RATES	
Insurable Amount	**Rate per $100 per year**
$0.00 to $1,000.00	1.80
$1000.01 to $2,000.00	1.35
$2000.01 or more	0.90

Figure: 7 TAC §84.308(e)(2)

Original Financing Term (Months)	Rate per $100 or Percentage of Amount Financed
0-12	10.00
13-35	12.00
36+	14.00

Figure: 7 TAC §84.308(e)(3)

Original Financing Term (Months)	Rate per $100 or Percentage of Amount Financed
0-12	6.50
13-35	7.50
36+	9.00

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Solid Waste Disposal Act and the Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act, the Texas Water Code, and Texas Commission on Environmental Quality (TCEQ) rules. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Shamrock Soil Products, Inc.*, Cause D-1-GV-10-00253; 261st Judicial District, Travis County, Texas.

Nature of Defendant's Operations: Shamrock Soil Products, Inc., a Texas corporation, operated an unpermitted municipal solid waste disposal site on approximately 9.5 acres of land in San Antonio, Texas. Since January 25, 2007, TCEQ conducted investigations of the Defendant's site and documented violations of the Texas Solid Waste Disposal Act, the Texas Water Code, and TCEQ rules.

Proposed Agreed Judgment: The Agreed Final Judgment orders the Defendant to pay a civil penalty of $16,000.00. Defendant will pay the State $14,000.00 in attorneys' fees and $298.00 for court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Laura E. Miles-Valdez, Assistant Attorney General, Environmental Protection and Administrative Law Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201004866
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 20, 2010

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 13, 2010, through August 19, 2010. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on August 25, 2010. The public comment period for this project will close at 5:00 p.m. on September 24, 2010.

FEDERAL AGENCY ACTIONS:

Applicant: Orange Shipbuilding Company, Inc., Location: The project is located in the Sabine River Cutoff, on the right descending bank, upstream of the Port of Orange, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Orange, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 429253.66; Northing: 3328308.21. Project Description: The applicant proposes to construct, operate and maintain 2 dry docks in a newly constructed and bulkheaded slip. In addition, the applicant proposes to place 6 mooring pilings along the shoreline of their existing facility to secure additional vessels serviced or utilized by the applicant. The new slip with bulkhead will be mechanically excavated and constructed "in the dry" to the extent practicable with final measurements of 150 feet by 150 feet. The proposed bulkhead for the portion of the slip constructed in uplands and the adjacent shoreline measures 409 linear feet in length. The slip is proposed to be dredged to a depth of -22 feet mean low tide. CMP Project No.: 10-0164-F1. Type of Application: U.S.A.C.E. permit application #SWG-2010-00136 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Lakewood Yacht Club; Location: The project site is located in Offatts Bayou, at 9023 Teichman Road, in Galveston, Galveston County, Texas 77554. The project can be located on the U.S.G.S. quadrangle map titled: Galveston, Texas. Approximate Latitude/Longitude Coordinates in NAD 83 (meters): Lat: 29.280375 degrees N, Long: 94.869905 degrees W. Project Description: The applicant proposes to maintain and improve existing marina facilities. The project includes the excavation of 3,000 cubic yards of material to restore ingress and egress within an existing manmade canal and to maintain design depths within the existing marina. Excavated material will be placed on the upland portion of the property to raise the elevation of the property. The existing facility contains a 165-foot-long pier with 12 boat slips. Proposed improvements will remove the existing pier and boat slips and replace them with a 190-foot-long breakwater and 12 wider boat slips. Construction of the breakwater will require 600 cubic yards of riprap to provide the foundation for the breakwater. CMP Project No.: 10-0167-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00530 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-201004930
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: August 24, 2010

♦ ♦ ♦

Collin County Toll Road Authority

Public Notice - Request for Qualifications

Pursuant to Texas Transportation Code, §366.402, the Collin County Toll Road Authority (CCTRA) is seeking qualifications from firms who wish to analyze, identify, plan, develop, design, construct, finance, operate and maintain the Collin County Outer Loop (CCOL) Segment 3 project. This project is to be developed in stages and with possible connections to other segments of the CCOL. CCTRA intends to enter into a Comprehensive Development Agreement (CDA) with the selected developer to operate and maintain the project for a specific term (CDA term), up to the maximum time allowed by Texas law. The CDA will cover the development of the initial project facilities (Initial Facilities) and subsequent additional expansion facilities (Expansion Facilities) needed to accommodate growth in traffic over time. At the end of the CDA term, all rights to operate the Segment 3 Toll Road will revert to CCTRA or to Collin County.

CCTRA will assess the SOQs based on the following weighted criteria that total 100%: 50% for Qualifications and Experience and 50% for Project Understanding and Approach. The CCTRA may negotiate with the entity offering the apparent best value.

Qualifications are due to the Collin County Toll Road Authority no later than 4:00 p.m. on November 5, 2010.

For more information and to download the RFQ document please go to the following website:

https://www.bidsync.com/DPX/tx/collinco?ac=view&auc=1508169

Or, contact Matt Dobecka, CPPB, Collin County Purchasing, 2300 Bloomdale Road, Suite 3160, McKinney, Texas 75071, mdobecka@collincountytx.gov.

TRD-201004918
James E. Shepherd
Attorney
Collin County Toll Road Authority
Filed: August 24, 2010

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Amendment and Renewal

The Comptroller of Public Accounts (Comptroller) announces this notice of amendment and renewal of a statistical consulting services contract with Analytical Systems, Inc., P.O. Box 656, Castroville, Texas 78009 (Consultant). Consultant advises the Comptroller on statistical issues and provides other related services in connection with the Comptroller's Annual Property Value Study (Study).

The Notice of Request for Proposals (RFP 189a) was published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6185). The Notice of Award was published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8955). The total contract amount is not to exceed $45,000.00. The term of the contract was September 1, 2008, through August 31, 2010. The renewal extends the contract through August 31, 2011. The report will be due on or about August 31, 2011.

TRD-201004920
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: August 24, 2010

♦ ♦ ♦

Notice of Loan Funding Availability and Request for Applications

The Comptroller of Public Accounts (Comptroller) and the State Energy Conservation Office (SECO) invite applications from eligible interested governmental entities for loan assistance to perform building energy efficiency and retrofit activities through the State Energy Plan (SEP) by announcing this Notice of Loan Funding Availability (NOLFA) and Request for Applications (RFA) No. BE-AG3-2010) for the Building Energy Retrofit Program (BERP), created pursuant to the American Recovery and Reinvestment Act of 2009, Public Law, PL-111-5 (ARRA or Act); 10 Code of Federal Regulations (CFR) Parts 420 and 600; Executive Order (EO) RP-72; Chapters 403, 447 and 2305, Texas Government Code; 34 Texas Administrative Code (TAC) Chapter 19; and related legal authority and regulations. The Comptroller reserves the right to restrict one loan per eligible governmental entity under the terms of the NOLFA.

By this NOLFA, SECO is announcing the availability of up to $45,000,000 for building efficiency and retrofit revolving loan funds. Applications will be evaluated and financial assistance may be awarded, if any, under the criteria set forth in this NOLFA and RFA.

Application Requirements and Eligibility: The BERP finances energy-related cost-reduction retrofits for state, public school district, public college, public university, and public hospital facilities. Low interest rate loans are available to assist those institutions in financing their energy-related cost-reduction efforts. The BERP's revolving loan mechanism allows applicants to repay loans through the stream of energy cost savings realized from the projects. A building retrofit refers to an improvement to building infrastructure that reduces utility (energy and water) costs. If the retrofit proposed is 50% or greater of a defined space, then it is considered "new construction" and is required to meet the current state energy code. (Please see the SECO LoanSTAR Guidelines, Volume I, Section II, C, Classifying Project Types. (http://www.seco.cpa.state.tx.us/ls/ls_guideline.php). Funds are available for new construction. Financing for the incremental cost increase between standard efficiency equipment and high efficiency equipment is eligible and must meet the current state energy code requirements. Applicants must meet eligibility requirements and be able to comply with and expend ARRA grant funds, if awarded, in accordance with the Comptroller and ARRA requirements. A proposed project must meet all of the following program requirements:

* The maximum loan amount shall not exceed $10 million dollars.

* The interest rate is set at 2%.

* The term of the loan is for 10-years or less; if at least 10% of the project cost contains renewable energy technologies, the term of the loan may qualify for up to a 15-year payback.

* The project must demonstrate a composite simple payback period of 10-years or less (or if renewable energy included 15-years or less) to qualify. The individual Energy Cost Reduction Measures (ECRM) must demonstrate a simple payback of less than the ECRM's economic useful life.

* Project expenses will be reimbursed on a "cost reimbursement" basis. No advance of funds is allowed.

* Borrower will be required to comply with federal ARRA requirements including OMB reporting requirements and the Solid Waste Disposal Act, and, if applicable, Davis-Bacon Act and related prevailing wage laws, Buy American provisions, National Environmental Policy Act, and National Historic Preservation Act. Applicants understand and will see that the State Historical Preservation Office (SHPO) is consulted in any project award that may include a building or site of historical importance. In this regard, SHPO guidance will be solicited and followed to insure that the historical significance of the building will be preserved. All requirements are set out in the sample contract available at http://www.secostimulus.org.

* SECO will conduct periodic on-site monitoring visits on all building retrofit projects.

* All improvements financed hereunder, if any, shall meet minimum efficiency standards as prescribed by applicable building energy codes. Examples of projects that are acceptable for ARRA funding are those that may include:

- Building and mechanical system commissioning and optimization.

- Energy management systems and equipment control automation.

- High efficiency heating, ventilation and air conditioning systems, boilers, heat pumps and other heating and air conditioning projects.

- High efficiency lighting fixtures and lamps.

- Building Shell Improvements (insulation, adding reflective window film, radiant barriers, and cool roof.)

- Load Management Projects.

- Energy Recovery Systems.

- Low flow plumbing fixtures and high efficiency pumps.

- Renewable energy efficiency projects are strongly encouraged wherever feasible, and may include installation of distributed technology such as of rooftop solar water and space heating systems, geothermal heat pumps (only closed loop systems with no greater than 10 ton capacity), or electric generation with photovoltaic or small wind and solar-thermal systems.

- If there are closed-loop geothermal heat pumps greater than 10 ton capacity involved, then applicants will be responsible for further NEPA review by DOE in the event of an award. If renewable generation greater than 20 KW is involved, applicants will be responsible for further NEPA review by DOE.

Eligible governmental entities may use loan funds to finance energy savings projects using Energy Savings Performance Contracts (ESPCs), Design-Bid-Build (DBB) project, Design-Build (DB) project, or Systems Commissioning. Energy Savings Performance Contracts are preferred and will be prioritized in the evaluation phase. All applications must be complete, be submitted under signed transmittal letter, include an executive summary and a table of contents, describe the project and personnel qualifications relevant to the evaluation criteria, comply with the LoanSTAR Technical Guidelines (http://www.seco.cpa.state.tx.us/ls/ls_guideline.php) and comply with Performance Contracting Guidelines (http://www.seco.cpa.state.tx.us/sa_pc.htm) for ESPCs. All projects must be analyzed by a Professional Engineer licensed in the State of Texas. The Engineer is selected by the prospective applicant.

* Applications must include a Preliminary Energy Assessment (PEA). PEAs must include Energy Cost Reduction Measures (ECRMs) for DBB and DB projects or Utility Cost Reduction Measures (UCRMs) for ESPCs that will be completed to reduce utility (energy and water) costs. Project costs and simple paybacks must also be documented for each ECRM and UCRM in the PEA. Applicants do not have to submit a PEA if:

- the applicant is requesting financial assistance for an energy savings performance contract and the application includes a Utility Assessment Report (UAR) prepared in accordance with the SECO Performance Contracting Guidelines (http://www.seco.cpa.state.tx.us/sa_pc.htm); OR

- the applicant is requesting financial assistance for a DBB or DB project and the application includes an Energy Assessment Report (EAR) prepared in accordance with the LoanSTAR Technical Guidelines (http://www.seco.cpa.state.tx.us/ls/ls_guideline.php).

* As part of the technical assessment of the application, SECO will review the PEA with the applicant and determine the eligibility of the project for funding. SECO technical staff may request that the applicant and/or its report engineer provide additional information or calculations, which must be submitted within the stated time period. If the Comptroller determines that the PEA meets the eligibility requirements of the program and the project has been evaluated and scored a loan agreement will be prepared and negotiated with the borrower.

- For borrowers using Energy Savings Performance Contracting construction methodology, the borrower will be required to prepare and submit a detailed engineering analysis in the form of a Utility Assessment Report (UAR) prepared in accordance with the SECO Performance Contracting Guidelines (http://www.seco.cpa.state.tx.us/sa_pc.htm) prescribed format unless an accepted UAR was submitted with the application. Post construction measurement and verification plan must be included and the cost of the measurement and verification must be included as part of the total project cost.

- For borrowers using Design-Bid-Build construction methodology or Design-Build construction methodology, applicants are required to submit a detailed engineering analysis in the form of an Energy Assessment Report (EAR) prepared in accordance with the LoanSTAR Technical Guidelines (http://www.seco.cpa.state.tx.us/ls/ls_guideline.php) prescribed format unless an accepted EAR was submitted with the application. Post-retrofit energy savings should be monitored by the applicant in Design-Bid-Build and Design-Build projects to insure that energy cost savings are being realized. The level of monitoring may range from utility bill analysis to individual system or whole building metering, depending on the size and types of retrofits installed.

- For Systems Commissioning, applicants are required to submit a detailed engineering analysis in the form of a Systems Commissioning Report which meets BERP payback requirements. There is not a prescribed format for Systems Commissioning Reports.

Evaluation Criteria: Applications will be evaluated under the criteria outlined in the RFA. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all applications

submitted. The Comptroller is not obligated to execute a loan agreement on the basis of this notice or the distribution of any RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFA.

Contact: Parties interested in submitting an application should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFA. The Comptroller will mail copies of the RFA only to those parties specifically requesting a copy. The RFA will be available for pick-up at the above referenced address on Friday, September 3, 2010, after 10:00 a.m. Central Standard Time (CST) and during normal business hours thereafter. The Comptroller will also make the entire RFA available electronically on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us after 10:00 a.m. CST on Friday, September 3, 2010.

Questions and Non-Mandatory Letters of Intent: Written inquiries, questions, and Non-mandatory Letters of Intent must be submitted at the above-referenced address not later than 2:00 p.m. (CST) on Friday, September 10, 2010. Prospective applicants are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFA and be signed by an official of the entity. CPA responses to any submitted questions will be posted on Friday, September 17, 2010, or as soon thereafter as practical. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Applications must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CST), on Friday, October 15, 2010. Late Applications will not be considered under any circumstances; Applicants shall be solely responsible for verifying time receipt of applications in the Issuing Office.

The anticipated schedule of events pertaining to this RFA is as follows: Issuance of NOLFA/RFA - Friday, September 3, 2010, after 10:00 a.m. CST; Non-Mandatory Letters of Intent and Questions Due - Friday, September 10, 2010; Official Responses to Questions Posted - Friday, September 17, 2010, or as soon thereafter as practical; Deadline for submission of applications - no later than 2:00 p.m. CST on Friday, October 15, 2010. Loan Awards, if any, as soon as practical.

TRD-201004946
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: August 25, 2010

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/30/10 - 09/05/10 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/30/10 - 09/05/10 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/10 - 09/30/10 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/10 - 09/30/10 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-201004927
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 24, 2010

♦ ♦ ♦

State Board of Dental Examiners

SBDE Disciplinary Matrix

The State Board of Dental Examiners' (Board) Disciplinary Matrix was developed to outline Board policy when the Board takes disciplinary action in accordance with Texas Occupations Code Chapters 263, 265, and 266. The matrix also provides licensees, attorneys, the public, and Administrative Law Judges ready access to the Board's enforcement policies. Further, the matrix is intended to maintain flexibility in determining the most appropriate sanction for each violation and allow the Board to take into account aggravating and mitigating factors (i.e., the licensee's compliance history, the seriousness of the violation, the threat to the public's health and safety) when determining sanctions.

The matrix is organized by violation type and distinguished by violation tiers. The violations described in the matrix mirror the violations specified in Texas Occupations Code (Dental Practice Act). Violations that are distinguished as First Tier Violations are those that the Board determines to be less serious, or which pose minimal threat to public safety, after consideration of any aggravating or mitigating factors. Violations that are distinguished as Second, Third, or Fourth Tier Violations are those that the Board determines to be more serious, or which pose more than a minimal threat to public safety, after consideration of any aggravating or mitigating factors. Each violation tier in the matrix includes a description of events that might fall within that violation tier. The corresponding sanction description describes each of the sanctions that could be imposed.

The matrix was first presented to the Board at the November 20, 2010 meeting. The Board adopted the matrix and voted to publish it in the *Texas Register* at the August 20, 2010 meeting. This matrix is effective immediately upon filing in the *Texas Register*.

Texas State Board of Dental Examiners
Disciplinary Matrix

Table of Contents

VIOLATION TIERS

First Tier Violations: Violations that are distinguished as First Tier Violations are those that the Board determines to be less serious, or which pose minimal threat to public safety, after consideration of any aggravating or mitigating factors.

Second, Third, or Fourth Tier Violations: Violations that are distinguished as Second, Third, or Fourth Tier Violations are those that the Board determines to be more serious, or which pose more than a minimal threat to public safety, after consideration of any aggravating or mitigating factors.

SANCTIONS

The Board will determine an appropriate sanction after consideration of any aggravating or mitigating factors.
When considering conduct constituting a violation of multiple statute sections, the Board will determine an appropriate sanction after consideration of the sanction recommendations from all applicable violation sections and any aggravating or mitigating factors.
NOTE: All Sanctions other than denial of licensure, revocation of license, emergency suspension of license, or surrender of license should include a stipulation requiring completion of the online jurisprudence assessment.

Levels listed from lowest (no action) to highest (revocation):

- Dismissal – No disciplinary action. Dismissal may be conditioned.
- Administrative Penalty (Ticket) – Fine-based penalty limited to those violations that do not involve the provision of direct patient care.
- Warning – Lowest level of disciplinary action.
- Reprimand – Increased level of disciplinary action.
- Suspension – Increased level of disciplinary action. Suspension may be probated in full be enforced in full or for limited time periods.
    - Emergency Suspension – If a licensee is found by the board or executive committee to constitute a clear, imminent, or continuing threat to a person's physical health or well-being, the person's license or permit will be immediately suspended.
- Revocation of license or certification. Voluntary surrender may be accepted in lieu of revocation.

AGGRAVATING AND MITIGATING FACTORS

The Board will consider all factors required by statute or board rule (e.g., Tex. Occ. Code Chapter 53). In addition, the Board will consider aggravating or mitigating factors, including the following:

- Potential or actual patient harm
- Prior disciplinary action
- Prior violations of a similar nature
- Self-report or voluntary admission of violation
- Remedial measures taken to correct or mitigate harm
- Rehabilitative potential
- Level of competency exhibited over course of career
- Attempts to circumvent a statute or board rule
- Isolated or repeated violation
- Number of violations
- Cooperation with board investigation and response to board communication
- Material or financial gain from violation
- Involvement of, or impairment by alcohol, illegal drugs, or controlled substances
- Criminal conduct
- Other relevant circumstances

ADMINISTRATIVE FINE SCHEDULE

See SBDE Rule §107.202 – 22 Tex. Admin. Code §107.202. The amount of an administrative fine assessed will be based on the following criteria:

- The seriousness of the violation, including but not limited to, the nature, circumstances, extent and the gravity of the prohibited acts and the hazard of potential hazard created to the health, safety, or welfare of the public;
- the economic damage to property or the environment caused by the violation;
- the history of previous violations:
- the amount necessary to deter future violations;
- efforts made to correct the violation; or
- any other matter the justice may require.

Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

First Offense:	Second Offense:	Third Offense:
≤ $3,000	≤ $4,000	≤ $5,000

ADMINISTRATIVE PENALTY SCHEDULE (Tickets)

An administrative penalty may consist only of a monetary penalty that does not exceed $1,000 for each violation. The total amount of penalties assessed against a person may not exceed $3,000 in a calendar year.

If the Respondent fails to pay or appeal the administrative penalty by the due date, the penalty amount will double, not to exceed the statutory maximum penalty for each violation.

Violation:	Administrative Penalty:
No Consumer Information	$250.00
Names of Dentists not Posted	$250.00
Fail to Display Registration (Dental office)	$250.00
Fail to Provide Records to Board	$500.00
Fail to Provide Records to Patient	$500.00
Fail to File Records Maintenance Agreement	$250.00
Fail to Notify Board of Change of Information	$250.00
Sanitation and Infection Control	$500.00
False/Misleading Communications/Unlawful or Deceptive Advertising	$250.00
Specialty Announcement-	$250.00
Advertising – Testimonials	$250.00
Improper Use of Trade Name	$500.00
No Prosthetic Identification	$250.00

STANDARD OF CARE

Licensee fails to treat a patient according to the standard of care in the practice of dentistry or dental hygiene. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(4)	
First Tier Violation: • Practice below minimum standard with a low risk of patient harm. • Failure to advise patient before beginning treatment. • Failure to make, maintain and keep adequate dental records.	Sanction: • Conditional dismissal including continuing education and/or restitution to patient for service rendered below minimum standard. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, restitution to patient for service rendered below minimum standard, and/or audit of practice procedures.
Second Tier Violation: • Practice below minimum standard with patient harm or risk of patient harm. • Misleading patient as to the gravity, or lack thereof, of their dental needs. • Failure to maintain appropriate life support training. • Abandonment of patient. • Failure to report patient death or injury requiring hospitalization. • Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency.	Sanction: • Warning, Reprimand, or Probated Suspension with stipulations that may include: period of enforced suspension, continuing education, administrative fine, restitution to patient, and/or audit of practice procedures.
Third Tier Violation: • Negligence in treatment • Any intentional act or omission that risks or results in serious harm.	Sanction: • Denial, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene

Standard of care violations continued on next page

STANDARD OF CARE (continued)

Licensee fails to use proper diligence in practice or fails to safeguard patients against avoidable infections. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(9)	
First Tier Violation: • Failure to properly document compliance with health and sanitation requirements. Office premises are maintained in compliance with health and sanitation requirements. Low risk of patient harm.	Sanction: • Administrative Penalty ticket • Conditional dismissal including continuing education, and/or audit of practice procedures. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, and/or audit of practice procedures.
Second Tier Violation: • Office premises are not maintained in compliance with health and sanitation requirements. • Barrier techniques, disinfection, or sterilization techniques do not comply with health and sanitation requirements. • Failure to properly document controlled substance inventories or prescription records. • Failure to use reasonable diligence in preventing unauthorized persons from utilizing DEA or DPS permit privileges.	Sanction: • Warning, Reprimand, or Probated Suspension with stipulations that may include: continuing education, restitution to patient, administrative fine, audit of practice procedures, and/or supervised practice or practice in a group setting.

Licensee is negligent in performing dental services and that negligence causes injury or damage to a dental patient. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(12)	
	Sanction: • Denial of licensure or revocation. • Emergency suspension of license to practice dentistry or dental hygiene.

Licensee is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(11)	
	Sanction: • Suspension of license pending medical evaluation determining licensee is safe to practice. If evaluation determining licensee is safe to practice is received, then probated suspension with stipulation including regular evaluations for ability to practice safely. • Denial of licensure or revocation. • Emergency suspension of license to practice dentistry or dental hygiene in light of violation that may be a clear, imminent, or continuing threat to a person's physical health or well-being.

IMPERMISSIBLE DELEGATION

Licensee holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(8)	
First Tier Violation: • Impermissible delegation resulting in no more than a minimal risk of patient harm. Isolated incident.	Sanction: • Conditional dismissal including continuing education and/or restitution to patient. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, restitution to patient, and/or audit of practice procedures.
Second Tier Violation: • Impermissible delegation resulting in actual patient harm, or presenting a risk of patient harm. • Repeated incidents or pattern of impermissible delegation.	Sanction: • Reprimand, or Probated Suspension with stipulations that may include: continuing education, administrative fine, restitution to patient, and/or audit of practice procedures.

DISHONORABLE OR UNPROFESSIONAL CONDUCT

NOTE: Violations under this section may also constitute violations under sections such as those related to criminal conduct, chemical dependency, or improper distribution of a drug.

Licensee practices dentistry or dental hygiene in a manner that constitutes dishonorable conduct. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(3)	
First Tier Violation: • Isolated dishonorable conduct resulting in no adverse patient effects.	Sanction: • Conditional Dismissal including continuing education. Elements normally related to dishonesty, fraud or deceit deemed to be unintentional. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, supervised practice or practice in a group setting, audit of practice procedures, and/or limitations on sedation or controlled substance permits.
Second Tier Violation: • Repeated acts of dishonorable conduct or dishonorable conduct which places a patient or the public at risk of harm. • Dishonorable conduct which impairs a person's ability to treat a patient according to the standard of care. • Dispensing, administering, prescribing, or distributing drugs for a non-dental purpose. • Failure to meet duty of fair dealing in advising, treating, or billing patient. • Diagnosis of dental disease, prescription of medication, or performance of impermissible acts by dental hygienist. • Practicing dental hygiene without required supervision.	Sanction: • Warning, Reprimand, or Probated Suspension with stipulations that may include: continuing education, restitution to patient for financial exploitation, administrative fine, supervised practice or practice in a group setting, and/or limitations on sedation or controlled substance permits. • Denial of Licensure, Suspension or Revocation of Licensure. • If violation involves mishandling or improper documentation of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include mandatory evaluation and enrollment in a Board approved peer assistance program, and abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing.
Third Tier Violation: • Failure to comply with a substantive board rule regarding dishonorable conduct resulting in serious patient harm. • Repeated acts of dishonorable conduct or dishonorable conduct which results in harm to a patient or the public. • Sexual or sexualized conduct with patient. • Financial exploitation or dishonorable conduct resulting in a material or financial loss to a patient in excess of $4,999.	Sanction: • Denial of licensure or revocation of license to practice dentistry or dental hygiene. • Emergency suspension of license to practice dentistry or dental hygiene.

CRIMINAL CONVICTIONS

NOTE: Deferred Adjudication may be considered as a conviction after consideration of factors outlined in Texas Occupations Code Chapter 53.
NOTE: Violations under this section may also constitute dishonorable or unprofessional conduct violations.

Licensee is convicted of a misdemeanor involving fraud or a felony under federal law or the law of any state. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(2)	
First Tier Violation: • Misdemeanor conviction involving fraud	Sanction: • Warning, Reprimand or Probated Suspension with stipulations that may include: continuing education, and/or administrative fine.
Second Tier Violation: • Felony conviction	Sanction: • Denial of licensure or revocation of license to practice dentistry or dental hygiene. Voluntary surrender of license may be accepted. • Emergency suspension of license to practice dentistry or dental hygiene

CHEMICAL DEPENDENCY OR IMPROPER POSSESSION OR DISTRIBUTION OF DRUG
NOTE: Violations under this section may also constitute dishonorable or unprofessional conduct violations.

Licensee is addicted to or habitually intemperate in the use of alcoholic beverages or drugs or has improperly obtained, possessed, used, or distributed habit-forming drugs or narcotics. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(7)	
First Tier Violation: • Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances.	Sanction: • Probated Suspension with stipulations that may include: continuing education, supervised practice or practice in a group setting, limitations on sedation or controlled substance permits, random drug screens, and/or enrollment in a Board approved peer assistance program.
Second Tier Violation: • Improperly distributes habit-forming drugs or narcotics • Prescribes or dispenses a controlled substance for a non-dental purpose. • Prescribes or dispenses a controlled substance to a person who is not a dental patient, or to a patient without adequate diagnosis of the need for prescription.	Sanction: • Probated Suspension with stipulations that may include: period of enforced suspension, mandatory evaluation and enrollment in a Board approved peer assistance program, and abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing, continuing education, supervised practice or practice in a group setting, and/or limitations on sedation or controlled substance permits.
Third Tier Violation: • Misuse of drugs or alcohol with a risk of patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted.	Sanction: • Enforced or Probated Suspension with stipulations that may include: period of enforced suspension, mandatory evaluation and enrollment in a Board approved peer assistance program, and abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing, continuing education, supervised practice or practice in a group setting, and/or limitations on sedation or controlled substance permits.
Fourth Tier Violation: • Misuse of drugs or alcohol with significant physical injury or death of a patient or a risk of significant physical injury or death.	Sanction: • Denial of licensure, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene

FRAUD AND MISREPRESENTATION

NOTE: Violations under this section may also constitute dishonorable or unprofessional conduct violations.

Licensee obtains a license by fraud or misrepresentation. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(6)	
First Tier Violation: • Failure to honestly and accurately provide information that may have affected the Board's determination of whether to grant or renew a license.	Sanction: • Conditional dismissal including continuing education. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional. • Warning or Reprimand with stipulations that may include: continuing education, and/or administrative fine.
Second Tier Violation: • Intentional misrepresentation of previous licensure, education, or professional character, including failure to disclose criminal convictions.	Sanction: • Denial of licensure or revocation of license to practice dentistry or dental hygiene. • Emergency suspension of license to practice dentistry or dental hygiene.

Licensee engages in deception or misrepresentation in soliciting or obtaining patronage. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(5)	
Violation: • Engaging in false advertising. • Creating unjustified expectation. • Engaging in false, misleading or deceptive referral schemes. • Failing to comply with requirements relating to professional signs. • Failure to list at least one dentist practicing under a trade name in an advertisement. • Falsely advertising as a specialist in one of the ADA recognized specialties or advertising as a specialist in an area not recognized by the ADA. • Other violations as assigned by rule.	Sanction: • For a first violation of advertising restrictions, no sanction will be pursued until an opportunity to cure has been provided pursuant to statutory requirements. • Administrative Penalty ticket • Warning or Reprimand with stipulations that may include: cure of violation, continuing education, and/or administrative fine.

VIOLATION OF LAW REGULATING DENTISTRY OR DENTAL HYGIENE

NOTE: A violation of any law relating to the regulation of dentists or dental hygienists, including those law violations expressed elsewhere in this matrix, will also be considered a violation of the Dental Practice Act, at Tex. Occ. Code §263.002(a)(10).

Licensee violates or refuses to comply with a law relating to the regulation of dentists or dental hygienists. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(10)	
First Tier Violation: • Isolated failure to make, maintain and keep adequate dental records not resulting in patient harm. • Failure to notify patients that complaints concerning dental services can be directed to the Board. • Failure to post names of, degrees received by, and schools attended by each dentist practicing in office. Failure to properly exclude names of dentists not practicing in office. • Failure to place identifying mark on a removable prosthetic device. • Failure to notify the Board of maintenance of records agreement. • First Tier violation of another law regulating dentists or dental hygienists.	Sanction: • Administrative Penalty ticket. • Conditional dismissal including continuing education, and or audit of practice procedures.
Second Tier Violation: • Failure to make, maintain and keep adequate dental records resulting in potential for patient harm. • Failure to obtain written, signed informed consent. • Failure to provide full dental records to the Board upon request. • Failure to maintain an appropriate permit for a mobile dental facility. • Perform treatment outside licensee's scope of practice not resulting in patient harm. • Prescription of controlled substance while DPS or DEA permit is expired. • Second Tier violation of another law regulating dentists or dental hygienists.	Sanction: • Conditional dismissal including continuing education, restitution to patient for service provided without informed consent, and/or audit of practice procedures. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, restitution to patient for service provided, and/or audit of practice procedures.
Third Tier Violation: • Failure to make, maintain and keep adequate dental records resulting in actual patient harm. • Violation of stipulation in a prior Board Order. • Perform treatment outside licensee's scope of practice resulting in patient harm or potential for patient harm. • Prescription of controlled substance without DPS or DEA permit. • Third Tier or Fourth Tier violation of another law regulating dentists or dental hygienists.	Sanction: • Reprimand or Probated Suspension with stipulations that may include: enforced suspension of license until licensee obtains compliance with all stipulations in prior Board Orders, continuing education, restitution to patient, and/or administrative fine. • Denial of licensure or revocation. • Emergency suspension of license to practice dentistry or dental hygiene.

VIOLATION OF LAW REGULATING DENTISTRY OR DENTAL HYGIENE (continued)

Licensee knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that: regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or regulates the business of insurance. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(14)	
	Sanction: • Reprimand or Probated Suspension with stipulations that may include: continuing education, administrative fine, repayment of any funds gained in violation of applicable law. • Denial of licensure or revocation. • Emergency suspension of license to practice dentistry or dental hygiene.

Licensee holds a license or certificate in another state and that state reprimands the licensee, suspends or revokes the licensee's license or certificate or places the licensee on probation, or imposes another restriction on the licensee's practice. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(13)	
First Tier Violation: • License or certificate is reprimanded or restricted in another jurisdiction. The action leading to the reprimand or restriction did not cause patient harm or risk patient harm.	Sanction: • Conditional dismissal including continuing education, and/or audit of practice procedures.
Second Tier Violation: • License or certificate is reprimanded or restricted in another jurisdiction. The action leading to the reprimand or restriction caused patient harm or caused a risk of patient harm. • Failure to report disciplinary action received in another jurisdiction.	Sanction: • Warning, Reprimand, or Probated Suspension with stipulations that may include: continuing education, administrative fine, and/or audit of practice procedures.
Third Tier Violation: • License or certificate is suspended, revoked, or placed on probation in another jurisdiction. • License or certificate is reprimanded or restricted in another jurisdiction for action that caused severe patient harm or death.	Sanction: • Denial of licensure, revocation, or voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene

OTHER VIOLATIONS

License required to practice dentistry or dental hygiene Dental Practice Act (DPA), Tex. Occ. Code §256.001	
	Sanction: • Issuance of Cease and Desist Order with referral of all information to local law enforcement.

Licensee is adjudged under the law to be insane. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(1)	
	Sanction: • Denial of licensure or revocation of license to practice dentistry or dental hygiene. • Emergency suspension of license to practice dentistry or dental hygiene.

DENTAL ASSISTANTS

Permitted Duties Dental Practice Act (DPA), Tex. Occ. Code §265.003	
First Tier Violation: • Failure to comply with procedural Board rule such as failure to timely complete continuing education to maintain a Board-issued certification.	Sanction: • Conditional dismissal including continuing education. • Denial of certification or revocation of certificates.
Second Tier Violation: • Practices dentistry or dental hygiene, or otherwise performs activities outside the scope of permitted duties for dental assistants.	Sanction: • Denial of certification or revocation of certificates.

DENTAL LABORATORIES

Registration Required Dental Practice Act (DPA), Tex. Occ. Code §266.151	
Violation: • Operation of a dental laboratory or offer to provide dental laboratory services without a registration certificate.	Sanction: • Issuance of Cease and Desist Order with referral of all information to local law enforcement.

Certified Dental Technician Dental Practice Act (DPA), Tex. Occ. Code §266.152	
Violation: • Failure to have at least one dental technician working on the laboratory's premises who is certified by a recognized board of certification for dental technology.	Sanction: • Warning or Reprimand with stipulations that may include: continuing education, and/or administrative fine. • Denial of certification or revocation of certification.

Applicant or certificate holder has violated, aided another person, or allowed a person under their direction to violate a law regulating the practice of dentistry. Dental Practice Act (DPA), Tex. Occ. Code §266.251	
Violation: • Failure to obtain written work orders or prescriptions from a licensed dentist, and maintain appropriate records. • Failure to keep premises and records open to inspection during working hours. • Failure to comply with the requirements for notification of change of ownership.	Sanction: • Warning or Reprimand with stipulations that may include: continuing education, and/or administrative fine. • Denial of certification or revocation of certification.

TRD-201004947
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Filed: August 25, 2010

♦ ♦ ♦

Education Service Center Region 10

Request for Qualifications - Dual Credit Courses for the Texas Virtual School Network

Filing Date: August 23, 2010

Filing Authority. The Texas Virtual School Network (TxVSN) is authorized by TEC Chapter 30A. Region 10 Education Service Center operates the network under the administrating authority of the Texas Education Agency.

Eligible Applicants. Texas public and private higher education institutions as defined by Section 61.003

Description. The TxVSN at Education Service Center Region 10 is requesting proposals for online dual credit courses from Texas private and public higher education institutions in order to expand its course catalog for spring 2011 and subsequent semesters. Selected higher education institutions will provide approved dual credit courses to eligible students in Texas public school districts and open enrollment charter schools. When available through the TxVSN catalog, dual credit courses will be eligible for the state virtual school allotment funding if a high school student successfully completes a course.

Dates of Project. Dual credit courses approved by this RFQ shall be approved through August 31, 2012. The Texas Virtual School Network Central Operations at Education Service Center Region 10 may at its own discretion and with approval from the Texas Education Agency, extend approval awarded pursuant to this RFQ for an additional one-year period through August 31, 2013.

Project Amount. HB 3646 of the 81st Texas Legislature established a biennium appropriation to fund the state virtual school allotment. When a high school student successfully completes a course offered through the TxVSN, the course provider is eligible for a state virtual school allotment payment of $400 and the student's district receives an allotment of $80.

Selection Criteria. Dual Credit courses submissions will be reviewed based on criteria established by Texas Education Code Chapter 30A. Those courses meeting or exceeding the established criteria will be included in the catalog for spring 2011 as well as future semesters.

Region 10 ESC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFQ. This RFQ does not commit Region 10 ESC to pay any costs before an application is approved. The issuance of this RFQ does not obligate Region 10 ESC to award a contract or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the Request for Qualifications 2010-11 may be downloaded from the Region 10 website at www.region10.org/news/newsatregion10.html beginning September 7, 2010. To receive a URL link and instructions to participate in the live Applicant's Webinar, applicants must return the NOTICE OF INTENT TO APPLY (ATTACHMENT B) no later than Tuesday, June 1, 2010 at 4:30 p.m. CDT.

Further Information. For clarifying information about the RFQ contact Sue Hayes, Chief Financial Officer - Region 10 by email at sue.hayes@region10.org or fax to (972) 348-1113. All inquiries must be in writing.

Applicant's Conference. All applicants will have an opportunity to receive general and clarifying information about the scope of the RFQ. An Applicant's Webinar is scheduled for Thursday September 9, 2010 from 10:00 - 11:30 a.m. CDT. The webinar will be repeated on Monday September 13, 2010 from 10:00 - 11:30 a.m. CDT.

Deadline for Receipt of Application. Applications must be received in the Region 10 ESC business office by 4:30 p.m. (Central Daylight Savings Time), Tuesday, October 12, 2010, to be considered.

TRD-201004915
Wilburn O. Echols, Jr.
Executive Director
Education Service Center Region 10
Filed: August 23, 2010

♦ ♦ ♦

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 **October 4, 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 October 4, 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: ANJU ENTERPRISES, INC. dba Parkway Chevron; DOCKET NUMBER: 2010-0721-PST-E; IDENTIFIER: RN101772721; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases; 30 TAC §334.50(b)(2)(A)(ii) and the Code, §26.3475(a), by failing to provide proper release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors

at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records at least once each month; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; and 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $14,023; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Armortex, Inc.; DOCKET NUMBER: 2010-1073-AIR-E; IDENTIFIER: RN104444526; LOCATION: Schertz, Guadalupe County; TYPE OF FACILITY: bullet-resistant fiberglass wall board manufacturing; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), by failing to submit the Title V annual compliance certification; PENALTY: $3,025; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Dallas Chemical Technologies, Inc.; DOCKET NUMBER: 2010-1100-IWD-E; IDENTIFIER: RN102334075; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing and warehousing; RULE VIOLATED: 30 TAC §§305.125(1), 319.1, and 319.7(d) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0001968000, Monitoring and Reporting Requirements Number 1, by failing to submit monthly effluent reports; 30 TAC §305.125(1) and TPDES Permit Number WQ0001968000, Other Requirements Number 5, by failing to comply with permit requirements for development of a complete storm water pollution plan; and 30 TAC §305.125(1) and TPDES Permit Number WQ0001968000, Other Requirements Number 6, by failing to comply with schedules of activities for attainment of water quality-based final effluent limitations for total zinc and total aluminum; PENALTY: $14,169; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: EJO Enterprises, Inc. dba Super Saver Cleaners; DOCKET NUMBER: 2010-1247-DCL-E; IDENTIFIER: RN105626774; LOCATION: Travis County; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.10(a)(1) and §337.11(e), by failing to obtain a valid, current dry cleaning facility registration; PENALTY: $100; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(5) COMPANY: Ernestina Garcia; DOCKET NUMBER: 2010-0730-PST-E; IDENTIFIER: RN101772416; LOCATION: Nueces County; TYPE OF FACILITY: inactive USTs; RULE VIOLATED: 30 TAC §334.7(d)(1)(F) and (d)(3) and §334.10(b)(2)(B)(iii), by failing to maintain records to demonstrate that the UST system is protected from corrosion and to update the petroleum storage tank (PST) registration to accurately reflect the type of corrosion protection in place for the UST system; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation, a UST system; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Hope, Hardwork, and Happiness, Inc. dba HHH 25; DOCKET NUMBER: 2010-0898-PST-E; IDENTIFIER: RN101538460; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: To Nguyen and Quang Huynh dba John's Quik Stop; DOCKET NUMBER: 2010-0475-PST-E; IDENTIFIER: RN102226750; LOCATION: Fort Worth, Tarrant 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; 30 TAC §115.246(1), (3), and (7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system (VRS); and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one Station representative received training in the operation and maintenance of the Stage II VRS and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operating procedures of the VRS; PENALTY: $6,592; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Kingstreet Investments, LLC dba King Food Mart; DOCKET NUMBER: 2010-0746-PST-E; IDENTIFIER: RN103143608; 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: $2,782; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: City of Kingsville; DOCKET NUMBER: 2009-2049-MSW-E; IDENTIFIER: RN102334570; LOCATION: Kingsville, Kleberg County; TYPE OF FACILITY: municipal solid waste (MSW) landfill; RULE VIOLATED: 30 TAC §330.139, MSW Permit Number 235B, Site Operating Plan (SOP) Section 4.9, and TCEQ Agreed Order Docket Number 2008-0697-MSW-E, Ordering Provision Number 3.a.ii, by failing to maintain and operate the working face in a manner to control windblown solid waste; 30 TAC §330.165(c) and §330.305(d), MSW Permit Number 235B, Section 4.22, Site Development Plan (SDP) Attachment Six, Groundwater and Surface Water Protection Plan, and TCEQ Agreed Order Docket Number 2008-0697-MSW-E, Ordering Provision Number 3.b.ii, by failing to maintain at least 12 inches of suitable earthen material and to provide effective stability to top dome surfaces and external embankment side slopes during all phases of landfill operation; 30 TAC §330.143(a), (b)(1) - (2), and (6) and MSW Permit Number 235B, SOP, Section 4.11, by failing to maintain the visibility of all required landfill markers, install landfill markers to clearly mark significant features, maintain landfill markers at each corner of the facility and along each boundary line, establish and maintain a buffer zone within and adjacent to the facility boundary, maintain grid markers white, and to place soil and liner evaluation report and geomembrane liner evaluation report liner area markers; 30 TAC §330.159, by failing to conduct quarterly monitoring of landfill gases; 30 TAC §305.125(1) and MSW Permit Number

235B, SDP, Attachment 14, Landfill Gas Management Plan (LGMP), Section 4.1.3., by failing to maintain the integrity of the gas management wells; 30 TAC §330.125(b)(3) and (5) and MSW Permit Number 235B, SDP, Attachment 14, LGMP, Section 5.0, and SOP Section 1.2, by failing to retain all results from gas and groundwater monitoring in the operating record and submit results to the TCEQ regional office; 30 TAC §330.125(3) and §335.586(d)(3) and MSW Permit Number 235B, SOP Section 4.1, by failing to maintain personnel training records; 30 TAC §330.153(a) and MSW Permit Number 235B, SOP Section 4.16, by failing to provide all-weather roads from the facility to access public roads; 30 TAC §330.421(a)(2) and (d), by failing to follow the construction specifications for the installation of monitoring wells; 30 TAC §305.125(1) and MSW Permit Number 235B, SOP Section 4.3.2, by failing to comply with permit requirements by failing to ensure that the leachate collection system remains in good working order; 30 TAC §330.331(a)(2) and MSW Permit Number 235B, SDP, Attachment 15, Leachate and Contaminated Water Plan (LCWP) Section 3.1.1, by failing to have a composite liner and leachate collection system that is designed and constructed to maintain less than a 30-centimeter depth of leachate over the liner; 30 TAC §305.125(1) and MSW Permit Number 235B, SDP Attachment 15, LCWP, Section 3.2, by failing to meet the minimum frequency for quarterly measuring of leachate levels; 30 TAC §330.131 and MSW Permit Number 235B, SOP Section 4.5, by failing to provide controlled access to the entire facility; and 30 TAC §330.133(b), by failing to prevent disposal of MSW in an unauthorized area; PENALTY: $80,625; Supplemental Environmental Project (SEP) offset amount of $40,313 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Abandoned Tire Clean-Up; SEP offset amount of $40,312 applied to RC&D - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: Koch Pipeline Company, L.P.; DOCKET NUMBER: 2010-0639-AIR-E; IDENTIFIER: RN105613822; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: liquid petroleum gas pipeline; RULE VIOLATED: THSC, §382.085(a) and (b), by failing to prevent unauthorized emissions; PENALTY: $15,000; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(11) COMPANY: Kuraray America, Inc.; DOCKET NUMBER: 2010-0962-AIR-E; IDENTIFIER: RN100212216; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: copolymer plant; RULE VIOLATED: 30 TAC §115.722(c) and §116.115(c), Air Permit Number 9576, Special Condition (SC) Number 5, and THSC, §382.085(b), by failing to properly fill the ethylene surge drum; PENALTY: $2,700; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Duvelsa Hernandez dba Lalos Mini Mart; DOCKET NUMBER: 2010-0877-PST-E; IDENTIFIER: RN102013372; LOCATION: Agua Dulce, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $5,265; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: LANXESS Corporation; DOCKET NUMBER: 2010-0224-IWD-E; IDENTIFIER: RN100825363; LOCATION: West Orange, Orange County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0001167000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for five-day biochemical oxygen demand and total suspended solids; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0001167000, Monitoring and Reporting Requirements Number 1, by failing to submit effluent monitoring results at the intervals specified in the permit; PENALTY: $20,824; SEP offset amount of $10,412 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Locos Pick and Pull, LLC; DOCKET NUMBER: 2010-1250-WQ-E; IDENTIFIER: RN105667067; LOCATION: Tyler, Smith County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: McWane, Inc. dba Tyler Pipe Company; DOCKET NUMBER: 2010-0620-AIR-E; IDENTIFIER: RN102679867; LOCATION: Smith County; TYPE OF FACILITY: iron foundry; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit (FOP) Number O-01407, General Terms and Conditions (GTC) Number 7, New Source Review (NSR) Permit Number 70403, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits of 11.87 and 8.48 pounds per hour (lbs/hr) of non-methane/non-ethane volatile organic compounds; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O-01407, GTC and SC Number 7, NSR Permit Number 70403, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits of 0.78 lbs/hr of particulate matter (PM); and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-01407, GTC, and THSC, §382.085(b), by failing to report three deviations on the semi-annual deviation report and consequently failing to certify the deviations; PENALTY: $73,168; SEP offset amount of $29,267 applied to RC&D - Clean School Buses; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Monarch Utilities I, L.P.; DOCKET NUMBER: 2010-0818-IWD-E; IDENTIFIER: RN102286572; LOCATION: Hays County; TYPE OF FACILITY: potable water treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Permit Number WQ0004196000, Permit Conditions Number 2.g., and Special Provision C, and the Code, §26.121(a), by failing to maintain a minimum freeboard of two feet resulting in unauthorized discharges of wastewater; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(17) COMPANY: N & S Investments, Inc. dba Sonik Mart; DOCKET NUMBER: 2010-0725-PST-E; IDENTIFIER: RN102351699; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience

store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures on all USTs; PENALTY: $3,830; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(18) COMPANY: PRITEN YOGESH PATEL, LLC dba Joe's Mart; DOCKET NUMBER: 2010-0650-PST-E; IDENTIFIER: RN103036679; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for release; and 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; PENALTY: $3,525; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(19) COMPANY: Michael Rached; DOCKET NUMBER: 2010-1277-WOC-E; IDENTIFIER: RN105940886; LOCATION: 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.

(20) COMPANY: RELIANCE STORE, LLC dba Five Star Food Mart; DOCKET NUMBER: 2010-0661-PST-E; IDENTIFIER: RN102488616; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; PENALTY: $5,684; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Richard Clark Builders, Inc.; DOCKET NUMBER: 2010-1251-WQ-E; IDENTIFIER: RN105951784; LOCATION: Hewitt, McLennan County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: RICHEY AND MONK GROCERY, INC. dba Thrif-Tee Food Center; DOCKET NUMBER: 2010-0686-PST-E; IDENTIFIER: RN101894558; LOCATION: Liberty, Liberty County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide a release detection method for the UST by failing to conduct reconciliation of inventory control records at least once a month; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §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; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $12,517; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-0335.

(23) COMPANY: Carlos Salazar; DOCKET NUMBER: 2010-1270-WOC-E; IDENTIFIER: RN103644753; LOCATION: Los Fresnos, Cameron 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: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: San Pedro Canyon Water Company; DOCKET NUMBER: 2010-0697-PWS-E; IDENTIFIER: RN102673167; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §240.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the consumer confidence report (CCR) to each bill paying customer and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers and the information is correct and consistent with compliance monitoring data; PENALTY: $474; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(25) COMPANY: Steve Wier, Inc. dba Birds Nest Aviation, Inc.; DOCKET NUMBER: 2010-1286-WQ-E; IDENTIFIER: RN101492494; LOCATION: Manor, Travis County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2828.

(26) COMPANY: THOMAS & DORIS HUTTO, INC. dba Hutto Garbage Service; DOCKET NUMBER: 2010-0558-MLM-E; IDENTIFIER: RN100629716; LOCATION: Crockett, Houston County; TYPE OF FACILITY: MSW; RULE VIOLATED: 30 TAC §330.241(a) and (b) and MSW Registration Number 40033, SOP Section 21, Page IV-28, by failing to restrict, after a significant work stoppage due to a mechanical breakdown, receiving and accumulating solid waste in quantities that could not be processed in a timely manner; 30 TAC §330.225(b) and (c) and MSW Registration Number 40033, SOP Section 13.2, Page IV-19 and Section 4.2 Page IV-6, by failing to prevent the unloading of waste at an unauthorized area and to ensure that any waste deposited in an unauthorized area is immediately removed or properly disposed of, and any prohibited waste is returned to the transporter or generator of the waste; 30 TAC §330.215(1) and MSW Registration Number 40033, SOP Section 8, Page IV-11, by failing to operate and maintain the stationary compactor to prevent a public nuisance through material loss and spillage; 30 TAC §330.233(a)(1) and §330.235 and MSW Registration Number 40033, SOP Section 17, Page IV-24 and Section 18, Page IV-25, by failing to properly control windblown material and litter throughout the storage area and to collect spilled waste materials; 30 TAC §328.56(d)(4) and §330.205(b) and MSW Registration Number 40033, SOP Section 7, Page IV-10 and Section 8, Page IV-11, by failing to store solid waste in a manner that does not constitute a fire, safety, or health hazard or provide food or harborage for animals and vectors and to provide an on-site storage area for recyclable materials; 30 TAC §330.209(a) and (b) and MSW Registration Number 40033, SOP Section 7, Page IV-10, by failing to maintain an area for source-separated or recyclable material that is separate from the transfer station process area; 30 TAC

§330.207(f)(1) and MSW Registration Number 40033, SOP Section 6, Page IV-9, by failing to prevent wastewaters from interfering with or passing through the waste treatment facility's processes or operations; 30 TAC §330.227 and MSW Registration Number 4033, SOP Section 6, Page IV-9, by failing to prevent and control surface water drainage to minimize surface water running onto, into, and off the treatment area and off-site and by failing to prevent water from ponding to avoid becoming a nuisance; 30 TAC §330.245(c), (f), (i), and (k) and MSW Registration Number 40033, SOP Section 22, Page IV-29, by failing to store solid waste in odor-retaining containers and vessels and to take appropriate odor control measures and by failing to conduct cleaning and maintenance of mobile waste processing unit equipment; 30 TAC §334.243(a) and MSW Registration Number 40033, Section 6, Page IV-9, by failing to wash down the working surface at least two times per week and to properly treat, collect, and dispose of the wash waters; 30 TAC §330.219(a) and (b) and MSW Registration Number 40033, SOP Section 10, Page IV-13, by failing to maintain all required records; 30 TAC §330.221(c) and §330.247 and MSW Registration Number 40033, SOP Section 24, Page IV-31, by failing to train employees in a fire protection plan and appropriate sections of the health and safety plan; 30 TAC §330.231 and MSW Registration Number 40033, SOP Section 16, Page IV-23, by failing to maintain and list all required information on the facility sign; 30 TAC §330.15 and §330.215(2), by failing to adhere to the provisions of the permit at all times; and 30 TAC §324.6 and §330.227 and 40 Code of Federal Regulations §279.22(d), by failing to abate used oil spills and to contain the spills and contaminated water from the storage and processing areas; PENALTY: $14,475; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(27) COMPANY: Tom N. Townsend; DOCKET NUMBER: 2010-1271-WOC-E; IDENTIFIER: RN1059803223; LOCATION: Bowie 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: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(28) COMPANY: Triangle Waste Solutions, LP; DOCKET NUMBER: 2010-0948-MSW-E; IDENTIFIER: RN104509708; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: waste collection company; RULE VIOLATED: 30 TAC §324.11(2) and §324.4(2), by failing to obtain a used oil registration prior to transporting used oil; PENALTY: $778; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(29) COMPANY: Alberto Alba Villarreal; DOCKET NUMBER: 2010-0581-PST-E; IDENTIFIER: RN102268927; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: UST; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.54(c) and (c)(2), by failing to monitor for releases a UST system; 30 TAC §334.54(d), by failing to ensure that any residue from stored regulated substances, which remained in the temporarily out-of-service UST 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; and §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $5,183; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(30) COMPANY: WEATHERFORD FARMS, INC.; DOCKET NUMBER: 2010-0282-IWD-E; IDENTIFIER: RN101526416; LOCATION: Stafford, Fort Bend County; TYPE OF FACILITY: greenhouse operation with wastewater treatment pond; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0003060000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limitations for copper; PENALTY: $8,250; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201004917
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 24, 2010

♦ ♦ ♦

Enforcement Orders

An agreed order was entered regarding Julio S. Alonso and Maria I. Alonso dba A-1 Metal Finishing & Polishing, Docket No. 2008-0317-MLM-E on August 12, 2010 assessing $9,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmy O. Curtice, Docket No. 2008-0467-PST-E on August 12, 2010 assessing $7,875 in administrative penalties with $1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ELEGANT, INC. dba Sunnys Food Store, Docket No. 2008-1114-PST-E on August 12, 2010 assessing $14,360 in administrative penalties with $2,872 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Benefield, Docket No. 2009-0081-WR-E on August 12, 2010 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dublin, Docket No. 2009-0164-MWD-E on August 12, 2010 assessing $102,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Manufacturing Co., L.L.C., Docket No. 2009-1126-AIR-E on August 12, 2010 assessing $2,675 in administrative penalties with $535 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-

8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Titan Gunite, LLC, Docket No. 2009-1202-AIR-E on August 12, 2010 assessing $6,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Leander, Docket No. 2009-1206-MWD-E on August 12, 2010 assessing $13,490 in administrative penalties with $2,698 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rodman, LLC, Docket No. 2009-1294-MSW-E on August 12, 2010 assessing $15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ANATOLIAN TRADING, INC. dba Medical Center Shell, Docket No. 2009-1410-PST-E on August 12, 2010 assessing $3,648 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jose Ordonez, Docket No. 2009-1418-LII-E on August 12, 2010 assessing $500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding QANDIL, INC. and Sky Business, Inc. dba Bryan Drive In, Docket No. 2009-1576-PST-E on August 12, 2010 assessing $3,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Miguel Guerrero, Docket No. 2009-1580-LII-E on August 12, 2010 assessing $500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Shane Harkin, Docket No. 2009-1674-LII-E on August 12, 2010 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ramesh Pillai, Docket No. 2009-1694-MLM-E on August 12, 2010 assessing $4,725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Martin Cantu dba Valley Quick Stop, Docket No. 2009-1762-MLM-E on August 12, 2010 assessing $8,435 in administrative penalties with $1,687 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2009-1781-AIR-E on August 12, 2010 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Roland C. Andrade, Docket No. 2009-1791-MSW-E on August 12, 2010 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petroleum Wholesale, L.P. dba Sunmart 479, Docket No. 2009-1938-PST-E on August 12, 2010 assessing $5,579 in administrative penalties with $1,115 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Double Diamond Properties Construction Co., Docket No. 2009-1948-WQ-E on August 12, 2010 assessing $5,550 in administrative penalties with $1,110 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shapiro Family Limited Partnership, Docket No. 2009-1949-PST-E on August 12, 2010 assessing $3,575 in administrative penalties with $715 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding LINDALE STORES INC dba Quick Pantry, Docket No. 2009-2003-PST-E on August 12, 2010 assessing $5,207 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-0675,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. LAND CORP., Docket No. 2009-2070-MWD-E on August 12, 2010 assessing $1,090 in administrative penalties with $218 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SEIS NLSS MG CORPORATION dba Sams Food Mart 3, Docket No. 2009-2078-PST-E on August 12, 2010 assessing $7,651 in administrative penalties with $1,530 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals USA, Inc., Docket No. 2010-0019-AIR-E on August 12, 2010 assessing $25,375 in administrative penalties with $5,075 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PTCAA Texas, L.P. dba Pilot Travel Center 431, Docket No. 2010-0054-PST-E on August 12, 2010 assessing $11,743 in administrative penalties with $2,348 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Bend County Municipal Utility District No. 124, Docket No. 2010-0059-MWD-E on August 12, 2010 assessing $6,960 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rabindra Nauth, Docket No. 2010-0073-PST-E on August 12, 2010 assessing $6,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southerland Communities RR Ranch, Ltd., Docket No. 2010-0079-EAQ-E on August 12, 2010 assessing $5,106 in administrative penalties with $1,021 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nueces County, Docket No. 2010-0110-PST-E on August 12, 2010 assessing $5,125 in administrative penalties with $1,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Borna Enterprises, Inc. dba Roadrunner Chevron, Docket No. 2010-0111-PST-E on August 12, 2010 assessing $6,315 in administrative penalties with $1,263 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Criminal Justice, Docket No. 2010-0113-MWD-E on August 12, 2010 assessing $1,880 in administrative penalties with $376 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.A.R. ENTERPRISES, INC. dba Daghlas Mart, Docket No. 2010-0115-PST-E on August 12, 2010 assessing $16,656 in administrative penalties with $3,331 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BFI Waste Services of Texas, LP dba Allied Waste, Docket No. 2010-0125-IHW-E on August 12, 2010 assessing $7,650 in administrative penalties with $1,530 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Open Pantry, LLC. dba Sunnys Mart, Docket No. 2010-0126-PST-E on August 12, 2010 assessing $5,533 in administrative penalties with $1,106 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LANXESS Corporation, Docket No. 2010-0142-AIR-E on August 12, 2010 assessing $5,050 in administrative penalties with $1,010 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Edgewood Independent School District, Docket No. 2010-0161-PST-E on August 12, 2010 assessing $4,400 in administrative penalties with $880 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mexia, Docket No. 2010-0163-MWD-E on August 12, 2010 assessing $6,850 in administrative penalties with $1,370 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mark William Dailey, Docket No. 2010-0164-LII-E on August 12, 2010 assessing $1,358 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary K. Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hamza Enterprises Inc dba Ezy Stop, Docket No. 2010-0171-PST-E on August 12, 2010 assessing $3,222 in administrative penalties with $644 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rhodia Inc., Docket No. 2010-0194-AIR-E on August 12, 2010 assessing $7,350 in administrative penalties with $1,470 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brian K. Gay, Docket No. 2010-0203-OSI-E on August 12, 2010 assessing $469 in administrative penalties with $93 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.E., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2010-0214-MWD-E on August 12, 2010 assessing $970 in administrative penalties with $194 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HEALTHSOUTH OF SAN ANTONIO, INC., Docket No. 2010-0216-PST-E on August 12, 2010 assessing $11,339 in administrative penalties with $2,267 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HUT ENTERPRISES, LLC dba Washington Shell, Docket No. 2010-0217-PST-E on August 12, 2010 assessing $7,786 in administrative penalties with $1,557 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M & M BROTHER CORPORATION dba Nasa Food Mart, Docket No. 2010-0246-PST-E on August 12, 2010 assessing $12,348 in administrative penalties with $2,469 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2010-0247-AIR-E on August 12, 2010 assessing $3,070 in administrative penalties with $614 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chiwoo Park dba Dunlavy Mart, Docket No. 2010-0250-PST-E on August 12, 2010 assessing $4,565 in administrative penalties with $913 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HAJARAT CORPORATION dba Corner Food Store, Docket No. 2010-0274-PST-E on August 12, 2010 assessing $3,771 in administrative penalties with $754 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fairbank Food Store, Inc. dba BestCo Food Mart, Docket No. 2010-0279-PST-E on August 12, 2010 assessing $4,944 in administrative penalties with $988 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Neely dba Heights Water, Docket No. 2010-0287-PWS-E on August 12, 2010 assessing $960 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hugh Howard dba Howard Petroleum, Docket No. 2010-0299-PST-E on August 12, 2010 assessing $4,700 in administrative penalties with $940 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richards Independent School District, Docket No. 2010-0303-MWD-E on August 12, 2010 assessing $6,360 in administrative penalties with $1,272 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STEINHAGEN OIL COMPANY, INC. dba Fastlane No. 30, Docket No. 2010-0320-PST-E on August 12, 2010 assessing $3,497 in administrative penalties with $699 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ADNIK BUSINESS, INC. dba Mini Mart 1, Docket No. 2010-0321-PST-E on August 12, 2010 assessing $2,037 in administrative penalties with $407 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Skyland Gas, Inc dba Pik N Go 1, Docket No. 2010-0331-PST-E on August 12, 2010 assessing $3,878 in administrative penalties with $775 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TAWAKUL INVESTMENTS INC. dba Spring Time, Docket No. 2010-0338-PST-E on August 12, 2010 assessing $4,025 in administrative penalties with $805 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOLDEN HORN CORPORATION dba Cat Corner, Docket No. 2010-0346-PST-E on August 12, 2010 assessing $6,151 in administrative penalties with $1,230 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carl Childers, Docket No. 2010-0360-MLM-E on August 12, 2010 assessing $2,156 in administrative penalties with $431 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vander Horst Enterprises, LLC dba Lane Jones Dairy, Docket No. 2010-0383-AGR-E on August 12, 2010 assessing $2,945 in administrative penalties with $589 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding I & C Texas Enterprises, Inc. dba Shell Food Mart, Docket No. 2010-0402-PST-E on August 12, 2010 assessing $6,078 in administrative penalties with $1,215 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources, LP, Docket No. 2010-0433-AIR-E on August 12, 2010 assessing $5,400 in administrative penalties with $1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ingram Readymix, Inc., Docket No. 2010-0463-IWD-E on August 12, 2010 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Specialty Products, LLC, Docket No. 2010-0466-AIR-E on August 12, 2010 assessing $5,940 in administrative penalties with $1,188 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valley Mills Independent School District, Docket No. 2010-0537-PWS-E on August 12, 2010 assessing $1,680 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Meier, Enforcement Coordinator at (512) 239-1370, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Tiger Holdings, Inc. dba Express Mart 103, Docket No. 2010-0626-PST-E on August 12, 2010 assessing $3,500 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding United Parcel Service Inc., Docket No. 2010-0772-PST-E on August 12, 2010 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Brian O. Flowers, Docket No. 2010-0608-WOC-E on August 12, 2010 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Keith Drewery dba Drewery Construction Company, Inc., Docket No. 2010-0667-WQ-E on August 12, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding G.T.T. General Contractors, Inc., Docket No. 2010-0580-WQ-E on August 12, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding David Wood Construction, L.P., Docket No. 2010-0640-WQ-E on August 12, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Lupe Rubio Construction Company, Inc., Docket No. 2010-0769-WQ-E on August 12, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ballenger Construction Company, Docket No. 2010-0542-WQ-E on August 12, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Smith County, Docket No. 2010-0516-WQ-E on August 12, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Smith County, Docket No. 2010-0517-WQ-E on August 12, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Smith County, Docket No. 2010-0518-WQ-E on August 12, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding House of Boats, Inc., Docket No. 2010-0604-WQ-E on August 12, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201004960

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 25, 2010

♦ ♦ ♦

Notice of Correction to Default Order Number 4

In the June 11, 2010, issue of the *Texas Register* (35 TexReg 5112), the Texas Commission on Environmental Quality (commission) published a notice of Default Order Number, specifically Item Number 4. The reference to Nhat Q. Tran dba Wallisville Market was submitted in error by the commission as a Default Order and instead should have been submitted as Default and Shutdown Order.

For questions concerning this error, please contact Gary Shiu at (713) 422-8916.

TRD-201004925
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 24, 2010

♦ ♦ ♦

Notice of Correction to Shutdown Default Order Number 1

In the August 20, 2010, issue of the *Texas Register* (35 TexReg 7590), the Texas Commission on Environmental Quality (commission) published a notice of Shutdown Default Order Number, specifically Item Number 1. The reference to NirGozlan and Gadi Shushan was submitted in error by the commission as a Shutdown Default Order and instead should have been submitted as Default Order.

For questions concerning this error, please contact Stephanie J. Frazee at (512) 239-3693.

TRD-201004926
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 24, 2010

♦ ♦ ♦

Notice of Water Quality Applications

The following notice was issued on August 13, 2010 through August 20, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

SYNAGRO OF TEXAS CDR INC has applied for a new permit, Proposed TCEQ Permit No. WQ0004910000, to authorize the land application of sewage sludge for beneficial use on 162.73 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge land application site will be located approximately 1,400 feet south of State Highway 175, approximately 7.17 miles west of the intersection of State Highway 175 and Farm-to-Market Road 317 Loop, in Henderson County, Texas 75751.

GEORGIA PACIFIC WOOD PRODUCTS SOUTH LLC which operates the Corrigan Plywood Plant, a plywood manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0001902000 for a major amendment with renewal to authorize a reduction in the monitoring frequency for chemical oxygen demand (COD) from once per week to once per month and total aluminum from once per month to once per quarter at Outfall 001 and for COD from twice per week to once per month and total aluminum from once per month to once per quarter at Outfall 002; to authorize the addition of building and thermal oxidizer wash down water at Outfalls 001 and 002; and to specify that all monitoring will occur during normal business hours Monday through Friday, excluding federal holidays. The current permit authorizes the discharge of wet decking runoff, noncontact cooling water, boiler blowdown, vehicle wash water, resin regeneration water, and storm water runoff on an intermittent and flow variable basis via Outfall 001 and fire pond overflow, boiler blowdown, noncontact cooling water, resin regeneration water, and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located on the west side of U.S. Highway 59 approximately 6000 feet northwest of the intersection of U.S. Highway 59 and Farm-to-Market Road 352 in the City of Corrigan, Polk County, Texas 75939.

CITY OF HENRIETTA has applied for a renewal of TPDES Permit No. WQ0010454002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 392,000 gallons per day. The facility is located approximately 1 mile northeast of the intersection of U.S. Highway 287 and State Highway Loop 510 in Clay County, Texas 76365.

GEORGIA PACIFIC WOOD PRODUCTS SOUTH LLC which operates the Camden Plywood Plant, has applied for a major amendment to TPDES Permit No. WQ0001598000 to authorize the disposal of treated domestic wastewater from internal Outfall 101 and kiln condensate at a daily average flow not to exceed 15,000 gallons per day via irrigation of 20.97 acres of land; authorize the discharge of wash water from the Regenerative Catalytic Oxidizer (RCO)/Regenerative Thermal Oxidizer (RTO) Units via Outfall 002; authorize the discharge of storm water runoff on an intermittent and flow variable basis via new Outfall 007; reduce monitoring frequencies at Outfall 001 and 101; specify the sampling of all outfalls only during normal business hours Monday through Friday between 8:00 a.m. and 5:00 p.m. (excluding Easter, Independence Day, Labor Day, Memorial Day, Thanksgiving, Christmas and New Years holidays); change the frequency of the discharge via Outfall 001 from continuous to intermittent; remove the flow limit at Outfall 001; establish uniform effluent limitations for chemical oxygen demand through all the permited outfalls; remove the term "lumber kiln condensate" from the Other Requirements, Item 3; remove the Other Requirements, Item 4; remove the Other Requirements, Item 5; and remove storm water Outfalls 005 and 006. The current permit authorizes the discharge of non-contact cooling water, boiler blowdown, boiler feed pre-treatment water, treated domestic wastewater (previously monitored), wet deck runoff, fire deluge water, boiler scrubber water, log flume water, vehicle wash water and storm water runoff at a total dry weather volume discharged during any 24-hour period shall not exceed 0.12 million gallons via Outfall 001; storm water overflow including wet deck runoff and fire deluge water on an intermittent and flow variable basis via Outfall 002; storm water overflow including non-contact cooling water, boiler blowdown, boiler scrubber water, log flume water, vehicle wash water, boiler feed pre-treatment water and treated domestic wastewater from the equalization pond on an intermittent and flow variable basis via Outfall 004; and storm water runoff on an intermittent and flow variable basis via Outfalls 005 and 006. The proposed permit authorizes the discharge of non-contact cooling water, boiler blowdown, boiler feed pre-treatment water, treated domestic wastewater (previously monitored), wet deck runoff, fire deluge water, boiler scrubber water, log flume water, vehicle wash water and storm water runoff on an intermittent and flow variable basis via Outfall 001; storm water overflow including wet deck runoff and fire deluge water and wash water from the Regenerative Catalytic Oxidizer (RCO)/Regenerative Thermal Oxidizer (RTO) Units on an intermittent and flow variable basis via Outfall 002; storm water overflow including non-contact cooling water, boiler blowdown, boiler scrubber water, log flume water, vehicle wash water, boiler feed pre-treatment water and treated domestic wastewater from the equalization pond on an intermittent and flow variable basis via Outfall 004; storm water runoff on an intermittent and flow variable basis via Outfalls 005, 006, and 007; and the disposal of treated domestic wastewater and kiln condensate via irrigation of 20.97 acres of land. The facility site is located on the south side of the intersection of Farm-to-Market Road 942 and Farm-to-Market Road 62 in the City of Camden, Polk County, Texas 75934. The irrigation area is located on the north side of Farm-to-Market Road 942 and Farm-to-Market Road 62, directly across from the mill site.

CITY OF CORPUS CHRISTI has applied for a renewal of TPDES Permit No. WQ0010401003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 16,000,000 gallons per day. The facility is located at 6541 Greenwood Drive, at the intersection of State Highway 357 (Saratoga Blvd) and Greenwood Drive, about 1.5 miles south of South Padre Island Drive in the City of Corpus Christi in Nueces County, Texas 78415.

CITY OF PENELOPE has applied for a renewal of TPDES Permit No. WQ0013621001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 2,000 feet southeast of the intersection of Farm-to-Market Roads 308 and 2114; adjacent to the northerly side of Farm-to-Market Road 2114; at the southeast edge of the City of Penelope in Hill County, Texas 76676.

THE CITY OF ALAMO has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0013633001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 14,000 feet south along South Tower Road from the intersection of Tower Road and U.S. 83 Business Highway or approximately 17,000 feet south from the intersection of South Tower Road with U.S. 83 Expressway in Hildalgo County, Texas 78516.

LAJITAS MUNICIPAL SERVICES COMPANY LLC has applied for a renewal of TPDES Permit No. WQ0014282001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The facility is located approximately 2,000 feet south of Ranch-to-Market Road 170 and 1,800 feet east of the Rio Grande in Brewster County, Texas 79852.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014818001 to correct the EPA ID number on page 1 of the permit from TX0129713 to TX0129712. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. The facility will be located approximately 1,320 feet southeast from the intersection of Farm-to-Market Road 2759 and Farm-to-Market Road 762, in the City of Rosenberg in Fort Bend County, Texas 77471.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ

can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201004959
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 25, 2010

♦ ♦ ♦

Texas Facilities Commission

Request for Proposal #303-0-20246

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-0-20246. TFC seeks a five (5) or ten (10) year lease of approximately 9,516 sq. ft. of office space in the City of McAllen, Hidalgo County, Texas.

The deadline for questions is September 13, 2010, and the deadline for proposals is September 27, 2010, at 3:00 p.m. The target award date is December 15, 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 Contract Specialist Sandy Williams at (512) 475-0453 or sandy.williams@tfc.state.tx.us. Any addendum to the original RFP will be posted to the Electronic State Business Daily (ESBD). 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=90637*.

TRD-201004932
Kay Molina
General Counsel
Texas Facilities Commission
Filed: August 24, 2010

♦ ♦ ♦

Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective October 1, 2010.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for the following services:

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)

Family Planning Providers

Physicians and Certain Other Practitioners

The proposed amendments are estimated to result in an additional annual aggregate expenditure of $5,621,237 for federal fiscal year (FFY) 2011, with approximately $3,550,092 in federal funds and $2,071,145 in State General Revenue (GR). For FFY 2012, the estimated additional aggregate expenditure is $5,709,034, with approximately $3,456,820 in federal funds and $2,252,214 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201004907
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 23, 2010

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2011.

The amendment modifies the current reimbursement methodology in the Texas Medicaid State Plan for Case Management for Individuals with Mental Retardation or Related Condition or Pervasive Developmental Disability program by ending the monthly payment rate effective August 31, 2011 and replacing it with an encounter unit of service payment rate effective September 1, 2011. The proposed amendments has no fiscal impact.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201004908
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 23, 2010

♦ ♦ ♦

Public Notice to Clarify Proposed Medicaid Payment Reductions for Inpatient Hospital Services

The Texas Health and Human Services Commission (HHSC) conducted a public hearing on August 18, 2010, to receive public comment regarding a proposed adjustment to inpatient acute care hospital reimbursement rates. HHSC proposed two updates to the rates related to a no-cost rebasing initiative as well as a one percent reduction to the rebased rates. As a result of comments received, HHSC will delay implementation of the SDAs that were scheduled to be implemented September 1, 2010. However, the one percent reduction will still apply to the rates that are in effect on August 31, 2010. The one percent reduction will be effective September 1, 2010.

The Legislative Budget Board (LBB) and the Governor's Office informed HHSC in a letter dated May 17, 2010, of their revision to the Spending Reduction Plan for the 2010-2011 Biennium submitted by HHSC in response to the January 15, 2010 letter from the Governor, Lieutenant Governor and Speaker requesting a spending reduction proposal. In response to this direction, HHSC proposes to adjust payments

for inpatient hospital services. The result of this revision is that the payment rates for inpatient hospital services reimbursed under DRG prospective payment system will be reduced by one percent effective September 1, 2010, consistent with the May 17, 2010, direction from the LBB and the Governor's Office.

The payment rates will be reduced by one percent in accordance with 1 Texas Administrative Code §355.201, which allows the Commission to adjust fees, rates, and charges paid for medical assistance to stay within the limits of appropriated funds.

Written comments regarding the rate adjustment may be submitted by U.S. mail, overnight mail, special delivery mail, hand delivery, fax or e-mail. U.S. Mail: Attention: Rate Analysis, HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200. Overnight mail, special delivery mail or hand delivery, Attention: Rate Analysis, HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Phone number for package delivery: (512) 491-1445. Fax: Attention: Rate Analysis at (512) 491-1998. E-mail: Esther.Brown@hhsc.state.tx.us.

TRD-201004964
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 25, 2010

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Technical Assistance, Set up, and Draw Request Services - Request for Proposals

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA) announces an Request for Proposals (RFP) for Technical Assistance, Set up and Draw Request Services.

SUMMARY. The Texas Department of Housing and Community Affairs has posted RFP #332-RFP11-1001 for Technical Assistance, Set up and Draw Request Services for Disaster Recovery Division. If you are interested in providing a response to this proposal, please view the RFP posting on the Electronic State Business Daily (ESBD). There are two (2) documents associated with this procurement. The website for the ESBD is: http://esbd.cpa.state.tx.us/ and you can search by the Proposal number listed above.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the RFP is 4:00 p.m., Central Daylight Saving Time, Friday, September 30, 2010. No proposal received after the deadline will be considered. No incomplete, unsigned, or late proposals will be accepted after the proposal deadline, unless TDHCA determines, in its sole discretion that it is in the best interest of TDHCA to do so.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this RFP in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Individuals or firms interested in submitting a proposal should visit our website at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=90788, for a complete copy of the RFP. Throughout the procurement process, all questions relating to this RFP must be submitted to TDHCA in writing to Julie Dumbeck (julie.dumbeck@tdhca.state.tx.us).

PLACE AND METHOD OF PROPOSAL DELIVERY. Proposals shall be delivered to:

Texas Department of Housing and Community Affairs

Mailing Address:

P.O. Box 13941

Austin, TX 78711-3941

Physical Address for Overnight Carriers:

221 East 11th Street

Austin, Texas 78701-2410

(512) 475-3800

TRD-201004962
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 25, 2010

♦ ♦ ♦

Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of TEXAS EDUCATOR BENEFITS (Doing Business as COMPLETE BENEFIT SERVICES), to TEB BENEFITS GROUP INC., a domestic third party administrator. The home office is in El Paso, Texas.

Application to change the name of GREGORY T. WHITE (Doing Business as ACHIEVE FINANCIAL SERVICES), to ACHIEVE FINANCIAL GROUP, LLC., a domestic third party administrator. The home office is in Tyler, Texas.

Application to change the name of CO-ORDINATED BENEFIT PLANS, INC. (Doing Business as CBPI, INC.), to CO-ORDINATED BENEFIT PLANS, LLC, a foreign third party administrator. The home office is in Tampa, Florida.

Application to change the name of PAYCHEX AGENCY, INC., to PAYCHEX INSURANCE AGENCY, INC., a foreign third party administrator. The home office is in Rochester, New York.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of David Moskowitz, 333 Guadalupe Street, M/C 107-TPA-PF, Austin, Texas 78701.

TRD-201004867
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 20, 2010

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1280 "Green"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1280 is "GREEN." The play style is "key number match with auto win."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1280 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1280.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, STAR SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100, and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1280 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
STAR SYMBOL	STAR
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $40.00 or $100.

H. High-Tier Prize - A prize of $1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1280), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1280-0000001-001.

K. Pack - A pack of "GREEN" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements

of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GREEN" Instant Game No. 1280 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GREEN" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the LUCKY NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "STAR" play symbol, the player wins the PRIZE shown for that symbol instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. The "STAR" (auto win) play symbol will never appear more than once on a ticket.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

G. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "GREEN" Instant Game prize of $1.00, $2.00, $4.00, 5.00, $10.00, $20.00, $40.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A

claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GREEN" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GREEN" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "GREEN" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "GREEN" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1280. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1280 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,008,000	10.00
$2	672,000	15.00
$4	134,400	75.00
$5	67,200	150.00
$10	67,200	150.00
$20	67,200	150.00
$40	15,960	631.58
$100	840	12,000.00
$1,000	84	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.96. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1280 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1280, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201004923
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 24, 2010

♦ ♦ ♦

Instant Game Number 1345 "Loteria™ Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1345 is "LOTERIA™ TEXAS." The play style is "coordinate with prize legend."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1345 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1345.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: THE ARROWS SYMBOL, THE BELL SYMBOL, THE BOOT SYMBOL, THE CACTUS SYMBOL, THE CANOE SYMBOL, THE CROWN SYMBOL, THE DEER SYMBOL, THE DRUM SYMBOL, THE FISH SYMBOL, THE FLOWERPOT SYMBOL, THE FROG SYMBOL, THE HAND SYMBOL, THE LADDER SYMBOL, THE MERMAID SYMBOL, THE MOON SYMBOL, THE MUSICIAN SYMBOL, THE PARROT SYMBOL, THE PEAR SYMBOL, THE PITCHER SYMBOL, THE ROOSTER SYMBOL, THE ROSE SYMBOL, THE STAR SYMBOL, THE SUN SYMBOL, THE TREE SYMBOL, THE UMBRELLA SYMBOL, THE VIOLIN SYMBOL, THE WATERMELON SYMBOL, THE WORLD SYMBOL and THE BARREL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1345 - 1.2D

PLAY SYMBOL	CAPTION
THE ARROWS SYMBOL	THE ARROWS
THE BELL SYMBOL	THE BELL
THE BOOT SYMBOL	THE BOOT
THE CACTUS SYMBOL	THE CACTUS
THE CANOE SYMBOL	THE CANOE
THE CROWN SYMBOL	THE CROWN
THE DEER SYMBOL	THE DEER
THE DRUM SYMBOL	THE DRUM
THE FISH SYMBOL	THE FISH
THE FLOWERPOT SYMBOL	THE FLOWERPOT
THE FROG SYMBOL	THE FROG
THE HAND SYMBOL	THE HAND
THE LADDER SYMBOL	THE LADDER
THE MERMAID SYMBOL	THE MERMAID
THE MOON SYMBOL	THE MOON
THE MUSICIAN SYMBOL	THE MUSICIAN
THE PARROT SYMBOL	THE PARROT
THE PEAR SYMBOL	THE PEAR
THE PITCHER SYMBOL	THE PITCHER
THE ROOSTER SYMBOL	THE ROOSTER
THE ROSE SYMBOL	THE ROSE
THE STAR SYMBOL	THE STAR
THE SUN SYMBOL	THE SUN
THE TREE SYMBOL	THE TREE
THE UMBRELLA SYMBOL	THE UMBRELLA
THE VIOLIN SYMBOL	THE VIOLIN
THE WATERMELON SYMBOL	THE WATERMELON
THE WORLD SYMBOL	THE WORLD
THE BARREL SYMBOL	THE BARREL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $4.00, $7.00, $10.00, $17.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $33.00, $50.00, $80.00 or $300.

H. High-Tier Prize - A prize of $3,000 or $33,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1345), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1345-0000001-001.

K. Pack - A pack of "LOTERIA™ TEXAS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LOTERIA™ TEXAS" Instant Game No. 1345 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LOTERIA™ TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 30 (thirty) play symbols. The player scratches off the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the LOTERIA™ CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals 4 beans in any complete horizontal or vertical line in the LOTERIA™ CARD to win the prize shown for that line. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may win up to three (3) times per the prize structure.

C. No adjacent tickets will contain identical CALLER'S CARD play symbols in exactly the same locations.

D. No duplicate play symbols in the CALLER'S CARD play area.

E. On non-winning tickets, there will be at least one near win. A near win is defined as matching 3 of the 4 symbols to the CALLER'S CARD for a given row or column.

F. There will be no occurrence of all 4 symbols in either diagonal matching the CALLER'S CARD symbols.

G. At least 8, but no more than 12, CALLER'S CARD play symbols will match a symbol on the LOTERIA™ CARD on a ticket.

H. No duplicate play symbols on a LOTERIA™ CARD as indicated in the artwork section.

I. Each LOTERIA™ CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA™ TEXAS" Instant Game prize of $3.00, $4.00, $7.00, $10.00, $17.00, $20.00, $30.00, $33.00, $50.00, $80.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $33.00, $50.00, $80.00, or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A

claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LOTERIA™ TEXAS" Instant Game prize of $3,000 or $33,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LOTERIA™ TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LOTERIA™ TEXAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LOTERIA™ TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1345. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1345 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	1,370,880	7.35
$4	322,560	31.25
$7	282,240	35.71
$10	181,440	55.56
$17	161,280	62.50
$20	161,280	62.50
$30	16,800	600.00
$33	8,400	1,200.00
$50	7,980	1,263.16
$80	6,720	1,500.00
$300	5,040	2,000.00
$3,000	152	66,315.79
$33,000	20	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.99. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1345 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1345, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201004924
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 24, 2010

♦ ♦ ♦

Instant Game Number 1348 "7-11-21®"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1348 is "7-11-21®." The play style is "add up."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1348 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1348.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $50.00 and $300.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1348 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$300	THR HUND

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $300.

H. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

I. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1348), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1348-0000001-001.

J. Pack - A pack of "7-11-21®" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 146 to 150 will be on the last page with backs exposed. Tickets 001 will be folded over so the front of ticket 001 and 010 will be exposed.

K. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

L. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "7-11-21®" Instant Game No. 1348 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "7-11-21®" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. The player must add all 3 numbers for each GAME. If the total is 7, 11 or 21 in a single GAME, the player wins the prize shown for that GAME. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. Non-winning prize symbols will never be the same as the winning prize symbol(s).

D. No duplicate play symbols within a game.

E. No duplicate games in any order on a ticket.

F. No game will have the first two play symbols totaling 7, 11 or 21.

G. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "7-11-21®" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $50.00 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "7-11-21®" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "7-11-21®" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "7-11-21®" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 840,000 tickets in the Instant Game No. 1348. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1348 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	140,000	6.00
$2	36,400	23.08
$3	33,600	25.00
$4	8,400	100.00
$5	5,600	150.00
$6	5,600	150.00
$10	5,600	150.00
$20	1,190	705.88
$50	140	6,000.00
$300	28	30,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.55. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1348 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1348, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201004836
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 20, 2010

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 23, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Grande Communications Networks, LLC for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 38592 before the Public Utility Commission of Texas.

The requested amendment is to expand its service area footprint to include the facility known as "Creekside at Legacy" located at 6300 Windcrest Dr., Plano, Texas and the facility known as the "Cedar Park Center" located at 2100 Avenue of the Stars, Cedar Park, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38592.

TRD-201004940
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 2010

♦ ♦ ♦

Notice of Application for Designation as a Resale Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 17, 2010, for designation as a resale eligible telecommunications provider (RETP) pursuant to P.U.C. Substantive Rule §26.419.

Docket Title and Number: Application of SC TxLink for Designation as a Resale Eligible Telecommunications Provider Pursuant to 47 United States Code §214(e) and P.U.C. Substantive Rule §26.419. Docket Number 38570.

The Application: SC TxLink is requesting RETP designation in order to be eligible to receive funds for Lifeline Service from the Texas Universal Service Fund. SC TxLink seeks RETP designation that will cover all of the wire centers of Southwestern Bell Telephone Company d/b/a AT&T Texas and GTE Southwest d/b/a Verizon Southwest. The company has requested an effective date no earlier than 30 days after publication in the *Texas Register* which in this instance is October 4, 2010. The company holds Service Provider Certificate of Operating Authority Number 60732.

Persons who wish to comment on this application should notify the Public Utility Commission by September 23, 2010. Requests for further information should be mailed to the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 38570.

TRD-201004913
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2010

♦ ♦ ♦

Notice of Application for Designation as a Resale Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on August 17, 2010, for designation as a resale eligible telecommunications provider (RETP) pursuant to P.U.C. Substantive Rule §26.419.

Docket Title and Number: Application of Bellerud Communications, LLC for Designation as a Resale Eligible Telecommunications Provider Pursuant to 47 United States Code §214(e) and P.U.C. Substantive Rule §26.419. Docket Number 38571.

The Application: Bellerud is requesting RETP designation in order to be eligible to receive funds for Lifeline Service from the Texas Universal Service Fund. Bellerud seeks RETP designation that will cover all of the wire centers of Southwestern Bell Telephone Company d/b/a AT&T Texas and GTE Southwest d/b/a Verizon Southwest. The company has requested an effective date no earlier than 30 days after publication in the *Texas Register* which in this instance is October 4, 2010. The company holds Service Provider Certificate of Operating Authority Number 60147.

Persons who wish to comment on this application should notify the Public Utility Commission by September 23, 2010. Requests for further information should be mailed to the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 38571.

TRD-201004914

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2010

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 18, 2010, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Tell-All Telecom Inc. for a Service Provider Certificate of Operating Authority, Docket Number 38574.

Applicant intends to provide data, facilities-based, and resold telecommunications services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 10, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38574.

TRD-201004912
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2010

♦ ♦ ♦

Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on August 20, 2010, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of two (2) thousand-blocks of numbers on behalf of its customer, Christus Health, in the 210 NPA, in the San Antonio rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources for San Antonio Rate Center, Docket Number 38590.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than September 10, 2010. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 38590.

TRD-201004928
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 2010

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 18, 2010, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) transmission line in Scurry, Mitchell, Borden, Howard, Dawson, Martin, Midland, and Ector Counties, Texas.

Docket Style and Number: Application of Wind Energy Transmission Texas, LLC for a Certificate of Convenience and Necessity for the Scurry County South - Long Draw - Grelton - Odessa 345-kV CREZ Transmission Lines in Scurry, Mitchell, Borden, Howard, Dawson, Martin, Midland, and Ector Counties. SOAH Docket Number 473-10-5919; PUC Docket Number 38484.

The Application: Wind Energy Transmission Texas, LLC (WETT) requests to amend its CCN for proposed CREZ transmission lines designated the Scurry County South to Long Draw to Grelton to Odessa 345-kV Transmission Line Project (Project). The proposed Project consists of constructing three new 345-kV transmission lines known as the: (1) Scurry County South to Long Draw double-circuit 345-kV at 50.7 miles; (2) Long Draw to Grelton single-circuit, double-circuit-capable 345-kV at 55.4 miles; and (3) Grelton to Odessa single-circuit, double-circuit-capable 345-kV at 49.9 miles. The final proposed Project will extend from Oncor Electric Delivery Company LLC's (Oncor) new Scurry County South Switching Station located in Scurry County to Oncor's existing Odessa Switching Station located in Ector County.

The application includes alternative routes for each line and identifies WETT's preferred route as follows: (1) Scurry County South to Long Draw has 12 routes with Route 2-2 designated as preferred route; (2) Long Draw to Grelton has 10 routes with Route 2-3 designated as preferred route; and (3) Grelton to Odessa has 14 routes with Route 14-4 designated as preferred route. However, any route presented could be approved by the commission. Each of the transmission lines is proposed to be constructed on double-circuit lattice steel towers. The estimated date to energize facilities is February 6, 2013. The estimated cost of the Project is $252,187,000. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

In Docket Number 33672, the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. The Scurry County South to Long Draw to Grelton to Odessa double-circuit 345-kV CREZ transmission line project, the subject of this application, was specifically identified in that order as a necessary facility. In Docket Number 36802, WETT was ordered to complete the project identified as the "West A to West C single-circuit, double-circuit-capable 345-kV; West C to Odessa single-circuit, double-circuit-capable 345-kV; Central A to West A double-circuit 345-kV (Scurry County South - Long Draw - Grelton - Odessa 345-kV)" CREZ Project.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this pro-

ceeding is September 17, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-10-5919 and PUC Docket Number 38484.

TRD-201004909
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2010

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 18, 2010, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) transmission line in Childress, Hardeman, and Wilbarger Counties, Texas.

Docket Style and Number: Application of Electric Transmission Texas, LLC to Amend a Certificate of Convenience and Necessity for the Tesla to Riley 345-kV CREZ Transmission Line in Childress, Hardeman, and Wilbarger Counties. SOAH Docket Number 473-10-5924; PUC Docket Number 38494.

The Application: Electric Transmission Texas, LLC (ETT) requests to amend its CCN for a proposed CREZ transmission line designated the Tesla to Riley 345-kV CREZ Transmission Line Project (Project). The proposed Project consists of constructing a new double-circuit 345-kV transmission line which will extend from the proposed ETT Tesla Switching Station in southeast Childress County to the proposed ETT Riley Switching Station in central Wilbarger County.

The application includes a total of 17 alternative routes, one of which is ETT's preferred route. However, any route presented could be approved by the commission. The preferred route for the new 345-kV double-circuit line is approximately 64.12 miles in length and is proposed to be constructed on steel single-pole structures. The estimated date to energize facilities is June 12, 2013. The estimated cost of the Project is $109,570,468. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

In Docket Number 33672, the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. The Tesla to Riley 345-kV CREZ transmission line project, the subject of this application, was specifically identified in that order as a necessary facility. In Docket Number 36802, ETT was ordered to complete the project identified as the "Panhandle BB to Oklaunion double-circuit 345-kV (Tesla - Riley 345-kV)" CREZ Project.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is September 17, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-10-5924 and PUC Docket Number 38494.

TRD-201004910
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2010

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 18, 2010, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) transmission line in Haskell, Jones, Throckmorton, Shackelford, Young, Stephens, Jack, Palo Pinto, Wise, and Parker Counties, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend its Certificate of Convenience and Necessity for the Clear Crossing to Willow Creek 345-kV CREZ Transmission Line in Haskell, Jones, Throckmorton, Shackelford, Young, Stephens, Jack, Palo Pinto, Wise, and Parker Counties. SOAH Docket Number 473-10-5923; PUC Docket Number 38517.

The Application: Oncor Electric Delivery Company, LLC (Oncor) requests to amend its CCN for a proposed CREZ transmission line designated the Clear Crossing to Willow Creek 345-kV CREZ Transmission Line Project (Project). The proposed Project consists of constructing a new double-circuit 345-kV transmission line, which will extend from the new Electric Transmission Texas LLC Clear Crossing Switching Station to be located in southeastern Haskell County, to the existing Oncor Willow Creek Switching Station, located in southwestern Wise County.

The application includes a total of 94 alternative routes. Route 232 is identified as Oncor's preferred route. However, any route presented could be approved by the commission. The preferred route for the new 345-kV double-circuit line is approximately 106.8 miles in length and is proposed to be constructed on double-circuit lattice steel towers. The estimated date to energize facilities is December 2013. The estimated cost of the Project is $178,512,000. Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

In Docket Number 33672, the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZ. The Clear Crossing to Willow Creek 345-kV transmission-line project, the subject of this application, was specifically identified in that order as a necessary facility. In Docket Number 36802, Oncor was ordered to complete the project identified as the "Central B to Willow Creek double-circuit 345-kV (Clear Crossing - Willow Creek 345-kV)" CREZ Project.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is September 17, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-10-5923 and PUC Docket Number 38517.

TRD-201004911

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2010

♦ ♦ ♦

San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposals

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms for the development of a Pedestrian Safety Action Plan.

A copy of the Request for Proposals (RFP) may be requested by calling the MPO at (210) 227-8651 or by downloading the RFP and attachments from the MPO's website at www.sametroplan.org. Anyone wishing to submit a proposal must do so by 12:00 noon (CT), Friday, September 24, 2010 at the MPO office to:

Isidro ("Sid") Martinez, Director

San Antonio-Bexar County MPO

825 S. St. Mary's

San Antonio, Texas 78205

The Consultant Selection Committee will review the proposals based on the evaluation criteria listed in the RFP. The contract award will be made by the MPO's Transportation Policy Board.

Funding for this project, in the amount of $170,000, is contingent upon the availability of Federal funding.

TRD-201004780
Jeanne Geiger
Deputy Director
San Antonio-Bexar County Metropolitan Planning Organization
Filed: August 18, 2010

♦ ♦ ♦

Texas Department of Transportation

Notice of Rescission of Notice of Intent to Prepare a Supplemental Environmental Impact Statement - State Highway 71/United States Highway 290, Travis County, Texas

The Texas Department of Transportation (department), in cooperation with the Federal Highway Administration (FHWA), is issuing this notice to advise the public that the NOI to prepare a supplemental environmental impact statement (SEIS) for a proposed transportation project is being rescinded. On May 22, 2008, the department and FHWA announced their intent to prepare a limited-scope SEIS pursuant to 43 TAC §2.5(e)(2) for proposed improvement of SH 71 from Riverside Drive to SH 130, in Travis County, Texas. The improvements proposed between Riverside Drive and Farm-to-Market Road (FM) 973 were originally considered in a final environmental impact statement (FEIS) covering improvements to SH 71/US 290 from Ranch-to-Market Road (RM) 1826 to FM 973. A Record of Decision (ROD) was issued by FHWA on August 22, 1988. The mid-section of the original project limits, between Joe Tanner Lane and Riverside Drive, has been constructed. The limited-scope SEIS would have evaluated potential impacts resulting from tolling, changes in adjacent land use, the construction of SH 130, and proposed design modifications since the issuance of the SH 71/US 290 ROD along the unconstructed eastern portion of the original FEIS, between Riverside Drive and FM 973. The improvements, as proposed in 2008, are not included in the Capital Area Metropolitan Planning Organization (CAMPO) 2035 Transportation Plan. However, non-tolled improvement of SH 71 at Riverside Drive is included in the CAMPO 2035 Plan, and is consistent with prior federal approvals on the project.

The department and FHWA have decided to rescind the Notice of Intent to Prepare a Supplemental Environmental Impact Statement for SH 71 from Riverside Drive to SH 130. The decision to rescind the NOI is due to the limited availability of funds and local planning priorities. The SEIS was in the preliminary stages of development. One public meeting was held June 24, 2008, at Del Valle High School in Del Valle, Texas. Appropriate environmental documents will be completed in the future as components of the project proceed through project development as funding becomes available.

Agency Contact: Comments or questions concerning this proposed action should be sent to Enoch N. Needham, P.E., Director, Transportation Planning and Development, Texas Department of Transportation, Austin District, P.O. Box 15426, Austin, Texas 78761-5426; phone (512) 832-7000.

TRD-201004961
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 25, 2010

♦ ♦ ♦

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 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-201004919
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 24, 2010

♦ ♦ ♦

The Texas A&M University System

Award of Major Consulting Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, Texas A&M University-Commerce has entered into a consulting contract for Technology Visioning. The consultant will provide technology consulting services on the campus of Texas A&M University-Commerce located in Commerce, Texas

The Name and Address of Consultant is as follows: Smartbridge LLC, 4800 Sugar Grove Blvd., Suite #603, Stafford, TX 77477.

Texas A&M University-Commerce will pay an amount of $120,000.00 plus reasonable expenses. The contract will begin on August 23, 2010

and shall terminate on December 31, 2010 unless extended by mutual agreement in writing between both parties.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to Texas A&M University-Commerce, after completion of services.

Any questions regarding this posting should be directed to: Travis A. Ball, Director of Purchasing, Texas A&M University-Commerce, P.O. Box 3011, Commerce, TX 75429, Voice: (903) 886-5060, E-mail: Travis_Ball@tamu-commerce.edu.

TRD-201004963
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: August 25, 2010

♦ ♦ ♦

Workforce Solutions Brazos Valley Board

Notice of Release of Invitation for Bids for Incentive Assistance Program

On August 23, 2010 the Brazos Valley Council of Government (BVCOG) and Workforce Solutions Brazos Valley Board (WSBVB) are releasing an Invitation for Bid (IFB) for an Incentive Assistance Program in the Brazos Valley Workforce Development Area. The Program provides eligible customers with supportive services that allow them to take part in employment and training activities. The Incentive assistance is proposed to be provided in denominations of fifty and/or one hundred dollars via gift card or some other system that can be used by the customer for goods for the amount on the card. The cards must be accepted at numerous outlets throughout the Brazos Valley area to include the seven counties of Brazos, Burleson, Grimes, Leon, Madison, Robertson and Washington.

Potential respondents may view and print the IFB from the Internet on **www.bvjobs.org.**

Questions concerning the IFB may be submitted to the contact person, Joseph Bienski, email: jbienski@bvcog.org or telephone: (979) 595-2800. Answers to questions received will be posted at www.bvjobs.org no later than September 3, 2010.

An original and two copies of a written bid are due to the Board's offices below **no later than 4:00 p.m. September 30, 2010. No responses will be accepted after this deadline.**

Workforce Solutions Brazos Valley Board

Attn: Incentive Assistance Program

P.O. Box 4128, Bryan, Texas 77805

Physical Address:

3991 E. 29th Street

Bryan, Texas

Telephone: (979) 595-2800

Contact Person: Joseph Bienski

Telephone: (979) 595-2800

Email: jbienski@bvcog.org

Workforce Solutions Brazos Valley is an equal opportunity employer and provides equal opportunity employment programs. Auxiliary aids are available upon request to disabled individuals. Texas Relay (800) 735-2989 TDD (800) 735-2988 voice.

TRD-201004838
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: August 20, 2010

♦ ♦ ♦

Notice of Release of Invitation for Bids for Gasoline Assistance Program

On August 23, 2010 the Brazos Valley Council of Government (BVCOG) and Workforce Solutions, Brazos Valley Board (WSBVB) are releasing an Invitation for Bids (IFB) for a Gasoline Assistance Program in the Brazos Valley Workforce Development Area. The Program provides eligible customer with supportive services that allow them to take part in employment and training activities. The gasoline assistance is proposed to be provided in denominations of fifty and/or one hundred dollars via a gas/gift card or some other system that can be used by the customer ONLY to purchase gasoline for the amount on the card. The cards must be accepted at numerous gasoline outlets throughout the Brazos Valley area to include the seven counties of Brazos, Burleson, Grimes, Leon, Madison, Robertson and Washington.

Potential respondents may view and print the IFB from the Internet on www.bvjobs.org.

Questions concerning the IFB may be submitted to the contact person, Joseph Bienski, email: jbienski@bvcog.org; or telephone: (979) 595-2800. Answers to questions received will be posted at www.bvjobs.org no later than September 3, 2010.

An original and two copies of a written bid are due to the Board's offices **no later than 4:00 p.m. September 30, 2010. No responses will be accepted after this deadline.**

Workforce Solutions Brazos Valley Board

Attn: Incentive Assistance Program

P.O. Box 4128

Bryan, Texas 77805

Physical Address:

3991 E. 29th Street

Bryan, Texas

Contact Person: Joseph Bienski

Telephone: (979) 595-2800

Email: jbienski@bvcog.org

Workforce Solutions Brazos Valley is an equal opportunity employer and provides equal opportunity employment programs. Auxiliary aids are available upon request to disabled individuals. Texas Relay (800) 735-2989 TDD (800) 735-2988 voice.

TRD-201004843
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: August 20, 2010

♦ ♦ ♦

Notice of Release of Request for Proposals for Job Readiness Training

On August 23, 2010 Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposals (RFP) for Job Readiness Training. Workforce Solutions Brazos Valley Board is interested in seeking one or more contractors to provide job readiness training for customers in each of the seven counties in the region. Customers may be job seekers or employers. Job readiness training may be provided on-site in the form of classroom training and/or using computer labs and through distance learning technologies including Internet or web based training. The complete scope of required services and the proposal requirements are contained in the RFP which can be viewed and downloaded at www.bvjobs.org.

A bidder's conference will be held at the office of Workforce Solutions Brazos Valley Board, 3991 East 29th Street, Bryan, Texas 77802 on **August 30, 2010 at 3:00 p.m. CSDT,** Leon Room. Bidders may submit questions by email to bclemmons@bvcog.org up until the Bidders conference. All questions and answers will be posted on www.bvjobs.org by September 1, 2010.

Due Date: An original and four (4) copies of a written proposal are due to the Board's offices **no later than Tuesday, September 7, 2010 at 4:00 p.m. CST.** Faxed or email proposals are not acceptable. Proposals received after the indicated due date and time, regardless of delivery method, will not be accepted or considered for award.

Proposals may be hand delivered to:

ATTENTION: JOB READINESS TRAINING

Barbara Clemmons, Program Specialist

Workforce Solutions Brazos Valley Board

3991 East 29th Street

Bryan, Texas 77802

Proposals may be mailed to:

ATTENTION: JOB READINESS TRAINING

Barbara Clemmons, Program Specialist

Workforce Solutions Brazos Valley Board

P.O. Drawer 4128

Bryan, Texas 77805

Email **for questions only:** bclemmons@bvcog.org

Proposals received after the deadline will not be considered. WSBVB accepts no responsibility for late proposals.

Workforce Solutions Brazos Valley is an equal opportunity employer and provides equal opportunity employment programs. Auxiliary aids are available upon request to disabled individuals. Texas Relay (800) 735-2989 TDD (800) 735-2988 voice.

TRD-201004842
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: August 20, 2010

♦ ♦ ♦

Notice of Release of Request for Proposals for Rapid Response Services

Workforce Solutions Brazos Valley Board (WSBVB) is requesting proposals for Rapid Response Services.

The WSBVB is a volunteer body instituted in accordance with the Texas Workforce Act (House Bill 1863 and Senate Bill 642). The primary responsibility of the WSBVB is to provide policy and program guidance, to plan regionally for Workforce programs, and to exercise independent oversight of local workforce activities, in partnership with local government.

WSBVB is seeking a contractor to provide community wide rapid response services in the seven county region of the Brazos Valley Workforce Development Area, these services are delivered to areas impacted by high unemployment, due to industry layoffs or economic conditions that prevent employment in that area, these services are coordinated with community leaders, Workforce staff and WSBVB/BVCOG staff.

This Request for Proposals (RFP) will be released on August 23, 2010. A copy of the proposal can be downloaded at **www.bvjobs.org** under Workforce Board - Procurements or by contacting:

Vonda Morrison

Workforce Solutions Brazos Valley Board

P.O. Drawer 4128

Bryan, Texas 77805

Telephone: (979) 595-2800

Email: vmorrison@bvcog.org

Proposals and necessary copies must be received no later than September 7, 2010 by 4:00 p.m.. Proposals received after the due date and time will not be considered. Hand delivered proposals may be submitted at the Board Administrative Office, 3991 East 29th Street, Bryan, Texas 77802, ATTN: Rapid Response Services RFP. Please note no mail is delivered to this address. Mailed submissions must be sent to the P.O. Drawer noted above.

A Bidders conference will be held on **Monday, August 30, 2010 at 2:00 p.m.** in the Leon Room at the Workforce Solutions Brazos Valley Board office, 3991 East 29th Street, Bryan, Texas 77805; (979) 595-2800. Bidders will be given the opportunity to ask questions concerning this RFP. Attendance at the bidders' conference is not mandatory to submit a proposal but is encouraged. Bidders may submit questions by email to vmorrison@bvcog.org up until the Bidders conference. All questions and answers will be posted on www.bvjobs.org.

Workforce Solutions Brazos Valley Board is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request for individuals with disabilities. Texas Relay (800) 735-2989 TDD (800) 735-2988 (voice).

TRD-201004841
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: August 20, 2010

♦ ♦ ♦

Notice of Release of Request for Quotes for Radio Advertising Services

On August 23, 2010 the Brazos Valley Council of Government (BVCOG) and Workforce Solutions Brazos Valley Board (WSBVB) are releasing a Request for Quotes (RFQ) for radio advertising services. Radio advertising services are needed to support the outreach and recruitment of employers and job seekers for workforce center system services in the Brazos Valley Workforce Development Area. The workforce center system serves Brazos, Washington, Robertson, Burleson, Madison, Leon and Grimes counties.

A bidders conference will be conducted on August 30, 2010 at 1:00 p.m. at the Center for Regional Services, 3991 East 29th Street,

Bryan, Texas, in the Leon Room. Bidders may submit questions by email to kturner@bvcog.org up until the Bidders conference. All questions and answers will be posted on www.bvjobs.org by September 1, 2010. Bidders will have the opportunity to ask questions about the RFQ and the Board's marketing efforts. Potential respondents may view and print the RFQ from the Internet on **www.bvjobs.org.** The contact person for this RFQ is Kathleen Turner, email: kturner@bvcog.org or telephone: (979) 595-2800.

Due Date: An original and four copies of a written quote and radio advertising samples are due to the Board's offices **no later than 4:00 p.m. September 7, 2010. No responses will be accepted after this deadline.** Faxed or email quotes are not acceptable. Quotes received after the indicated due date and time, regardless of delivery method, will not be accepted or considered for award.

Quotes may be hand delivered to:

ATTENTION: RADIO ADVERTISING SERVICES

Kathleen Turner, Program Specialist

Workforce Solutions Brazos Valley Board

3991 East 29th Street

Bryan, Texas 77802

Quotes may be mailed to:

ATTENTION: RADIO ADVERTISING SERVICES

Kathleen Turner, Program Specialist

Workforce Solutions Brazos Valley Board

P.O. Drawer 4128

Bryan, Texas 77805

Email **for questions only:** kturner@bvcog.org

Workforce Solutions Brazos Valley Board is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request for individuals with disabilities. Texas Relay (800) 735-2989 TDD (800) 735-2988 (voice).

TRD-201004840
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: August 20, 2010

♦ ♦ ♦

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 35 (2010) is cited as follows: 35 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 "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 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 at: 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 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)*