TEXAS REGISTER

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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.)

Requests for Opinions

RQ-0975-GA

Requestor:

The Honorable Glenn Lewis

Chairman of the Board of Regents

Texas Southern University

3100 Cleburne Avenue

Hannah Hall 104

Houston, Texas 77004

Re: Whether Texas Southern University may exchange or grant outright a portion of its real property that contains or is adjacent to a historical cemetery (RQ-0975-GA)

Briefs requested by July 18, 2011

RQ-0976-GA

Requestor:

The Honorable Joel D. Littlefield

Hunt County Attorney

Post Office Box 1097

Greenville, Texas 75403-1097

Re: Authority of a county bail bond board to enact a rule that restricts a bail bond licensee from employing an individual who is currently on probation or parole or is the defendant in a pending criminal case (RQ-0976-GA)

Briefs requested by July 21, 2011

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

TRD-201102326

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: June 22, 2011

♦ ♦ ♦

Opinions

Opinion No. GA-0862

The Honorable Jeff Wentworth

Chair, Select Committee on Open Government

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of a Type A general-law municipality to adopt and enforce an ordinance prohibiting the discharge of certain firearms or other weapons on property located within its original corporate limits (RQ-0937-GA)

S U M M A R Y

Section 229.002 of the Texas Local Government Code does not prohibit a Type A general-law municipal ordinance from regulating the discharge of a firearm or other weapon in an area that is within the municipality's original city limits.

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

TRD-201102325
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: June 22, 2011

♦ ♦ ♦

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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER G. AUTHORIZED COSTS AND FEES IN IV-D CASES

1 TAC §55.155

The Office of the Attorney General, Child Support Division proposes new §55.155, concerning collecting annual service and payment processing fees.

Federal law requires all states to impose a $25 annual fee on cases that involve custodial parents who have never received public assistance. Currently, the State of Texas pays the fee for the parent. The Legislature has authorized the Office of the Attorney General to collect the fee from custodial parents. Additionally, state law allows the Title IV-D agency to charge a monthly payment processing fee in registry only cases to offset costs to taxpayers to operate the child support disbursement unit.

Alicia Key, IV-D Director, Child Support Division, has determined that for the first five years the new section as proposed is in effect, there will be positive fiscal implications for state government as a result of implementing the section. There will be no fiscal implications for local government.

Ms. Key has also determined that for each year of the first five years the section is in effect, the public benefit as a result of the new section will be compliance with federal and state law and the ability of the State of Texas to continue to provide services concerning the establishment, enforcement and modification of child support. There will be no significant fiscal implications for small businesses or individuals. In addition, Ms. Key has determined that there will be no local employment impact as a result of the new section.

Comments may be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed new section, §55.155, is authorized by Texas Family Code §231.103(g), which authorizes the Office of the Attorney General to adopt rules for the imposition of fees and recovery of costs of child support services.

The new section is proposed under Texas Family Code Chapter 231.

§55.155. Collecting Annual Service and Payment Processing Fees.

(a) The Title IV-D agency may assess and collect a $25 annual service fee allowed under Texas Family Code §231.103(a)(2). Beginning October 1, 2011, the annual service fee will be assessed in full service monitoring and enforcement cases which are not current or former TANF or foster care cases and have received over $500 in child support collections during the federal fiscal year. The annual service fee will be automatically deducted from the child support payment when the child support collections for that fiscal year total over $500.

(b) The Title IV-D agency may assess and collect a $3 monthly payment processing fee allowed under Texas Family Code §231.103(f). Beginning September 1, 2011, a monthly fee will assessed in cases that receive only payment processing and record keeping services through the State Disbursement Unit, and receive over $3 per month in child support collections that month. The monthly service fee will be automatically deducted from the child support payment each month in which at least $3 in child support is received. If a parent has more than one case, fees will be assessed in each case.

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 June 14, 2011.

TRD-201102168
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: July 31, 2011
For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

♦ ♦ ♦

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503, §355.507

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residen-

tial Care Programs, and §355.507, concerning Reimbursement Methodology for the Medically Dependent Children Program.

Background and Justification

These rules establish the reimbursement methodologies for the Community-Based Alternatives (CBA), the Integrated Care Management-Home and Community Support Services (ICM-HCSS) and Assisted Living/Residential Care (AL/RC), and the Medically Dependent Children Program (MDCP) waiver programs administered by the Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rates, is proposing the following three changes to these rules.

The first change amends §355.503 to delete Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care from its title. The Integrated Care Management program was discontinued January 31, 2011, and no longer needs to be incorporated in this rule.

The second change amends §355.503 to create two separate attendant services rates: a rate for CBA personal assistance services (PAS) for skilled services; and a rate for CBA PAS for non-skilled services. The CBA PAS for skilled services rate is calculated using the same methodology as the current CBA PAS rate. The rule language is amended to change the name of the reimbursement methodology for CBA PAS to CBA PAS for skilled services. In addition, the amendment will change the name of the non-attendant cost area of this rate to the administration and facility cost area.

New language is proposed to add a reimbursement methodology for the new CBA PAS for non-skilled services rate. The attendant cost area for this service will be equal to the attendant cost area for CBA PAS for skilled services, and the administration and facility cost area will be equal to the Primary Home Care Priority service support area as described in §355.5902, Reimbursement Methodology for Primary Home Care.

The third change amends §355.507 to change the name of PAS in the Medically Dependent Children Program (MDCP) to respite and adjunct services provided by an attendant, and to indicate that rates for MDCP respite and adjunct services provided by an attendant are based on the CBA rates for PAS skilled services.

These changes are being proposed to comply with the 2012-13 General Appropriations Act, Article II, Department of Aging and Disability Services, Rider 46, H.B. 1, 82nd Legislature, Regular Session, 2011, and Section 17(a)(2), Special Provisions Relating to All Health and Human Services Agencies, of Article II of the 2012-2013 General Appropriations Act. Because H.B. 1 is effective September 1, 2011, and the amendment is intended to achieve savings assumed in the bill and to ensure that the CBA waiver program remains within appropriated funds, the amendments must be effective September 1, 2011.

It is anticipated that approximately ninety percent of current CBA PAS consumers will move to the new PAS for non-skilled services. The reimbursement rate for the administration and facility cost area for PAS for non-skilled services will be lower than the current CBA PAS administration and facility cost area rate, which will lead to a savings to the state as detailed in the fiscal impact below.

Section-by-Section Summary

The proposed amendments to §355.503 are as follows:

Revise the title of the rule to delete ICM-HCSS and AL/RC.

Revise subsection (c)(1)(G) to add "for skilled services" to the name of the service whose reimbursement methodology is described in the subsection and to clarify that name of the non-attendant cost area of the rate for PAS for skilled services is the administration and facility cost area.

Add new subsection (c)(1)(H) to describe the reimbursement methodology for PAS for non-skilled services. This new subsection indicates that the attendant cost area for PAS for non-skilled services is equal to the attendant cost area for PAS for skilled services and the administration and facility cost area is equal to the Primary Home Care Priority service support cost area as described in §355.5902.

The proposed amendments to §355.507 are as follows:

Revise subsection (c) to change the name of MDCP personal assistance services to respite and adjunct services provided by an attendant, and to indicate that MDCP rates for respite and adjunct services provided by an attendant are based on rates for CBA PAS for skilled services.

Fiscal Note

Gordon Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be a fiscal impact to state government of ($3,612,696) for state fiscal year (SFY) 2012, ($2,232,888) for SFY 2013, ($2,238,445) for SFY 2014, ($2,238,445) for SFY 2015, and ($2,238,445) for SFY 2016. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Under §2006.002 of the Government Code, a state agency proposing an administrative rule that may have an adverse economic effect on small businesses must prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement estimates the number of small businesses subject to the rule and projects the economic impact of the rule on small businesses. The regulatory flexibility analysis describes the alternative methods the agency considered to achieve the purpose of the proposed rule while minimizing adverse effects on small businesses.

In 2008, approximately 239 entities provided CBA services to DADS consumers. Based on 2008 Texas Medicaid cost reports for the CBA program (the most recent data available), of these entities, approximately 213 were small businesses, of which approximately 95 were micro-businesses. HHSC considered four alternatives to achieve the savings assumed under the 2012-13 General Appropriations Act, Article II, Department of Aging and Disability Services, Rider 46, H.B. 1, 82nd Legislature, Regular Session, 2011, and Section 17(a)(2), Special Provisions Relating to All Health and Human Services Agencies, of Article II of the 2012-2013 General Appropriations Act. The Commission selected the Alternative 3 methodology for the proposed rule.

Alternative 1: Alternative 1 considered setting the total rate for CBA PAS for non-skilled services equal to the total Primary Home Care Non-Priority rate. Under this alternative, the total rate for the CBA PAS for non-skilled service would be $1.25 per hour less than the current rate for CBA PAS. Under this alternative, 210 small businesses experienced a reduction in CBA Medicaid revenues. These reductions ranged in size from $0.01 per annum to $540,079 per annum. Of the 95 micro-businesses,

92 experienced a reduction in CBA Medicaid revenues. These reductions ranged in size from $0.01 per annum to $40,928 per annum.

Under Alternative 1, the part of the rate intended to support attendant compensation would be reduced by $0.56 per hour, which would likely lead providers to reduce attendant wages and benefits. As well, the facilities and administration cost area rate would be based upon the rate for a service that allows for service breaks of up to fourteen days; such service breaks are not currently allowed in the CBA program.

Alternative 2: HHSC also considered setting the attendant compensation cost area rate for the CBA PAS for non-skilled service equal to the current CBA PAS attendant compensation cost area rate while setting the administration and facilities cost area rate equal to the Primary Home Care Non-Priority service support cost area rate. Under this alternative, the total rate for the CBA PAS for non-skilled service would be $0.69 per hour less than the current total rate for CBA PAS. Under this alternative, 210 small businesses experienced a reduction in CBA Medicaid revenues. These reductions ranged in size from $0.01 per annum to $298,124 per annum. Of the 95 micro-businesses, 92 experienced a reduction in CBA Medicaid revenues. These reductions ranged in size from $0.01 per annum to $22,592 per annum.

Under Alternative 2, the part of the rate intended to support attendant compensation would be equal to the current CBA PAS attendant cost area rate but the facilities and administration cost area rate would be based upon the rate for a service that allows for service breaks of up to fourteen days. Service breaks are not currently allowed in the CBA program.

Alternative 3: Alternative 3 combines the current CBA PAS attendant cost area with the Primary Home Care Priority service support cost area. Under this alternative, the total rate for the CBA PAS for non-skilled service would be $0.51 per hour less than the current total rate for CBA PAS. Under this alternative, 209 small businesses experienced a reduction in CBA Medicaid revenues. These reductions are estimated to range in size from $0.46 per annum to $220,352 per annum. Of the 95 micro-businesses, 91 experienced a reduction in CBA Medicaid revenues. These reductions ranged in size from $0.46 per annum to $16,698 per annum.

Under Alternative 3, the part of the rate intended to support attendant compensation would be equal to the current CBA PAS attendant cost area rate and the facilities and administration cost area rate would be based upon the rate for a service that does not allow for service breaks.

Alternative 4: Alternative 4 combines the rate described under Alternative 3 with a reduction in Attendant Compensation Rate Enhancement spending requirements from 90 percent to 85 percent. Under this alternative, 209 small businesses experienced a reduction in CBA Medicaid revenues. These reductions are estimated to range in size from $0.46 per annum to $220,352 per annum. Of the 95 micro-businesses, 91 experienced a reduction in CBA Medicaid revenues. These reductions ranged in size from $0.46 per annum to $16,698 per annum.

Under Alternatives 1 through 3, providers participating in the Attendant Compensation Rate Enhancement have flexibility on how they spend 10 percent of the part of the rate intended for attendant compensation; providers could use all or part of the 10 percent to cover reductions in the administrative and facilities cost area rate. Under Alternative 4, providers participating in the Attendant Compensation Rate Enhancement would have flexibility on how they spend 15 percent of the part of the rate intended for attendant compensation; providers could use all or part of the 15 percent to cover reductions in the administrative and facilities cost area rate. Under this alternative, providers could reduce attendant wages by five percent without being subject to recoupment under Attendant Compensation Rate Enhancement rules. Providers not participating in the Attendant Compensation Rate Enhancement have no spending requirements for attendant compensation.

Alternatives 1 and 2 were not selected because of the adverse impact they would have on small businesses and micro-businesses. These alternatives were rejected in favor of Alternative 3 which has less of an adverse impact on small and micro-businesses.

Alternative 4 was not selected because of the adverse impact it would have on attendant compensation. Legislative discussions and actions during the 82nd Regular Session made it clear that the legislature did not want to reduce rates that would impact attendant compensation. Selection of Alternative 4 would be contrary to legislative intent.

Alternative 3 was selected for proposal. HHSC believes that this alternative comes closest to meeting the legislative intent of DADS Rider 46 and Special Provision item 17(a) in H.B. 1. Alternative 3 preserves funding for attendant compensation as well as funding to avoid service breaks while still garnering significant cost savings. Alternative 3 has a negative impact on the smallest number of small and micro-businesses of any of the alternatives other than Alternative 4, which negatively impacts the same number of small and micro-businesses as Alternative 3 while also negatively impacting attendant compensation.

The implementation of the proposed amendment may require changes in practices of some contracted providers in that providers may have to be more cost efficient in their administration and operation of CBA PAS non-skilled services as a result of the lower administration and facility cost area for this service as compared to the administration and facility cost area for CBA PAS skilled services.

DADS is proposing rule changes in this issue of the *Texas Register,* which will allow the Home and Community Support Services Agencies (HCSSAs) that are CBA providers to deliver non-skilled attendant services through their Personal Attendant Services (PAS) category. Currently, HCSSAs must provide all services through their Licensed and Home Health category, which requires a licensed nurse to supervise all attendants. Allowing for the non-skilled service to be delivered through the PAS category will eliminate the need for a licensed nurse supervisor thereby providing an opportunity for reducing provider administrative costs. This change should alleviate some of the negative impact of Alternative 3 by reducing provider administrative burdens.

The amendment should not affect local employment.

Public Benefit

Carolyn Pratt has also determined that, for each of the first five years the amendment is in effect, the expected public benefit is that these rules will reflect the determination of rates that CBA providers will be paid in compliance with legislative direction.

Takings Impact Assessment

HHSC 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.

Regulatory Analysis

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

Public Hearing

HHSC will conduct a public hearing on July 6, 2011, at 1:00 p.m. to receive public comment on this proposed amendment. The public hearing will be held in the Public Hearing Room of the John H. Winters Headquarters Building, 701 West 51st Street, Austin, Texas. Entry is through Security at the main entrance of the building, which faces West 51st Street. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Jamie Mollenhauer by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by fax to (512) 491-1998; by e-mail to pam.mcdonald@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendment implements Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32.

§355.503. Reimbursement Methodology for the Community-Based Alternatives Waiver Program [~~and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs~~].

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

(c) Waiver reimbursement determination. Recommended reimbursements are determined in the following manner:

(1) Unit of service reimbursement. Reimbursement for personal assistance services and in-home respite care services, and cost per unit of service for nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, and speech/language therapy will be determined on a fee-for-service basis in the following manner:

(A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and requisition fee revenues accrued for the reporting period.

(C) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(D) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(E) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(F) For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech/language therapy, and in-home respite care services, an allowable cost per unit of service is calculated for each contracted provider cost report for each service. The allowable cost per unit of service, for each contracted provider cost report is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(G) For personal assistance services <u>for delegated services</u>, two cost areas are created:

(i) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(ii) <u>The administration and facility cost area</u> [~~An other attendant cost area is created which~~] includes the other personal attendant services costs not included in subparagraph (G)(i) of this paragraph as determined in subparagraphs (A) - (E) of this paragraph. An allowable cost per unit of service is determined for each contracted provider cost report for the <u>administration and facility cost area</u> [~~other attendant cost area~~]. The allowable <u>costs</u> [~~cost~~] per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(iii) The attendant cost area and the <u>administration and facility cost area</u> [~~other attendant cost area~~] are summed to determine the personal assistance services <u>for delegated services</u> cost per unit of service.

(H) For personal assistance services for non-delegated services, two cost areas are created:

(i) The attendant cost area is equal to the attendant cost area for personal assistance services for delegated services from subparagraph (G)(i) of this paragraph.

(ii) The administration and facility cost area is equal to the Primary Home Care Nonpriority service support cost area as described in §355.5902 of this title (relating to Reimbursement Methodology for Primary Home Care).

(iii) The attendant cost area and the administration and facility cost area are summed to determine the personal assistance services for non-delegated services cost per unit of service.

(2) - (7) (No change.)

(d) - (g) (No change.)

§355.507. Reimbursement Methodology for the Medically Dependent Children Program.

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

(c) The rates for respite and adjunct services provided by an attendant [~~personal assistance services (PAS)~~] without delegation of the service by an RN will be based upon the Community-Based Alternatives (CBA) approved rates for personal assistance services (PAS) for delegated services [~~PAS~~] in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program) and §355.112(l) of this title (relating to Attendant Compensation Rate Enhancement). The rates for respite and adjunct services provided by an attendant [~~PAS~~] with delegation of the service by an RN will be based upon the Community-Based Alternatives (CBA) approved rates for PAS for delegated services in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program) and the add-on payment for the highest level of attendant compensation rate enhancement in accordance with §355.112(n) of this title [~~(relating to Attendant Compensation Rate Enhancement)~~].

(d) - (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 June 20, 2011.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 424-6900

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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.723

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

Background and Justification

This rule establishes the reimbursement methodology for the Home and Community-based Services (HCS) and Texas Home Living (TxHmL) waiver programs administered by the Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rates, is proposing two changes to this rule.

The first change will indicate that the administration and operation cost component for HCS Supported Home Living (SHL) and TxHmL Community Support Services (CSS) will be equal to five dollars, effective September 1, 2011. The proposed amendment will adjust payment rate determination language for HCS SHL and TxHmL CSS to comply with the 2012-13 General Appropriations Act (Article II, Special Provisions Relating to All Health and Human Services Agencies, Section 17(a)(3), H.B. 1, 82nd Legislature, Regular Session, 2011). This change will align payment for administrative costs for HCS SHL and TxHmL CSS more closely with payment for administrative costs for similar services in other DADS programs to promote efficiency within the HCS and TxHmL programs.

The second change will indicate that for fiscal years 2012 and 2013, the foster/companion care coordinator component of the HCS foster/companion care (FCC) rate will be remodeled using a consumer to foster/companion care coordinator ratio of 1:20 in place of the ratio of 1:15 in the current rule language. This remodeling will be performed after the administration and operation cost component per unit of service for each HCS and TxHmL service type is calculated. This proposed amendment will adjust payment rate determination language for the HCS program to comply with the 2012-13 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 48, H.B. 1, 82nd Legislature, Regular Session, 2011). This change will align payment for the foster/companion care coordinator, an administrative cost of the HCS FCC service, more closely with actual costs for this function.

Because H.B. 1 is effective September 1, 2011, and the amendment is intended to achieve savings assumed in the bill and to ensure that the HCS and TxHmL waiver programs remain within appropriated funds, the amendment must be effective September 1, 2011.

Section-by-Section Summary

The proposed amendments to §355.723 are as follows:

Add new subsection (d)(10) to state that, effective September 1, 2011, the administration and operation cost component per unit of services for HCS SHL and TxHmL CSS is equal to five dollars.

Add new subsection (d)(11) to state that, for fiscal years 2012 and 2013, the foster/companion care coordinator component of the FCC rate will be remodeled using a consumer to foster/companion care coordinator ratio of 1:20. This remodeling will be performed after the administration and operation cost component per unit of service for each HCS and TxHmL service type is calculated.

Fiscal Note

Gordon Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be a fiscal impact to state government of ($9,187,415) for state fiscal year (SFY) 2012, ($9,578,965) for SFY 2013, ($9,673,572) for SFY 2014, ($9,673,572) for SFY 2015, and ($9,673,572) for SFY

2016. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there will be an adverse economic effect on small businesses and micro-businesses as a result of enforcing or administering the amendment. Under section 2006.002 of the Government Code, a state agency proposing an administrative rule that may have an adverse economic effect on small businesses must prepare an economic impact statement that estimates the number of small businesses subject to the rule and projects the economic impact of the rule on small businesses.

In 2008, approximately 305 entities provided HCS services to DADS consumers. Based on 2008 Texas Medicaid cost reports for the HCS program (the most recent data available), of these entities, approximately 210 were small businesses, of which approximately 154 were micro-businesses.

Under the proposed amendment to the HCS SHL and TxHmL CSS reimbursement methodology, HHSC estimates that 162 small businesses will experience a reduction in HCS/TxHmL Medicaid revenues. These reductions are estimated to range in size from $20.46 per annum to $224,286 per annum. Of the 154 micro-businesses, HHSC estimates that 110 will experience a reduction in HCS/TxHmL Medicaid revenues. These reductions are estimated to range in size from $20.46 per annum to $61,094 per annum.

Under the proposed amendment to the HCS FCC reimbursement methodology, HHSC estimates 188 small businesses will experience a reduction in HCS Medicaid revenues. These reductions are estimated to range in size from $17.04 per annum to $62,006 per annum. Of the 154 micro-businesses, HHSC estimates that 134 will experience a reduction in HCS Medicaid revenues. These reductions are estimated to range in size from $17.04 per annum to $36,444 per annum.

Under some circumstances, when an adverse economic impact is projected to affect small or micro-businesses, the agency is required to prepare a regulatory flexibility analysis (RFA). The RFA must include consideration of alternative methods of achieving the purpose of the proposed rule or proposed amendment. The considered alternatives must be consistent with the health, safety, and environmental and economic welfare of the state, while accomplishing the same objectives as the proposed rule or amendment and reducing the adverse impact of the proposed rule on small businesses.

However, the RFA need not be done if an agency is given no discretion in the terms of the amendment. In such a circumstance, the mandated amendment "may be considered *per se* consistent with the health, safety, or environmental and economic welfare of the state and the agency need not consider other regulatory methods." (33 TexReg 985 (2008)). Adoption of this amendment to §355.723 is directed by the 2012-2013 General Appropriations Act (Article II, Special Provisions Relating to All Health and Human Services Agencies, H.B. 1, 82nd Legislature, Regular Session, 2011) regarding Cost Containment Initiatives and (Article II, Department of Aging and Disability Services, H.B. 1, 82nd Legislature, Regular Session, 2011) regarding Home and Community-based Services (HCS) Foster Care Rates. The statute anticipates savings for the 2012-2013 biennium from equalizing rates across waivers by reducing the administration and operation cost component for HCS SHL and TxHmL CSS. The statute anticipates savings for the 2012-2013 biennium from reducing the administration and operations cost component for HCS FCC services. HHSC has no discretion as to the reimbursement reductions and has determined that an RFA is not required.

The implementation of the proposed amendment will require changes in practices of some contracted providers in that providers may have to be more cost efficient in their administration and operation of HCS SHL and FCC and TxHmL CSS services as a result of these reductions.

The amendment should not affect local employment.

Public Benefit

Carolyn Pratt has also determined that, for each of the first five years the amendment is in effect, the expected public benefit is that these rules will reflect the determination of rates that HCS and TxHmL providers will be paid in compliance with legislative direction.

Takings Impact Assessment

HHSC 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.

Regulatory Analysis

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

Public Hearing

HHSC will conduct a public hearing on July 6, 2011, at 8:30 a.m. to receive public comment on this proposed amendment. The public hearing will be held in the Public Hearing Room of the John H. Winters Headquarters Building, 701 West 51st Street, Austin, Texas. Entry is through Security at the main entrance of the building, which faces West 51st Street. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by fax to (512) 491-1998; by e-mail to pam.mcdonald@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's

duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendment implements Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32.

§355.723. Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

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

(d) Administration and operation cost component. The administration and operation cost component included in the recommended rates described in subsection (c) of this section for each HCS and TxHmL service type is determined as follows.

(1) Step 1. Determine total projected administration and operation costs and projected units of service by service type using cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter.

(2) Step 2. Determine the foster/companion care coordinator component of the foster/companion care rate as follows. For fiscal years 2010 through 2013, this component will be modeled using the weighted average foster/companion care coordinator wage as reported on the most recently available, reliable audited HCS cost report database plus 10.25 percent for payroll taxes and benefits inflated to the rate period and a consumer to foster/companion care coordinator ratio of 1:15. For fiscal year 2014 and thereafter, this component will be determined by summing total reported foster/companion care coordinator wages and allocated payroll taxes and benefits from the most recently available audited cost report, inflating those costs to the rate period and dividing the resulting product by the total number of foster care units of service reported on that cost report.

(3) Step 3. Determine total foster/companion care coordinator dollars as follows. Multiply the foster/companion care coordinator component of the foster/companion care rate from paragraph (2) of this subsection by the total number of foster care units of service reported on the most recently available, reliable audited HCS cost report database.

(4) Step 4. Determine total projected administration and operation costs after offsetting total foster/companion care coordinator dollars as follows. Subtract the total foster/companion care coordinator dollars from paragraph (3) of this subsection from the total projected administration and operation costs from paragraph (1) of this subsection.

(5) Step 5. Determine projected weighted units of service for each HCS and TxHmL service type as follows:

(A) Supervised Living and Residential Support Services in HCS. Projected weighted units of service for Supervised Living and Residential Support Services equal projected Supervised Living and Residential Support units of service times a weight of 1.00;

(B) Day Habilitation in HCS and TxHmL. Projected weighted units of service for Day Habilitation equal projected Day Habilitation units of service times a weight of 0.25;

(C) Foster/Companion Care in HCS. Projected weighted units of service for Foster/Companion Care equal projected Foster/Companion Care units of service times a weight of 0.50;

(D) Supported Home Living in HCS and Community Support Services in TxHmL. Projected weighted units of service for Supported Home Living equal projected Supported Home Living units of service times a weight of 0.30;

(E) Respite in HCS and TxHmL. Projected weighted units of service for Respite equal projected Respite units of service times a weight of 0.20;

(F) Supported Employment in HCS and TxHmL. Projected weighted units of service for Supported Employment equal projected Supported Employment units of service times a weight of 0.25;

(G) Behavioral Support in HCS and TxHmL. Projected weighted units of service for Behavioral Support equal projected Behavioral Support units of service times a weight of 0.18;

(H) Physical Therapy, Occupational Therapy, Speech Therapy and Audiology in HCS and TxHmL. Projected weighted units of service for Physical Therapy, Occupational Therapy, Speech Therapy and Audiology equal projected Physical Therapy, Occupational Therapy, Speech Therapy and Audiology units of service times a weight of 0.18;

(I) Social Work in HCS. Projected weighted units of service for Social Work equal projected Social Work units of service times a weight of 0.18;

(J) Nursing in HCS and TxHmL. Projected weighted units of service for Nursing equal projected Nursing units of service times a weight of 0.18.

(K) Employment Assistance in HCS and TxHmL. Projected weighted units of service for Employment Assistance equal projected Employment Assistance units of service times a weight of 0.25.

(L) Dietary in HCS and TxHmL. Projected weighted units of service for Dietary equal projected Dietary units of service times a weight of 0.18.

(6) Step 6. Calculate total projected weighted units of service by summing the projected weighted units of service from paragraph (5)(A) - (L) of this subsection.

(7) Step 7. Calculate the percent of total administration and operation costs to be allocated to the service type by dividing the projected weighted units for the service type from paragraph (5) of this subsection by the total projected weighted units of service from paragraph (6) of this subsection.

(8) Step 8. Calculate the total administration and operation cost to be allocated to that service type by multiplying the percent of total administration and operation costs allocated to the service type from paragraph (7) of this subsection by the total administration and operation costs after offsetting total foster/companion care coordinator dollars from paragraph (4) of this subsection.

(9) Step 9. Calculate the administration and operation cost component per unit of service for each HCS and TxHmL service type by dividing the total administration and operation cost to be allocated to that service type from paragraph (8) of this subsection by the projected units of service for that service type from paragraph (1) of this subsection.

(10) Step 10. Effective September 1, 2011, the administration and operation cost component per unit of service for Supported Home Living in HCS and Community Support Services in TxHmL is equal to five dollars.

(11) Step 11. For fiscal years 2012 and 2013, the foster/companion care coordinator component of the foster/companion care rate will be remodeled using a consumer to foster/companion care coordinator ratio of 1:20. This remodeling will be performed after

the administration and operation cost component per unit of service for each HCS and TxHmL service type is calculated as described in paragraph (9) of this subsection.

(e) (No change.)

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

Filed with the Office of the Secretary of State on June 20, 2011.

TRD-201102269
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 424-6900

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SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7103

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.7103, concerning Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

Background and Justification

This rule establishes the reimbursement methodology for 24-Hour Residential Child Care (RCC). HHSC, under its authority and responsibility to administer and implement rates, proposes to delete the rate end date currently in the rule. Under the current rule, the rates that became effective September 1, 2009, would end on August 31, 2011. The proposed amendment removes the August 31, 2011, end date. The proposed amendment conforms the RCC payment rate determination language to the 2012-13 General Appropriations Act (Article II, Department of Family and Protective Services, H.B. 1, 82nd Legislature, Regular Session, 2011), which did not revise the funds appropriated for RCC provider rates. Deletion of the rate end date in the rule as currently written allows the current rates to continue past the August 31, 2011 end date.

HHSC also proposes to add language that describes the rate methodology for Single Source Continuum Contractors under Foster Care Redesign, as required by the 2012-2013 General Appropriations Act (Article II, Department of Family and Protective Services, H.B. 1, 82nd Legislature, Regular Session, 2011) and S.B. 218, 82nd Legislature, Regular Session, 2011, which direct the Department of Family and Protective Services (DFPS) to implement a redesign of the foster care system in accordance with the recommendations contained in DFPS's December 2010 Foster Care Redesign report submitted to the legislature. H.B. 1 and S.B. 218 permit HHSC to use payment rates for foster care under the redesigned system that are different from those used on the effective date of S.B. 218 for 24-hour residential child care.

Section-by-Section Summary

The proposed amendments to §355.7103 are as follows:

Revise subsection (q) to delete ending dates for current reimbursements. This deletion will allow existing reimbursement rates to stay in place for the 2012-2013 biennium.

Add new subsection (r) to state that payment rates for Single Source Continuum Contractors under Foster Care Redesign are determined on a *pro forma* basis in accordance with §355.105(h), which allows HHSC to base reimbursements on a *pro forma* analysis if there are insufficient available data, as would occur in changes in program design.

Fiscal Note

Cindy Brown, Chief Financial Officer for the Department of Family and Protective Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

It is not anticipated that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt has also determined that, for each of the first five years the amendment is in effect, the expected public benefit is that these rules will reflect the determination of rates that 24-Hour Residential Child-Care providers will be paid in compliance with legislative direction.

Takings Impact Assessment

HHSC 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.

Regulatory Analysis

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

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by fax to (512) 491-1998; by e-mail to pam.mcdonald@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas

78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Government Code §531.055, which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency; and Human Resources Code §40.4004(c) and (d), which authorize the Executive Commissioner to consider fully all written and oral submissions to the DFPS Council about a proposed rule.

The amendment implements Government Code, Chapter 531.

§355.7103. Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

(a) - (p) (No change.)

(q) Rates [~~For the state fiscal year 2010 through 2011 biennium, rates~~] are paid for each level of service identified by the DFPS. For foster homes, the payments effective September 1, 2009, [~~through August 31, 2011,~~] for each level of service will be equal to the minimum rate paid to foster homes for that level of service in effect August 31, 2009, plus 3.33 percent. For Child Placing Agencies (CPAs), the rates effective September 1, 2009, [~~through August 31, 2011,~~] for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2009, plus 2.41 percent, which is equivalent to a 1.33 percent increase for CPA retainage and a 3.33 percent increase in pass-through funds for foster homes. For General Residential Operations (GROs) and Residential Treatment Centers (RTCs), the rates effective September 1, 2009, [~~through August 31, 2011,~~] for each level of service will be equal to the rate paid to GROs and RTCs for that level of service in effect August 31, 2009, plus 9.30 percent. For facilities providing emergency care services, the rate effective September 1, 2009, [~~through August 31, 2011,~~] will be equal to the rate in effect August 31, 2009, plus 8.68 percent. For psychiatric step-down services, the rate effective September 1, 2009, [~~through August 31, 2011,~~] will be equal to the rate in effect on August 31, 2009.

(r) Payment rates for Single Source Continuum Contractors under Foster Care Redesign are determined on a pro forma basis in accordance with §355.105(h) 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 June 17, 2011.

TRD-201102234
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 424-6900

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SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8055

The Texas Health and Human Services Commission (HHSC) proposes new §355.8055, concerning Reimbursement Methodology for Rural and Certain Other Hospitals.

Background and Justification

HHSC proposes a new rule describing the Medicaid methodology for reimbursing rural hospitals, rural referral centers, sole community hospitals and critical access hospitals. HHSC proposes changing the methodology for reimbursing inpatient services for these hospitals, which is currently described in §355.8052(i). A related proposed amendment to §355.8052 is published concurrently in this issue of the *Texas Register.*

Under the current methodology, qualifying hospitals are reimbursed for inpatient services the greater of their Medicaid payments based on the prospective payment system, or the cost-reimbursed methodology described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) without the imposition of the TEFRA target cap described in §355.8052. This proposal reimburses all qualified hospitals using the TEFRA cost-based reimbursement methodology in compliance with the 2012-13 General Appropriations Act (Article II, Rider 40, Health and Human Services Commission, H.B. 1, 82nd Legislature, Regular Session, 2011). As a result of this change, some hospitals that are currently paid based on the prospective inpatient payment methodology will be paid based on the cost-based reimbursement methodology. This change in payment method may result in recoupment of funds.

Section-by-Section Summary

Proposed new §355.8055(a) describes the types of hospitals that are to be reimbursed under this section. The 2000 decennial census serves as the measurement for determining if a hospital is located in a county with 50,000 or fewer persons.

Proposed new §355.8055(b) establishes that a hospital that is described in subsection (a) is reimbursed based on TEFRA principles, without the imposition of TEFRA target caps.

Proposed new §355.8055 describes the methodology for determining interim rates and associated interim payments.

Proposed new §355.8055(d) limits the amount and frequency of interim payments to available funds, and clarifies that interim payments are subject to settlement at both tentative and final audit of the hospital's cost report.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each of the first five years the new rule is in effect, there is no fiscal impact to HHSC. Additionally, the proposed new rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the proposed rule since these hospitals will be paid at their cost in accordance with the TEFRA methodology.

Public Benefit

Ms. Pratt has also determined that for each year of the first five years the proposed rule is in effect, the public will benefit from adoption of the new rule. The anticipated public benefit as a result of the proposed rule is that, by reimbursing all qualifying hospitals based on the TEFRA methodology, HHSC will no longer reimburse a qualifying hospital more than the hospital's cost of providing Medicaid services. In addition, this rule will comply with legislative direction.

Regulatory Analysis

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

Takings Impact Assessment

HHSC 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 §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Chris Dockal, Senior Rate Analyst, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1983; or by e-mail to: Chris.Dockal@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Texas Government Code §531.021(d), which authorizes HHSC to adopt rules that provide for payment of rates in accordance with available levels of appropriated state and federal funds.

The new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8055. Reimbursement Methodology for Rural and Certain Other Hospitals.

(a) A hospital is reimbursed under this section if the hospital is:

(1) located in a county with 50,000 or fewer persons, based on the 2000 decennial census;

(2) a Medicare-designated Rural Referral Center (RRC) or Sole Community Hospital (SCH) not located in a metropolitan statistical area (MSA), as defined by the U.S. Office of Management and Budget; or

(3) a Medicare-designated Critical Access Hospital (CAH).

(b) A hospital that is described in subsection (a) of this section is reimbursed for inpatient services based on the cost-reimbursement methodology described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) without the imposition of the TEFRA target cap described in §355.8052(c) of this division (relating to Inpatient Hospital Reimbursement).

(c) Interim payments are determined by multiplying the hospital's charges that are allowed under Medicaid by the interim rate in effect on the patient's date of admission. The interim rate is derived from the hospital's most recent Medicaid cost report settlement, whether tentative or final.

(d) The amount and frequency of interim payments are subject to the availability of funds appropriated for that purpose. Interim payments are subject to settlement at both tentative and final audit of a hospital's cost report.

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

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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1 TAC §355.8061

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8061, concerning Payment for Hospital Services.

Background and Justification

The proposed amendment to §355.8061 modifies the Medicaid outpatient hospital reimbursement methodology to reorganize and clarify subsection (a)(2) by deleting and replacing that subsection. The proposed amendment also makes Medicaid payment methodology changes in two areas: (1) non-emergency services provided in an emergency department (ED); and (2) imaging services. These changes are proposed as cost-saving initiatives to comply with the 2012-13 General Appropriations Act (Article II, Health and Human Services Commission, Rider 61(b)(3) and (4), H.B. 1, 82nd Legislature, Regular Session, 2011). Further, to stay within available levels of appropriated state funds as directed by the 2012-13 General Appropriations Act (Article II, Special Provisions, Section 16(b)(5), H.B. 1, 82nd Legislature, Regular Session, 2011), the proposed amendment reduces the percentage applied to a hospital's allowable charges and costs to determine payment amounts.

The proposed amendment reduces reimbursement for outpatient services provided in an ED that do not qualify as emergency services to 60 percent of the calculated outpatient reimbursement. HHSC will determine whether a service provided in an ED is a non-emergency service based on the same criteria that will be used to determine whether a professional service provided

in an ED is a non-emergency service. This proposed amendment seeks to discourage hospitals from providing non-emergency care in the ED and is in compliance with direction from the 82nd Legislature.

Additionally, HHSC proposes to change the reimbursement methodology for outpatient hospital imaging services from the current cost-based methodology to a procedure code fee schedule. As a result, all outpatient imaging services will be reimbursed at the same rates statewide, eliminating the large variation in payments currently made across hospitals for the same service.

These two payment methodology changes are intended to provide cost savings to the state in instances where hospitals provide non-emergency services in an ED and where current reimbursements for imaging services exceed the fee schedule.

Section-by-Section Summary

A proposed amendment to §355.8061(a)(1) includes a reference to new §355.8055, which describes the inpatient reimbursement for rural and certain other hospitals. New §355.8055 is proposed concurrently in this issue of the *Texas Register.*

Proposed new §355.8061(a)(2) is titled "Outpatient hospital services reimbursement."

Proposed new §355.8061(a)(2)(A) describes the cost-based reimbursement methodology used for outpatient hospital services.

Proposed new §355.8061(a)(2)(B) clarifies Medicaid reimbursement and interim payment for outpatient hospital services. This subparagraph includes the percentages applied to the allowable costs and charges for high volume and non-high volume providers and includes the application of the interim rate in the determination of the outpatient reimbursement methodology. Language was added to specify that imaging services are not reimbursed under the cost-based methodology effective September 1, 2011, along with outpatient surgeries that are paid according to the ambulatory surgical center fee schedule.

Proposed new §355.8061(a)(2)(B)(ii) and (iii) include adjusted percentages applied to the allowable costs and charges for high volume and non-high volume providers. This adjustment is proposed to stay within available levels of appropriated state funds and complies with Texas Government Code §531.021.

Proposed new §355.8061(a)(2)(B)(iv) amends the existing cost-based reimbursement methodology for services provided in an ED that do not qualify as an emergency visit. HHSC will limit reimbursement for the non-emergency services provided in an ED to 60 percent of the cost-based reimbursement amount determined under this rule.

Proposed new §355.8061(a)(2)(B)(v) and (vi) describe HHSC's calculation of outpatient interim rates and interim reimbursements.

Proposed new §355.8061(a)(2)(C) specifies that outpatient interim claim reimbursement will be cost-settled at both tentative and final audit of a hospital's cost report. The language clarifies that the calculation of costs takes into account any reductions to allowable charges determined under subparagraph (B).

Proposed new §355.8061(a)(2)(D) specifies that outpatient interim payments will be subject to the availability of funds appropriated for that purpose.

Proposed new §355.8061(a)(2)(E) specifies that outpatient hospital surgery is limited to the lesser of the amount reimbursed to ambulatory surgical centers (ASCs) for similar services, the hospital's actual charge, the hospital's customary charge, or the allowable cost determined by HHSC or its designee, and is not subject to cost settlement.

Proposed new §355.8061(a)(2)(F) specifies that outpatient hospital imaging services will not be reimbursed under the cost-based methodology, but rather will be reimbursed based on the outpatient hospital imaging fee schedule based on a percentage of the Medicare fee schedule for similar services.

Proposed new §355.8061(a)(2)(G) indicates a September 1, 2011, effective date for the change in reimbursement for non-emergency services provided in the ED and outpatient hospital imaging services.

Portions of subsection (a)(2) relating to public notice and hearings for changes to reimbursements are deleted from this rule because those subjects are covered in other rules in Chapter 355.

Subsection (a)(3) is deleted because the reference to variances is no longer needed in this rule.

The proposed rule includes other technical corrections and non-substantive changes throughout to make the rule more understandable.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for the first five years the amendment is in effect, there will be an all-funds savings of: $84,491,874 ($35,131,721 general revenue (GR)) for fiscal year (FY) 2012; $87,630,606 ($37,286,823 GR) for FY 2013; $90,577,728 ($38,604,228 GR) for FY 2014; $93,623,966 ($39,902,534 GR) for FY 2015; and $96,772,651 ($41,244,504 GR) for FY 2016. Additionally, the proposed amendment will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has also determined that there may be an adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. Texas Government Code §2006.001 defines a "small business" to include only a for-profit corporation that has fewer than 100 employees or less than $6 million in annual gross receipts. HHSC is unable to estimate the impact to only the hospitals that meet the definition of a small business due to the hospitals' varying ratios of cost to charges for these services. However, impact to all Texas hospitals can be estimated. HHSC expects the changes proposed in subsection (a)(2)(B)(iv) and subsection (a)(2)(F) to result in an approximately 6.8 percent reduction in Medicaid outpatient reimbursements across all hospitals.

Approximately 3.4 percent of the decrease is related to the reduction in reimbursement for non-emergency services provided in an ED. Hospitals could mitigate the impact of this amendment by redirecting patients in need of non-emergency services from the ED to an urgent care clinic, physician office, or other more appropriate setting.

The remaining 3.4 percent decrease is attributed to reimbursing outpatient hospital imaging services based on a percentage of the Medicare fee schedule, which is a currently acceptable reimbursement methodology for similar services and results in a uni-

form payment to all hospitals that is not achieved with cost-based reimbursement.

HHSC expects the changes proposed in subsection (a)(2)(B)(ii) and (iii) to result in a 10 percent reduction in the rates effective August 31, 2010, or an approximate 8 percent reduction in rates in effect for FY 2011 for cost-based Medicaid outpatient reimbursements across all hospitals.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from adoption of the amendment. The anticipated public benefit, as a result of the amendment, is that HHSC will modify the reimbursement methodology for outpatient hospital imaging services to reimburse a set fee for all hospitals statewide, which will remove payment variances among hospitals. Also, this amendment will reduce reimbursement for non-emergency services provided in an ED, thereby encouraging changes in clinical practice to provide non-emergency care in more appropriate settings. Further, the amendment makes provisions for HHSC to remain within available levels of appropriated state funds.

Regulatory Analysis

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

Takings Impact Assessment

HHSC 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 §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Chris Dockal, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1983; or by e-mail to: Chris.Dockal@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Texas Government Code §531.021(d), which authorizes HHSC to adopt rules that provide for payment of rates in accordance with available levels of appropriated state and federal funds.

The amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8061. Payment for Hospital Services.

(a) The Health and Human Services Commission (HHSC) or its designee reimburses [~~designated agent shall reimburse~~] hospitals approved for participation in the Texas Medical Assistance Program for covered Title XIX hospital services provided to eligible Medicaid recipients. The Texas Title XIX State Plan for Medical Assistance provides for reimbursement of covered hospital services to be determined as specified in [~~paragraphs (1) - (3) of~~] this subsection.

(1) The amount payable for inpatient hospital services shall be determined as specified in §355.8052 of this division [~~title~~] (relating to Inpatient Hospital Reimbursement [~~Methodology~~]); §355.8054 of this division [~~title~~] (relating to Children's Hospital Reimbursement Methodology); §355.8055 of this division (relating to Reimbursement Methodology for Rural and Certain Other Hospitals); and §355.8056 of this division [~~title~~] (relating to State-Owned Teaching Hospital Reimbursement Methodology).

(2) Outpatient hospital services reimbursement.

(A) HHSC or its designee reimburses outpatient hospital services under a cost-based reimbursement methodology. The amount payable for outpatient hospital services will be determined under similar methods and procedures as those used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982 through July 31, 2000, by Public Law 97-248, except as otherwise specified by HHSC.

(B) Interim Medicaid reimbursement for outpatient hospital services. Except as described in subparagraphs (E) and (F) of this paragraph, HHSC will reimburse for outpatient hospital services as follows:

(i) HHSC will determine a cost-based reimbursement based only on allowable charges, which are charges for covered Medicaid services determined through adjudication.

(ii) HHSC will determine a cost-based reimbursement for high-volume providers at 76.03 percent of allowable charges. For the purpose of this section, a high-volume provider is one that was paid at least $200,000 during calendar year 2004.

(iii) HHSC will determine a cost-based reimbursement for the remaining providers at 72.27 percent of allowable charges.

(iv) For outpatient emergency department (ED) services that do not qualify as emergency visits, HHSC will reimburse 60 percent of the amount determined in clause (ii) or (iii) of this subparagraph. Services that do not qualify for reimbursement as emergency visits are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator's website.

(v) HHSC will calculate an outpatient interim rate, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's most recent tentative or final Medicaid cost report settlement, as described in subparagraph (C) of this paragraph.

(vi) Interim claim reimbursement is determined by multiplying a hospital's outpatient allowable charges resulting from clause (ii) or (iii) of this subparagraph and, if applicable, clause (iv) of this subparagraph, by the outpatient interim rate in effect on the date of service.

(C) Cost settlement. Interim claim reimbursement determined in subparagraph (B) of this paragraph will be cost-settled at

both tentative and final audit of a hospital's cost report. The calculation of costs will be determined based on the amount of allowable charges determined under subparagraph (B) of this paragraph, including any reductions to allowable charges made under subparagraph (B) of this paragraph.

(D) Available funds. The amount and frequency of interim reimbursement will be subject to the availability of funds appropriated for that purpose.

(E) Outpatient hospital surgery. Reimbursement for outpatient hospital surgery is limited to the lesser of the amount reimbursed to ambulatory surgical centers (ASCs) for similar services, the hospital's actual charge, the hospital's customary charge, or the allowable cost determined by HHSC or its designee. Outpatient hospital surgery reimbursed under the ASC reimbursement is not subject to cost-based reimbursement and is not included in the outpatient hospital cost settlement.

(F) Outpatient hospital imaging. Outpatient hospital imaging services are not reimbursed under the outpatient cost-based reimbursement methodology described in this subsection. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare fee schedule for similar services.

(G) Effective date. The reimbursement methodologies described in subparagraphs (B)(iv) and (F) of this paragraph are effective for dates of service on or after September 1, 2011.

[~~(2) The amount payable for outpatient hospital services shall be determined under similar methods and procedures as those used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982 through July 31, 2000, by Public Law 97-248, except as may be otherwise specified by HHSC. For the period of September 1, 1999 through and including September 30, 2001, payments to all providers were at 80.3% of allowed costs. For the period beginning October 1, 2001, Medicaid reimbursement for outpatient hospital services for high-volume providers, as defined by the commission, shall be at 84.48% of allowable cost. For the remaining providers, reimbursement for outpatient hospital services shall be at 80.3% of allowable cost. For the purpose of establishing the proposed discount factor, a high-volume provider is defined as one, which is paid at least $200,000 during calendar year 2004. Any subsequent changes to the discount will require HHSC to hold a public hearing on proposed reimbursements before HHSC approves any changes. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed change will be made available to the public. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a summary of the comments made during the public hearing will be presented to HHSC. Reimbursement for outpatient hospital surgery is limited to the lesser of the amount reimbursed to ambulatory surgical centers (ASCs) for similar services, the hospital's actual charge, the hospital's customary charge, or the allowable cost determined by the commission or its designee.~~]

[~~(3) Variances shall be accounted for in the Texas State Plan for Medical Assistance or as otherwise specified by the commission.~~]

(b) The direct and indirect costs of caring for charity patients [~~shall~~] have no relationship to eligible recipients of the Texas Medical Assistance program and are not allowable costs under the Texas [~~Title XIX~~] Medical Assistance program. Obligations by hospitals to provide free care, under the Hill-Burton Act or any other arrangement as a condition to secure federal grants or loans, are not recognized as a cost under the Texas Medical Assistance program.

(c) The contents of subsections (a) and (b) of this section do not describe the amount, duration, or scope of services provided to eligible recipients under the Texas Medical Assistance Program.

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

Filed with the Office of the Secretary of State on June 17, 2011.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

1 TAC §355.8551

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8551, concerning the dispensing fee for Medicaid pharmacy services reimbursement.

Background and Justification

The proposed rule amendment removes the reimbursement rate component fee amounts for the pharmacy dispensing fee, clarifies terms in the dispensing fee formula, and adds definitions for the components of the formula. Historically, this rule included the fee component amounts because there was not an online pharmacy dispensing fee reimbursement schedule available to the pharmacy providers. However, pharmacy providers can now access the fee component amounts from a fee schedule on the websites of both HHSC and the Texas Medicaid & Healthcare Partnership (the state's Medicaid claims administrator). Therefore, it is no longer necessary to include the fee amounts in the rule.

Also, it is preferable not to include fee amounts in the rule because there can be delays in updating the rule language when the fee amounts change. Fee amounts are not included in agency reimbursement methodology rules for other Medicaid programs. When fee component amounts are proposed for revision, there is a public rate hearing, which allows for public input into fee changes.

Section-by-Section Summary

Section 355.8551(a) adds definitions for "delivery incentive," "dispensing fee," "estimated acquisition cost," "fixed component," "preferred generic incentive," and "variable component." Language in current subsection (a) is moved to subsections (b) through (g).

Amended subsections (b) and (c) change the term "estimated drug ingredient cost" to "estimated acquisition cost" to be consistent with other rules and delete references to specific fee amounts for the reimbursement rate components.

Amended subsection (d) removes language that is not relevant to determining the dispensing fee component amount for the delivery incentive. The amendment to subsection (d) also deletes the word "delivered." A delivery incentive will be paid, subject to the availability of appropriated funds, to approved providers who certify in a form prescribed by HHSC that the delivery services meet minimum conditions for payment of the incentive.

Amended subsection (e) removes language that is not relevant to determining the dispensing fee component amount for the preferred generic incentive.

Amended subsections (f) and (g) make minor technical changes.

Throughout the amendment, references to "the Commission" are replaced with "HHSC."

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five years the proposed rule amendment is in effect there will be no fiscal impact to state government as a result of the amendment. The amendment will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there will be no effect on small businesses or micro-businesses as a result of enforcing or administering the proposed rule amendment. Providers will not be required to alter their business practices as a result of the amendment. There are no significant costs to persons who are required to comply with the amendment. There is no anticipated negative impact on local employment.

Public Benefit

Ms. Pratt has also determined that for each year of the first five years the proposed rule amendment is in effect, the public will benefit from the adoption of the amendment by clarifying the meaning of the components of the dispensing fee formula. Removing the fee amounts from the rule will keep the rule from becoming out of date when fee amounts are revised. This change will also make the rule consistent with other Medicaid reimbursement methodology rules.

Regulatory Analysis

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

Takings Impact Assessment

HHSC 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 §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Reuben Leslie, Lead Analyst, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to reuben.leslie@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8551. Dispensing Fee.

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

(1) Delivery Incentive--An incentive for offering no-charge prescription delivery to all Medicaid recipients, in accordance with subsection (d) of this section.

(2) Dispensing Fee--The portion of the reimbursement paid to a pharmacy under §355.8541 of this division (relating to Legend and Nonlegend Medications), in accordance with 42 C.F.R. §50.504, to provide a reasonable payment for the cost of dispensing a prescription drug, and which may include incentive amounts for providers that qualify under this section.

(3) Estimated Acquisition Cost--As defined in §355.8541 of this division and §355.8545 of this division (relating to Texas Maximum Allowable Cost).

(4) Fixed Component--A component that provides the base reimbursement to a pharmacy for the cost of dispensing a prescription; it includes reimbursement for professional services costs and overhead costs.

(5) Preferred Generic Incentive--An incentive to fill a Medicaid prescription with a premium preferred generic drug for which a drug manufacturer has agreed to pay a supplemental rebate.

(6) Variable Component--A component that is expressed as a percentage of the estimated acquisition cost, and provides an incentive to a pharmacy to stock and dispense higher-cost drugs by covering additional expenses incurred when providing those drugs.

(b) [~~(a)~~] The Texas Health and Human Services Commission (HHSC) [~~(Commission)~~] reimburses contracted Medicaid pharmacy providers according to the following dispensing fee formula [~~defined in this section. The dispensing fee is determined by the following formula~~]: Dispensing Fee = (((Estimated Acquisition [~~Drug Ingredient~~] Cost + Fixed Component) divided by (1 - the percentage used to calculate the Variable Component)) - Estimated Acquisition [~~Drug Ingredient~~] Cost) + Delivery Incentive + Preferred Generic Incentive.[~~, where:~~]

[~~(1) The estimated drug ingredient costs are defined in §355.8541 of this title (relating to Legend and Non-legend Medication)~~

and §355.8545 of this title (relating to Texas Maximum Allowable Cost).]

[(2) The fixed component is $7.43.]

(c) [(3)] An [The] inflation adjustment may [will] be made, subject to the availability of appropriated funds, on the first day of the biennium. The projected rate of inflation is [shall be] based upon a forecast of the Personal Consumption Expenditures (PCE) chain-type price index as the general cost inflation index. HHSC uses the lowest feasible PCE forecast consistent with the forecasts of nationally recognized sources available to HHSC at the time proposed reimbursement is prepared for public dissemination and comment.

[(4) The variable component is 1.98%.]

[(5) Add-on amounts.]

(d) [(A)] [Delivery Incentive.] A delivery incentive is [shall be] paid[, subject to the availability of appropriated funds,] to approved providers who certify in a form prescribed by HHSC [the Commission] that the delivery services meet minimum conditions for payment of the incentive. These conditions include: making deliveries to individuals rather than just to institutions, such as nursing homes; offering no-charge prescription delivery to all Medicaid recipients requesting delivery in the same manner as to the general public; and publicly displaying the availability of prescription delivery services at no charge. The delivery incentive [is $0.15 per prescription and] is to be paid on all [delivered] Medicaid prescriptions filled for legend drugs. This delivery incentive is not to be paid for over-the-counter drugs that are prescribed as a benefit of this program.

(e) [(B)] [Preferred Generic Incentive. A preferred generic drug dispensing incentive of $0.50 per prescription will be paid on all Medicaid prescriptions filled for preferred generic drugs for which a manufacturer has agreed to pay a supplemental rebate.] Preferred generic drugs are subject to the Preferred Drug List [(PDL)] requirements.

(f) [(6)] The total dispensing fee will [shall] not exceed $200 per prescription.

(g) [(b)] Notwithstanding other provisions of this section, HHSC [the Commission] may adjust the dispensing fee to address budgetary constraints in accordance with the provisions of §355.201 of this division [title] (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

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 June 17, 2011.

TRD-201102239
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

SUBCHAPTER B. APPLICATION SCREENING, REFERRAL, PROCESSING, RENEWAL, AND DISENROLLMENT

DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §370.47

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

The Texas Health and Human Services Commission (HHSC) proposes the repeal of §370.47, concerning the State Kids Insurance Program, in Chapter 370, State Children's Health Insurance Program.

Background and Purpose

Until passage of the federal Patient Protection and Affordable Care Act in 2010 (ACA), children of state employees were prohibited from enrolling in the Children's Health Insurance Program (CHIP), which provides low-cost health care for children without health insurance. With the passage of the ACA, Congress lifted the prohibition for states that meet certain criteria, clearing the way for those states to allow children of state employees who qualify to enroll in CHIP.

Because children of state employees before this year could not be enrolled in CHIP, the children of Texas state employees who qualified for CHIP were offered state subsidies through the State Kids Insurance Program (SKIP) to help pay for their children's health care through the state's group health insurance plan.

Because federal matching dollars are available for CHIP and not for SKIP, the 82nd Legislature, during its special session in 2011, abolished SKIP and amended §62.101 of the Texas Health and Safety Code. Children of state employees can now access CHIP benefits if they qualify. Children already enrolled in SKIP will automatically be enrolled in CHIP or will be eligible to renew their benefits under CHIP, depending on the date they were certified for benefits under SKIP.

Section-by-Section Summary

Section 370.47 is repealed in its entirety.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the repeal is in effect, there will be a fiscal impact to state government. Because SKIP was funded entirely with general revenue and the state will now be able to receive federal matching dollars for general revenue funds expended under CHIP, there is a net savings to state government. While the Employees Retirement System of Texas funded SKIP through its appropriations (using only state funds), HHSC will fund CHIP through its appropriations (which include federal matching funds). The effect on HHSC for the first five years the proposed repeal is in effect is an estimated cost of $18,281,417 all funds ($5,321,720 general revenue (GR)) in fiscal year (FY) 2012; $18,725,982 all funds ($5,576,597 GR) in FY 2013; $19,181,358 all funds ($5,721,799 GR) in FY 2014; $19,647,808 all funds ($5,860,941 GR) in FY 2015; and $20,125,600 all funds ($6,003,467 GR) in FY 2016.

The proposed repeal presents no foreseeable implications relating to costs or revenues of local governments. There are no an-

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

Small Business and Micro-Business Impact Analysis

Ms. Rymal has also determined that the proposal will have no adverse economic effect on small businesses or micro-businesses, because the rule proposed for repeal applies to eligibility for individuals to receive SKIP benefits and does not apply to businesses.

Public Benefit

Lawrence M. Parker, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the section is that Texas will have access to federal funds for health care coverage for the children of state employees who were formerly covered by state funds only. This change will also decrease workload for state employees and CHIP contractor staff, because the applications for children of state employees seeking help with health care coverage can now be processed like other Medicaid or CHIP applications. It also offers individuals a choice when deciding the most cost-effective and beneficial avenue of providing health care coverage for their children.

Regulatory Analysis

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

Takings Impact Assessment

HHSC 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 §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Regina (Gina) Perez, Health and Human Services Commission, Office of Family Services, MC-2039, 909 West 45th Street, Austin, TX 78751, or by e-mail to gina.perez@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for July 18, 2011, at 1:00 p.m. in Room 164 of the HHSC - MHMR Center, 909 West 45th Street, Building 2, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Graciela Reyna at (512) 206-4778.

Statutory Authority

The repeal is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and the Health and Safety Code, §62.101, which allows a child who is a dependent of a state employee to be enrolled in CHIP.

The repeal affects the Texas Government Code, Chapter 531; and the Health and Safety Code, Chapter 62. No other statutes, articles, or codes are affected by this proposal.

§370.47. State Kids Insurance Program.

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

Filed with the Office of the Secretary of State on June 17, 2011.

TRD-201102241
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 424-6900

CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

The Texas Health and Human Services Commission (HHSC) proposes to amend §372.956, concerning the expedited Supplemental Nutrition Assistance Program (SNAP) application process; and proposes the repeal of Subchapter E, Division 3, which consists of §§372.1201 - 372.1204, concerning finger-imaging requirements.

Background and Justification

Human Resources Code §31.0325 required HHSC to develop a program to prevent fraud through the use of electronic fingerprint-imaging or photo-imaging of adults and teen parents who applied for or received Temporary Assistance for Needy Families (TANF) cash help or SNAP food benefits. In compliance with the statute, HHSC developed rules, policies, and procedures for finger-imaging TANF and SNAP applicants and recipients.

Because less costly existing technologies can be used to verify identity and prevent fraud, the 82nd Legislature, during its regular session in 2011, repealed Human Resources Code §31.0325. The legislature replaced the finger-imaging requirement with a requirement for HHSC to use appropriate technology to confirm the identity of applicants for TANF and SNAP benefits and to prevent duplicate participation by recipients in the programs.

HHSC is proposing the amendment to §372.956 and the repeal of §§372.1201 - 372.1204 to remove all references to the finger-imaging requirement for TANF and SNAP households from HHSC's rule base. HHSC will ensure compliance with the new provisions in the Human Resources Code, §31.0326 and §33.0231, which require HHSC to confirm the identity of applicants for TANF and SNAP benefits and to prevent duplicate participation in the programs. The Legislature estimated a cost savings for the elimination of the finger-imaging requirement and no new funds were appropriated for the alternate process.

Section-by-Section Summary

The proposed amendment to §372.956 revises subsection (d)(2) to update the federal regulation citation and to state that an individual's identity is verified to prevent duplication of benefits

and other fraud. The amendment also deletes subsection (d)(3), which requires finger-imaging of certain household members for an expedited SNAP application for applicants in need of emergency food benefits.

The repeal of §§372.1201 - 372.1204 deletes the rules governing the finger-imaging requirement for TANF and SNAP households, exemptions from the requirement, and consequences for not complying with the requirement.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed amendment and repeals are in effect, there will be a fiscal impact to state government. There is no foreseeable fiscal impact to local governments. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

The effect on state government for the first five years the proposed amendment and repeals are in effect is an estimated reduction in cost of $2,899,462 all funds ($1,472,057 general revenue funds (GR)) in fiscal year (FY) 2012; $3,263,331 all funds ($1,656,793 GR) in FY 2013; $3,263,331 all funds ($1,656,793 GR) in FY 2014; $3,263,331 all funds ($1,656,793 GR) in FY 2015; and $3,263,331 all funds ($1,656,793 GR) in FY 2016.

Small Business and Micro-business Impact Analysis

Ms. Rymal has determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, because the vendor under contract with HHSC that performs the finger-imaging services is not a small business or a micro-business.

Public Benefit

Lawrence M. Parker, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years the amendment and repeals are in effect, the anticipated public benefit expected as a result of enforcing the amendment and repeals is that HHSC will continue to ensure that only Texans eligible for TANF and SNAP benefits will become eligible but will eliminate the requirement that individuals come to an eligibility office to complete the finger-imaging requirement. Because existing technologies can be used to verify identity and prevent fraud, the public will also benefit from the cost savings this change will bring.

Regulatory Analysis

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

Takings Impact Assessment

HHSC 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 §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Cathy Rose, Health and Human Services Commission, Office of Family Services, MC-2039, 909 West 45th Street, Austin, TX 78751, or by e-mail to cathy.rose@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for July 18, 2011, at 1:00 p.m. in Room 164 of the HHSC - MHMR Center, 909 West 45th Street, Building 2, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Graciela Reyna at (512) 206-4778.

SUBCHAPTER D. APPLICATION PROCESS
DIVISION 2. INTERVIEW

1 TAC §372.956

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §31.001, which authorizes HHSC to administer financial assistance programs (TANF), and §33.0006, which authorizes HHSC to operate the food stamp program (SNAP).

The amendment affects Texas Government Code, Chapter 531; and Texas Human Resources Code, Chapter 31 and Chapter 33. No other statutes, articles, or codes are affected by this proposal.

§372.956. Expedited SNAP Application Process.

(a) The Texas Health and Human Services Commission (HHSC) follows 7 CFR §273.2(i) and expedites SNAP eligibility decisions for applicants in need of emergency food benefits.

(b) For applicants who qualify for expedited service, HHSC provides an eligibility decision no later than the workday after the application is filed.

(c) For eligible applicants who do not qualify for expedited service, HHSC provides an eligibility decision:

(1) within seven days after application, for an applicant living in a drug or alcohol treatment center; or

(2) within five days after release from a public institution, for a joint SNAP and Supplemental Security Income applicant released from a public institution.

(d) HHSC may choose to postpone certain eligibility steps to expedite SNAP services, including the verification of the eligibility information required by 7 CFR §273.2(i)(4). HHSC does not postpone the following requirements:

(1) verification of the identity of the person interviewed, as required by 7 CFR §273.2(i)(4)(i)(A) to prevent duplication of benefits and other fraud; and [~~§273.2(f)(1)(vii);~~]

(2) verification that household members who are subject to the 20-hour-per-week work requirement explained in 7 CFR §273.24 meet this requirement.[~~; and~~]

[~~(3) finger imaging of nonexempt household members who are present during the eligibility interview, as required by §372.1202 of this chapter (relating to Finger-imaging Requirement).~~]

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 June 17, 2011.

TRD-201102242
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER E. PARTICIPATION REQUIREMENTS
DIVISION 3. FINGER IMAGING

1 TAC §§372.1201 - 372.1204

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

Statutory Authority

The repeals are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §31.001, which authorizes HHSC to administer financial assistance programs (TANF), and §33.0006, which authorizes HHSC to operate the food stamp program (SNAP).

The repeals affect Texas Government Code, Chapter 531; and Texas Human Resources Code, Chapter 31 and Chapter 33. No other statutes, articles, or codes are affected by this proposal.

§372.1201. Legal Basis and Purpose.

§372.1202. Finger-imaging Requirement.

§372.1203. Finger-imaging Exemption.

§372.1204. Consequence for Noncompliance with Finger-imaging Requirement.

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

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES
SUBCHAPTER L. URBAN SCHOOLS GRANTS PROGRAM

4 TAC §§1.800 - 1.802, 1.804

The Texas Department of Agriculture (the department) proposes amendments to §§1.800 - 1.802 and 1.804, concerning the Urban Schools Grant Program. The amendments are proposed to make these sections conform to new requirements established under Senate Bill 199 (SB 199), 82nd Legislative Session, 2011, that removes the $2,500 limit and allows nonprofit entities to apply in partnership with eligible schools.

Brian Murray, Assistant Commissioner for External Relations, 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 the administration and enforcement of the amended sections.

Mr. Murray also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of implementation of the amendments will be the updating of rules to conform to statutory requirements. There will be no adverse fiscal impact on microbusinesses, or small businesses or individuals required to comply with the amended sections.

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

The amendments are proposed under the Texas Agriculture Code (the Code), §48.001, which provides the department with the authority to adopt rules for administration of its duties under Chapter 48, as amended by SB 199; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The proposal affects the Texas Agriculture Code, Chapter 48.

§1.800. Statement of Purpose.

The Urban Schools Grant Program is designed to establish demonstration agricultural projects or other projects designed to foster an understanding and awareness of agriculture in certain Texas urban public school districts by awarding grants [~~of $2,500~~] to eligible elementary and middle schools.

§1.801. Definitions.

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

(1) - (3) (No change.)

(4) Nonprofit organization--A corporation no part of the income of which is distributable to members, directors, or officers.

§1.802. Eligibility.

Subject to available funds, a public elementary or [~~and~~] middle school [~~schools~~] from an urban public school district [~~districts~~] in the state, or a nonprofit organization that partners with an eligible school, is [~~are~~] eligible to receive a grant under this subchapter if the school or nonprofit organization submits [~~schools submit~~] to the department a proposal that includes:

(1) (No change)

(2) a schedule of projected costs for the project; [~~and~~]

(3) a statement of the educational benefits of the project, including how the project will improve the students' understanding of agriculture; and[~~.~~]

(4) if a nonprofit organization is applying for the grant, a statement from the school that the nonprofit organization is partnering with the school.

§1.804. Reporting Requirement.

Grant recipients shall submit required reports in accordance with department procedures, and as specified in the grant agreement entered into by the department and the grant recipient. [~~The department shall assign a liaison to monitor all demonstration agricultural projects. Grant recipients shall submit a report to the department at the conclusion of the project that shall include a brief summary of the educational results of the project and pictures to document such results.~~]

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

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 5. FUEL QUALITY

4 TAC §§5.1, 5.3, 5.4, 5.7

The Texas Department of Agriculture (the department) proposes amendments to §§5.1, 5.3, 5.4 and 5.7, concerning records and minimum fuel quality standards. The amendments are proposed to implement provisions of Senate Bill (SB) 893, 82nd Legislative Session, 2011. Amended §5.1 defines "NIST" as the acronym for the "National Institute of Standards and Technology." Amended §5.3 references the most current versions of automotive fuel rating specifications. Amended §5.4 specifies requirements for records and other documents to be maintained and provided by motor fuel dealers, distributors, suppliers, wholesalers, and jobbers. Amended §5.7 references the most current specifications for motor fuels for the establishment of minimum motor fuel standards.

To comply with changes to Chapter 17 of the Texas Agriculture Code, proposed changes in §5.4 specify the types of records and documents that motor fuel dealers, distributors, suppliers, wholesalers, and jobbers must maintain. The proposal further provides that the records must be submitted to the department in the manner and within the time period specified in a notice. The American Society for Testing and Materials (ASTM) sets voluntary consensus standards in motor fuels and other industries, while the National Institute of Standards and Technology (NIST) establishes codes of industrial practice. Since ASTM and NIST standards are routinely updated, proposed changes in §5.3 and §5.7 will provide for the use of the most current published versions of fuel quality standards, specifications, and test methods.

Howard Pieper, Coordinator for Fuel Quality, has determined that for the first five-year period the amended sections are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the amended sections.

Mr. Pieper also has determined that for each year of the first five years the amended sections are in effect, the public benefit of enforcing and administering the sections will be enhanced consumer protection related to motor fuel quality. Department access to accurate records will aid enforcement of fuel quality standards and stop-sale orders. There will be no costs to micro-businesses, small businesses or individuals required to comply with the amended sections.

Comments on the proposal may be submitted to Howard Pieper, Coordinator for Fuel Quality, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments to §§5.1, 5.3, 5.4, and 5.7 are proposed under the Texas Agriculture Code, §17.053 and §17.054, as amended by SB 893, which authorize the department to require records of purchase and sale of motor fuel, service performed on motor fuel dispensing devices, and of sampling and testing of motor fuel, and provide the department with the authority to establish by rule the manner of filing documents required to be kept and the time, place, and manner of inspection of the documents; §17.071, as amended by SB 893, which authorizes the department by rule to adopt minimum motor fuel quality and testing standards for motor fuel that is sold or offered for sale in this state; §17.104, which provides the department with the authority to adopt rules consistent with Chapter 17 for the regulation of the sale of motor fuels, including motor fuels that contain ethanol and methanol; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The code affected by the proposal is the Texas Agriculture Code, Chapter 17.

§5.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code, Chapter 17, and the standards set by the American Society for Testing and Materials (ASTM), the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) NIST--The National Institute of Standards and Technology.

§5.3. Automotive Fuel Rating.

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

(c) The testing methods, standards and specifications employed by the department to determine the automotive fuel rating of gasoline shall be those prescribed by the most current published versions of ASTM D-2699, ASTM D-2700, and ASTM D-5599[~~, as applicable~~]. Copies of the ASTM testing standards may be obtained by writing the American Society for Testing and Materials at 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428-2959 [~~1916 Race Street, Philadelphia, PA 19103~~].

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

§5.4. Records.

(a) Records [~~Any records~~] or other documents specified in this section must [~~required to~~] be maintained in accordance with [~~under~~] Texas Agriculture Code, Chapter 17, and shall be submitted to the department [~~upon request~~] in the manner and time period as specified in a notice provided by the department [~~specified in the request, including immediate inspection~~].

(b) Motor fuel dealers, distributors, suppliers, wholesalers, and jobbers shall maintain the following records and documents:

(1) invoices, receipts, or other transmittal documents or records, including electronically stored information, showing or describing the purchase, sale, delivery, or distribution of motor fuel;

(2) invoices, receipts, work orders, reports, or other documents, including electronically stored information, showing or describing the installation, maintenance, or repair of motor fuel dispensing devices and any equipment used in connection with motor fuel dispensing devices to record, display, or produce receipts or audit trails concerning the purchase, sale, delivery, or distribution of motor fuel; and

(3) any record or other document related to the sampling and testing of motor fuel purchased, sold, delivered, or distributed by the dealer, distributor, supplier, wholesaler, or jobber.

§5.7. Minimum Motor Fuel Standards.

(a) In accordance with Texas Agriculture Code, Chapter 17, the department adopts by reference, the most current published version of ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for gasoline with the following modification: Vapor pressure and vapor/liquid ratio seasonal specifications [~~as listed in this section~~] may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification.

(b) In accordance with Texas Agriculture Code, Chapter 17, the department adopts by reference, the most current published version of NIST Handbook 130, Section 2 of the Uniform Engine Fuels and Automotive Lubricants Regulation relating to "Gasoline-Ethanol Blends," copies of which are available upon request from the Superintendent of Documents, United States Government Printing Office, 710 North Capitol Street, Washington, D.C. 20402 or their Web site - www.nist.gov, [~~ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel"~~] as standard specification for alcohol blends with the following modification [~~modifications~~]:

(1) (No change.)

(2) Vapor pressure seasonal specifications [~~as listed in this subsection~~] may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification. NIST Handbook 130 is available upon request from the Superintendent of Documents, United States Government Printing Office, 710 North Capitol Street, Washington, D.C. 20402.[~~;~~]

[~~(3) The minimum temperature at 50 percent evaporated shall be 150 degrees F (66 degrees C) as determined by ASTM Test Method D 86 for motor fuels blended with ethanol;~~]

(3) [~~(4)~~] The vapor/liquid ratio specification shall be waived for motor fuels blended with ethanol.

(c) In accordance with Texas Agriculture Code, Chapter 17, the department adopts by reference, the most current published version of ASTM D 975, "Standard Specification for Diesel Fuel Oils" as standard specification for diesel motor fuels and renewable diesel fuels.

(d) In accordance with Texas Agriculture Code, Chapter 17, the department adopts by reference, the most current published version of ASTM D 5798, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines" as standard specification for E85 fuel ethanol.

(e) (No change.)

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

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 9. SEED QUALITY
SUBCHAPTER B. CLASSIFICATION OF LICENSES

4 TAC §9.2, §9.3

The Texas Department of Agriculture (the department) proposes amendments to §9.2 and §9.3, concerning agriculture seed inspection fees, late fees, permits, and vegetable seed license fees, and the repeal of §9.5, regarding service testing fees. These amendments are necessary to comply with changes made to the seed law program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the department has first reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry. The proposed amendments to §9.2 and §9.3 will increase fees by an average of 164% so that the new leaner and more cost-efficient program may be implemented, under the cost recovery requirement imposed by the 82nd Legislature. Section 9.5 is proposed for repeal because the department will no longer be offering service testing. The cost of providing service testing to agricultural producers is cost prohibitive and producers have other alternatives for obtaining testing services.

Ed Price, Seed Quality Branch Chief, has determined that for the first five-year period the proposed amendments and repeal are in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of $459,735 annually due to the increase in fees collected, and an estimated reduction in revenue of $212,755, due to the elimination of service testing fees, for a net increase in state revenue of $246,980. The charging of a fee is necessary to enable the continued operation of a leaner, cost-efficient program due to a new Legislative requirement that this program generate revenue to completely offset its costs. The ability of the department to enforce statutory requirements will be impacted if the department does not assess a fee that recovers the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendments, as proposed.

Mr. Price also has determined that for each year of the first five years the proposed amendments and repeal are in effect the public benefit anticipated as a result of enforcing the rules will be enhanced consumer protection related to agriculture and vegetable seed sold in Texas. There will be fiscal implications to an estimated range of 250 - 750 small and/or large businesses

as a result of the proposed amendments. For the first five-year period the rules are in effect, the cost of compliance for both small and large businesses will be a cost increase of $0.11 in the inspection and permit fees, and an increase of $180 in the vegetable seed licenses. The anticipated economic cost to persons required to comply with the rules as proposed would be a cost increase of $180 per year per individual vegetable seed license. The anticipated economic cost to person required to comply with the rules as proposed would be a cost increase of $110 per year per company selling 100,000 pounds of agriculture seed, $1,100 for companies selling 1,000,000 pounds of agriculture seed, $11,000 for companies selling 10,000,000 pounds of agriculture seed, and $27,500 for companies selling 25,000,000 pounds of agriculture seed in Texas.

Comments on the proposal may be submitted to Ed Price, Seed Quality Branch Chief, at the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments to §9.2 and §9.3 are proposed under the Texas Agriculture Code, §61.011, which provides the department with the authority to charge an inspection fee to a person who sells, or offers, exposes, or otherwise distributes for sale agricultural seed within this state for planting purposes; and §61.013, which provides the department with the authority to fix by rule and collect a fee for a vegetable seed license issued to a person who sells or offers, exposes, or otherwise distributes for sale vegetable seed for planting purposes in this state.

The Texas Agriculture Code, Chapter 61, is affected by the proposal.

§9.2. Agricultural Seed.

(a) (No change.)

(b) Texas Tested Seed Label. When a inspection fee is paid by means of a Texas Tested Seed Label, the person who distributes, sells, offers for sale, or exposes for sale agricultural seed shall:

(1) purchase the Texas Test Seed Labels from the department at a cost of $0.18 [~~$0.07~~] for each 100-pound container of seed or fraction thereof; and

(2) (No change.)

(c) Reporting system. When an inspection fee is paid by means of the reporting system, the following shall apply:

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

(3) The permittee shall pay an inspection fee of $0.18 [~~$0.07~~] for each 100 pounds of agricultural seed sold or otherwise distributed for sale planting purposes within the state.

(4) - (7) (No change.)

(8) The penalty for a late filing of quarterly reports shall be $50 [~~$30~~] or 10% of the amount of the fee due, whichever is greater.

§9.3. Vegetable Seed.

(a) (No change.)

(b) A person desiring a Vegetable Seed License shall submit to the department an "Application for Vegetable Seed License" form prescribed by the department accompanied by a license fee in the amount of $300 [~~$120~~].

(c) - (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.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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SUBCHAPTER C. SEED TESTING

4 TAC §9.5

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

The repeal of §9.5 is proposed under the Texas Agriculture Code, §61.009, which provides the department with the authority, at the request of a farmer or dealer, to conduct or provide for the testing of seed for purity and germination and fix by rule and collect fees for such tests.

The code affected by the proposal is the Texas Agriculture Code, Chapter 61.

§9.5. Service Testing Fees.

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

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TRD-201102203
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 10. SEED CERTIFICATION STANDARDS

The Texas Department of Agriculture (the department) proposes amendments to §§10.2, 10.3, 10.5, 10.10, 10.11, 10.13, 10.21 and 10.22, concerning fees for interagency certification, application for approval of variety, licensing of registered plant breeders and certified seed growers, late and re-inspection fees, label fees, bulk sales fees, inspection fees, hybrid sorghum reconsideration fees, and sunflower reconsideration fees. The department is the certifying agency in the administration of the Seed and Plant Certification Act and is charged with administering and enforcing the standards adopted by the State Seed and Plant Board. These amendments are necessary to comply with changes made to the certification program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the

department has first reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry. The proposed amendments to §§10.2, 10.3, 10.5, 10.10, 10.11, 10.13, 10.21 and 10.22 will increase fees by an average of 27% so that the new leaner and more cost-efficient program may be implemented, under the cost recovery requirement imposed by the 82nd Legislature.

Ed Price, Seed Quality Branch Chief, has determined that for the first five-year period the proposed amendments are in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of $209,002 annually. The charging of a fee is necessary to enable the continued operation of a leaner, cost-efficient program due to a new Legislative requirement that this program generate revenue to completely offset its cost. The ability of the department to enforce statutory requirements will be impacted if the department does not assess a fee that recovers the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendments, as proposed.

Mr. Price also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the availability of certified planting seed. There will be fiscal implications to an estimated range of 100 - 500 small and/or large businesses as a result of the proposed amendments. For the first five-year period the rules are in effect, the cost of compliance for micro, small and large businesses will be an increase in fees for seed certification. The anticipated economic cost to persons who are required to comply with the rules as proposed could be a cost increase of approximately $500 per year per individual.

Comments on the proposal may be submitted to Ed Price, Seed Quality Branch Chief, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL REQUIREMENTS

4 TAC §§10.2, 10.3, 10.5, 10.10, 10.11

The amendments to §§10.2, 10.3, 10.5, 10.10, and 10.11 are proposed under the Texas Agriculture Code, §62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest; and §62.008, which provides the department with the authority to inspect and certify seed and plants, and to fix and collect a fee for the issuance of a certification label in an amount necessary to cover the costs of inspection and labels.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.2. Eligibility of Varieties.

(a) Interagency certification as allowed by the Federal Seed Act.

(1) (No change.)

(2) A $200 [~~$100~~] fee will be assessed and must be paid for each lot of seed on which interagency certification is requested.

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

(b) - (c) (No change.)

(d) An application for approval of variety must be accompanied by a fee of $75.

§10.3. Approval of Applicant under Certification.

(a) An applicant for licensing as a "Registered Plant Breeder" or a "Certified Seed Grower" as provided in the Act, shall be a person, firm, or corporation of good character and have a reputation for honesty, competency and fair dealing. All applicants for a [~~Registered Plant Breeder~~] license shall pay a fee of $150 [~~$120~~] at the time of application.

(b) - (c) (No change.)

§10.5. Application for Field Inspection.

(a) (No change.)

(b) A late fee of $50 [~~$25~~] will be assessed and must be paid for each field on which certification is requested after the deadline date established for each specific crop. Applications will not be accepted if it can be determined by the certifying agency that the crop is too far advanced in development to allow satisfactory inspection.

(c) - (d) (No change.)

(e) The applicant may request reinspection of a rejected field provided the cause for rejection can be corrected and provided he/she again submits an inspection fee for the acreage involved. In no case will the reinspection fee be less than $50 [~~$25~~]. Request for reinspection of a rejected field will not be accepted if it can be determined that the inspector will not be able to visit the field in sufficient time before harvest to make a satisfactory inspection.

§10.10 Labels.

(a) - (h) (No change.)

(i) The cost of certification labels shall be $.12 [~~$.10~~] each, or $.12 [~~$.10~~] for each 100 pounds or fraction of 100 pounds of seed. The type of labels available are:

(1) - (4) (No change.)

§10.11. Bulk Sales.

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

(d) Selling seed of the Certified class in bulk. A maximum of two sales and two physical seed transfers are allowed. Delivery may be made by the certified seed grower or a retail seed facility, licensed under §9.2 of this title (relating to Agricultural Seed), directly to the consumer. Applications must be made on forms obtained from the department.

(1) The certified seed grower shall:

(A) - (C) (No change.)

(D) pay the necessary Bulk Sales Certificate fee ($.12 [~~$.10~~] per one hundred pounds, or fraction of one hundred pounds of seed); and

(E) if delivery is made directly to the consumer, pay the necessary Agricultural Seed Inspection Fee as required in §9.2 of this title [~~($.07 per one hundred pounds, or fraction of one hundred pounds of seed, if on the reporting system of $.07 per one hundred pounds, or fraction of one hundred pounds of seed, if using seed fee labels)~~];

(F) (No change.)

(2) (No change.)

(e) (No change.)

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

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Dolores Alvarado Hibbs
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SUBCHAPTER C. ACREAGE INSPECTION FEES FOR CERTIFICATION

4 TAC §10.13

The amendments to §10.13 are proposed under the Texas Agriculture Code, §62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest; and §62.008, which provides the department with the authority to inspect and certify seed and plants, and to fix and collect a fee for the issuance of a certification label in an amount necessary to cover the costs of inspection and labels.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.13. Inspection Fees for Certification.

The following chart designates fees per acre for various crop kinds as required for seed certification.
Figure: 4 TAC §10.13

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

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SUBCHAPTER F. ADDITIONAL REQUIREMENTS FOR THE CERTIFICATION OF CERTAIN CROPS

4 TAC §10.21, §10.22

The amendments to §10.21 and §10.22 are proposed under the Texas Agriculture Code, §62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest; and §62.008, which provides the department with the authority to inspect and certify seed and plants, and to fix and collect a fee for the issuance of a certification label in an amount necessary to cover the costs of inspection and labels.

The Texas Agriculture Code, Chapter 62, is affected by the proposal.

§10.21. Requirements and Standards for Hybrid Sorghum Varietal Purity Grow-outs.

(a) Test planting requirements.

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

(3) A fee of $250 [~~$60~~] for each sample grown for reconsideration must be paid to the Texas Department of Agriculture, and the travel and per diem expenses of department personnel necessary to sample, plant, and inspect the larger plot must be paid by the seed producer.

(4) (No change.)

(b) (No change.)

§10.22. Requirements and Standards for Sunflower Varietal Purity Grow-outs.

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

(c) A fee of $250 [~~$60~~] for each sample grown for reconsideration must be paid to the Texas Department of Agriculture, and the travel and per diem expenses of department personnel necessary to sample, plant, and inspect the larger plot must be paid by the seed producer.

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

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

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CHAPTER 12. WEIGHTS AND MEASURES

The Texas Department of Agriculture (the department) proposes amendments to §§12.12, 12.30, 12.43, 12.53, 12.60, and 12.73 concerning fees for registration of weights and measures devices; fees for tolerance testing of a weight or measure by the departments metrology laboratory; license fees for license service companies, license inspection companies, and registered technicians; and certificate of authority fee for public weighers. These amendments are necessary to comply with changes made to the weights and measures program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the department has first reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry. The proposed amendments to §§12.12, 12.30, 12.43, 12.53, 12.60, and 12.73 will increase weights and measures fees by an average of 26% so that the program may continue, under the cost recovery requirement imposed by the 82nd Legislature.

The amendments to §12.12 increases the fees for liquid measuring devices with a maximum flow rate of 20 gallons per minute or less and dispensing one product per nozzle from $8.50 to $9; for liquid measuring devices with a maximum flow rate of 20 gallons per minute or less and dispensing multiple products per nozzle from $25 to $26.50; for liquid measuring devices with a maximum flow rate greater than 20 gallons per minute from $30 to $45; for LPG meters from $30 to $40; for scales with a capacity less than 5,000 pounds from $15 to $20. The amendments to §12.12 combine non-truck and non-livestock scales with a capacity of 5,000 pounds and greater to specify the increase in device registration fees from $120 to $150. The amendments to §12.12 provide a means to classify truck scales and livestock scales with a capacity of 5,000 pounds or greater and specify the device registration fees of $215. In addition, as a means of providing increased information to consumers about the registration requirements for and inspections conducted at a location, the department is initiating, in a separate submission, requirements for a consumer information sticker that will direct consumers to the most accurate information on the device and that must be placed on each weighing or measuring device used in commercial transactions. A new consumer information sticker replacement fee of $8 per page has been added to §12.12, and the title of the section changed accordingly. Other nonsubstantive changes have been made to §12.12.

The amendment to §12.30 increases the Precision Test fee up to and including 3 kilograms from $40 to $70; more than 3 kilograms, up to and including 30 kilograms from $80 to $110; more than 30 kilograms from $100 to $140; increases the Tolerance Test fee of weights less than 10 pounds from $10 to $20; 10 pounds or more but less than 500 pounds from $20 to $30; 500 pounds or more but less than 2500 pounds from $40 to $60; 2500 pounds or more from $80 to $110; adds a new Weight Adjustment fee for less than 10 pounds: $5; 10 pounds or more but less than 100 pounds: $5; 100 pounds up to and including 1,000 pounds: $10; greater than 1,000 pounds: $20; increases the fee for Volume Measures, 5 gallons or less from $40 to $55; more than 5 gallons from $40 to $65 plus $1 for each gallon over 5 gallons; LPG provers holding 25 gallons or less from $100 to $150; LPG provers holding over 25 gallons from $250 to $325; adds a new Prover Neck Calibration fee: $50.

Section 12.43 increases the license service company fee from $90 to $100; §12.53 increases the license inspection company fee from $90 to $100; §12.60 increases the registered technician examination fees for each class of license from $60 to $100; and §12.73 increases the public weigher fee from $480 to $485.

Andria Perales, Coordinator for Weights and Measures, has determined that for the first five-year period the proposed amendments are in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of $1,133,739 annually. Since the department does not have historical information on the number of requests that may be received for replacement consumer information stickers, the amount of increased revenue associated with consumer information stickers cannot be determined at this time. The charging of a fee is necessary to enable the continued operation of a leaner, cost-efficient program due to a new Legislative requirement that this program generate revenue to completely offset its costs. The ability of the department to enforce statutory requirements will be impacted if the department does not assess a fee that recovers the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendments, as proposed.

Ms. Perales has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed amendments will be achieving effective recovery of the costs to administering the Weights and Measures Programs, thereby allowing the department to provide consumer protection. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendments would affect an estimated 23,575 Weights and Measures registration device holders. Registration holders would experience a per device fee increase ranging from $0.50 to $95 and the amount increase would be based on the number and type of weights and measure devices registered. Approximately 241 license service companies and license inspection companies calibrating weights or measures will experience a test calibration fee increase ranging from $0.50 to $75 per weight or measure. Approximately 241 license service companies and license inspection companies would experience a $10 license fee increase. An estimated 295 public weighers would experience a $5 license fee increase. An estimated 1,416 registered technicians would experience a $40 increase in examination fees. There are approximately 139,068 fuel dispensing devices and 62,230 scales registered with the department. Those devices are registered to approximately 23,575 license holders. Should the required consumer information stickers need to be replaced on a registered device as a result of being damaged, destroyed, lost or illegible, these license holders will pay $8 per sheet containing eight consumer information stickers. The fee is necessary to recover the cost of providing replacement stickers.

Comments on the proposal may be submitted to Andria Perales, Coordinator for Weights and Measures, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER B. DEVICES

4 TAC §12.12

The amendments to §12.12 are proposed under Texas Agriculture Code, §13.002, which provides the department with the authority to enforce the provisions of Chapter 13, concerning weights and measures; §13.1011, which provides the department with the authority to adopt rules establishing a system of annual registration under Chapter 13; §13.115, which provides the department with the authority to collect a fee for each test of a weight or measure; and §13.1151, which provides the department with the authority to set and charge a registration fee for registration of a pump, scale, or bulk or liquefied petroleum gas metering device registered under §13.101.

The code affected by the proposal is the Texas Agriculture Code, Chapter 13.

§12.12. Fee Schedule for Commercial Weighing and Measuring Devices and Consumer Information Stickers [~~Fees~~].

(a) Devices. For the following device types, the registration or registration renewal fee for each such device is: [~~Except as provided by Chapter 2, Subchapter B of this title (relating to Consolidated Licenses), fees for weights and measures device registrations are as follows:~~]

(1) Liquid measuring device with a [~~(or pump),~~] maximum flow rate of 20 gallons per minute or less and[~~,~~] dispensing one product per nozzle: $9 [~~$8.50 (per nozzle)~~].

(2) Liquid measuring device with a [~~(or pump),~~] maximum flow rate of 20 gallons per minute or less and[~~,~~] dispensing multiple products per nozzle: $26.50 [~~$25 (per nozzle)~~].

(3) Liquid measuring device with a [~~(or bulk meter),~~] maximum flow rate greater than 20 gallons per minute: $45 [~~$30 (per nozzle)~~].

(4) LPG meter: $40 [~~$30~~].

(5) Scale with a [~~(~~]capacity less than 5,000 pounds[~~)~~]: $20 [~~$15~~].

(6) Ranch Scales: $20 [~~$15~~].

(7) Non-Ranch, Non-Truck, and Non-Livestock Scales with a [~~Truck Scales and other large scales (~~] capacity of 5,000 pounds or greater[~~)~~]: $150 [~~$120~~].

(8) Truck Scales and Livestock Scales with a capacity of 5,000 pounds or greater: $215.

(b) Consumer Information Sticker: the fee for a page containing eight consumer information stickers is: $8.

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

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Texas Department of Agriculture
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SUBCHAPTER D. METROLOGY

4 TAC §12.30

The amendments to §12.30 are proposed under Texas Agriculture Code, §13.002, which provides the department with the authority to enforce the provisions Chapter 13, concerning weights and measures; §13.1011, which provides the department with the authority to adopt rules establishing a system of annual registration under Chapter 13; §13.115, which provides the department with the authority to collect a fee for each test of a weight or measure; and §13.1151, which provides the department with the authority to set and charge a registration fee for registration of a pump, scale, or bulk or liquefied petroleum gas metering device registered under §13.101.

The code affected by the proposal is the Texas Agriculture Code, Chapter 13.

§12.30. Metrology Services.

(a) The department's metrology laboratory provides a service to calibrate standards needing traceability to the national standards. For information on scheduling an appointment for metrology services contact the Giddings [~~Austin or Lubbock~~] metrology laboratory or Regional Office [~~laboratories~~].

(b) Metrology services are available based on the following fee schedule:

(1) Weights.

(A) Precision Test. NIST Class "A,B,S,S-1,M,"; ASTM Class "0,1,2,3"; OIML Class "E1,E2,F1,F2" and other weights: up to and including 3 kilograms: $70 [~~$40~~]; More than 3 kilograms, up to and including 30 kilograms: $110 [~~$80~~]; More than 30 kilograms: $140 [~~$100~~].

(B) Tolerance Test. NIST Class "P,Q,T,C,F"; ASTM Class "4,5,6,7"; OIML Class "M1,M2,M3"; and other weights: Less than 10 pounds: $20 [~~$10~~]; 10 pounds or more but less than 500 pounds: $30 [~~$20~~]; 500 pounds or more but less than 2500 pounds: $60 [~~$40~~]; 2500 pounds or more: $110 [~~$80~~].

(C) Weight Adjustments. Less then 10 pounds: $5; 10 pounds or more but less than 100 pounds: $5; 100 pounds up to and including 1,000 pounds: $10; greater than 1,000 pounds: $20.

(2) Volume Measures: 5 gallons or less: $55 [~~$40~~]; More than 5 gallons: $65 [~~$40~~] plus $1 [~~$0.50~~] for each gallon over 5 gallons; LPG provers holding 25 gallons or less: $150 [~~$100~~]; LPG provers holding over 25 gallons: $325; Prover Neck Calibration: $50 [~~$250~~].

(3) (No change.)

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

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SUBCHAPTER E. LICENSED SERVICE COMPANIES

4 TAC §12.43

The amendments to §12.43 are proposed under Texas Agriculture Code, §13.002, which provides the department with the authority to enforce the provisions of Chapter 13, concerning weights and measures; §13.1011, which provides the department with the authority to adopt rules establishing a system of annual registration under Chapter 13; §13.115, which provides the department with the authority to collect a fee for each test of a weight or measure; and §13.1151, which provides the department with the authority to set and charge a registration fee for registration of a pump, scale, or bulk or liquefied petroleum gas metering device registered under §13.101.

The code affected by the proposal is the Texas Agriculture Code, Chapter 13.

§12.43. Fees.

The [~~Except as provided by Chapter 2, Subchapter B of this title (relating to Consolidated Licenses), the~~] fee for each class of license is $100 [~~$90~~].

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

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SUBCHAPTER F. LICENSED INSPECTION COMPANIES

4 TAC §12.53

The amendments to §12.53 are proposed under Texas Agriculture Code, §13.002, which provides the department with the authority to enforce the provisions of Chapter 13, concerning weights and measures; §13.1011, which provides the department with the authority to adopt rules establishing a system of annual registration under Chapter 13; §13.115, which provides the department with the authority to collect a fee for each test of a weight or measure; and §13.1151, which provides the department with the authority to set and charge a registration fee for registration of a pump, scale, or bulk or liquefied petroleum gas metering device registered under §13.101.

The code affected by the proposal is the Texas Agriculture Code, Chapter 13.

§12.53. Fees.

(a) The fee for each class of license is $100 [~~$90~~].

(b) (No change.)

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

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SUBCHAPTER G. REGISTERED TECHNICIANS

4 TAC §12.60

The amendments to §12.60 are proposed under Texas Agriculture Code, §13.002, which provides the department with the authority to enforce the provisions of Chapter 13, concerning weights and measures; §13.1011, which provides the department with the authority to adopt rules establishing a system of annual registration under Chapter 13; §13.115, which provides the department with the authority to collect a fee for each test of a weight or measure; and §13.1151, which provides the department with the authority to set and charge a registration fee for registration of a pump, scale, or bulk or liquefied petroleum gas metering device registered under §13.101.

The code affected by the proposal is the Texas Agriculture Code, Chapter 13.

§12.60. Registration Requirement and Procedure.

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

(e) Examination fees for each class of license is $100 [~~$60~~].

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

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SUBCHAPTER H. PUBLIC WEIGHERS

4 TAC §12.73

The amendments to §12.73 are proposed under Texas Agriculture Code, §13.002, which provides the department with the authority to enforce the provisions of Chapter 13, concerning weights and measures; §13.1011, which provides the department with the authority to adopt rules establishing a system of annual registration under Chapter 13; §13.115, which provides the department with the authority to collect a fee for each test of a weight or measure; and §13.1151, which provides the department with the authority to set and charge a registration fee for registration of a pump, scale, or bulk or liquefied petroleum gas metering device registered under §13.101.

The code affected by the proposal is the Texas Agriculture Code, Chapter 13.

§12.73. Fees.

Public weigher fee is $485 [~~$480~~].

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

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CHAPTER 17. MARKETING AND PROMOTION

The Texas Department of Agriculture (the department) proposes amendments to Chapter 17, Subchapter C, §§17.51, 17.52, 17.55, 17.59 and 17.60, relating to the department's GO TEXAN promotional marketing program; and Subchapter G, §§17.302 - 17.304, relating to the department's GO TEXAN Partner Program (GOTEPP). The amendments to §17.51(5) and (14) are proposed to delete the reference to §17.58 (relating to the GO TEXAN Beef Program), because §17.58 has been repealed.

The amendments to §17.52 are proposed to provide for the department to assess a fee or royalty for use of the GO TEXAN certification mark; to delete the requirement that wine must be at least 75% by volume and derived from Texas grown grapes in order to qualify for the GO TEXAN program; and to provide that wine must be produced or processed in Texas in order to qualify for the GO TEXAN program. The amendments to §17.55 add new levels of membership in the GO TEXAN program and corresponding fees. The amendments to §17.59 are proposed to clarify specific program benefits for non-agricultural members. The amendments to §17.60 clarify that the annual membership fee for GO TEXAN Restaurant Program members will be based on the membership tier or sponsorship selected by the restaurant; and provide for assessment or collection of additional fees for special events. The proposed amendments to §§17.302 - 17.304 specify that GO TEXAN members must enroll at higher levels of membership (as defined in the new GO TEXAN Program rules) in order to apply for GOTEPP funding; and provide that the administration of the program is subject to the availability of funds.

The amendments related to fees are necessary to comply with changes made to the marketing program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the department has first reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to program users. The proposed amendments to §17.55 and §17.60 will increase fees so that the GO TEXAN program may continue, under the cost recovery requirement imposed by the 82nd Legislature.

Elizabeth Hadley, Assistant Commissioner for Marketing and Promotion, has determined that for the first five years the amended sections are in effect, there will be fiscal implications for state government as a result of administering or enforcing sections amended in Subchapter C, due to the collection of increased fees for program participation in the GO TEXAN promotional marketing program. It is estimated that 70 percent of current businesses enrolled in the program will renew at the lowest tier of membership ($100). At that rate, estimated revenue from GO TEXAN membership fees will equal approximately $173,500 annually. It is not possible to determine what revenue will be generated by other activities such as license agreements and event fees. The charging of increased fees is necessary to enable the continued operation of a leaner, cost-efficient program due to a new Legislative requirement that this program generate revenue to completely offset its costs. The ability of the department to provide a quality program will be impacted if the department does not assess a fee that recovers the full cost of the program. There will be no fiscal implications for local government.

Ms. Hadley has also determined that for each year of the first five years the proposed amended sections are in effect, the public benefit anticipated as a result of enforcing the amended sections will be increased recognition of the GO TEXAN certification mark through additional outreach methods and an increase in consumption of Texas agricultural products through the continuation of the GO TEXAN Program. There will be a cost to individuals, micro-businesses and small businesses as a result of the amended sections as set out in this proposal GO TEXAN program members will pay participation fees based on the level of membership chosen, at a minimum cost of $100.

Comments on the proposal may be submitted to Elizabeth Hadley, Assistant Commissioner for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER C. GO TEXAN AND DESIGN MARK

4 TAC §§17.51, 17.52, 17.55, 17.59, 17.60

The amendments to §§17.51, 17.52, 17.55, 17.59, and 17.60 are proposed pursuant to the Texas Agriculture Code, §12.0175, which provides the department with authority to establish programs by rule to promote and market agricultural products and other products grown, processed, or produced in the state, and charge a membership fee, as provided by department rule, for each participant in a program, and adopt rules to administer a program established under §12.0175; and §12.031, as amended by Senate Bill 1086, 82nd Legislature, 2011, which provides the department with the authority to assess and collect fees or royalties on department-owned registered certification marks and to collect event fees or royalties for marketing and promotional activities authorized by §12.0175.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§17.51. Definitions.

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

(1) - (4) (No change.)

(5) Food--Agricultural products produced or processed in Texas for human consumption. [~~One hundred percent fresh beef and processed 100% beef products must comply with the requirements of §17.58 of this title (relating to GO TEXAN Beef Program).~~]

(6) - (13) (No change.)

(14) Processed food product--Non-Texas agricultural food product which has undergone a value-added procedure in Texas to change or add to its physical characteristics, including, but not limited to, cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, distilling, eviscerating, preserving, or dehydrating. For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being a processed food product. [~~One-hundred percent fresh beef and processed 100% beef products must comply with the requirements of §17.58 of this title (relating to GO TEXAN Beef Program.~~]

(15) - (19) (No change.)

§17.52. Application for Registration to Use the GO TEXAN and Design Mark.

(a) No person shall use, employ, adopt, or utilize the GO TEXAN and Design mark, unless prior application for registration or licensing has been made to the department and permission to make such use, employment, adoption, or utilization has been granted. In addition to any other fee that may be assessed under this chapter, the department may assess a fee or royalty for use of the GO TEXAN certification mark.

(b) Unless permission is otherwise granted by the department, the GO TEXAN and Design mark may only be used by registrants and licensees to certify and promote the following Texas agricultural products:

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

(3) wine which is produced or processed in Texas, as defined in §17.51 of this chapter (relating to Definitions);[:]

[(A) at least 75% by volume, derived from grapes grown and fermented in the State of Texas; and]

[(B) fully produced and finished within the State of Texas;]

(4) - (17) (No change.)

(c) - (p) (No change.)

§17.55. Registration of Those Entitled to Use the GO TEXAN and Design Mark.

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

(c) An annual [registration] fee [of $25] for registration in the GO TEXAN, GO TEXAN Associate and/or GO TEXAN Restaurant program shall be paid to the department. Applicants may select from three different levels of membership. Annual fees and benefits for each level of membership are described in paragraphs (1) - (3) of this subsection. The department may, in its sole discretion, from time to time, revise or update the benefits for each level of membership. All benefits are subject to continued authorization and appropriation of the program by the Texas Legislature.

(1) Tier 1 - $100. Benefits for this membership level include licensed use of the GO TEXAN certification mark and listing in a searchable database of GO TEXAN program members.

(2) Tier 2 - $500. Benefits for this membership level include all the benefits provided for Tier 1 members, plus listing in applicable GO TEXAN electronic resources, smartphone applications or publications provided by the department; up to three hours of marketing or advertising consulting services by department staff; eligibility for participation in the department's GO TEXAN Partner Program; and discounts on GO TEXAN program merchandise.

(3) Tier 3 - $1,000. Benefits for this membership level include all the benefits provided for Tier 2 members, plus increased discounts on GO TEXAN program merchandise, membership award/plaque to denote program participation and display of a company graphic on the GO TEXAN website.

(d) GO TEXAN program members may also participate as sponsors in the program. Sponsorship levels begin at $5,000 and include all benefits available to Tier 3 members, set out in subsection (c)(3) of this section, plus additional benefits that may be provided for in a sponsorship agreement between the GO TEXAN program member and applicant. [Annual GO TEXAN, GO TEXAN Associate registration, and the GO TEXAN Restaurant Program registration fees charged by the department shall not exceed $50.]

§17.59. Non-Agricultural Member; Other Products; Products Produced in this State.

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

[(d) Unless permission is otherwise granted by the department, licensees granted use of the GO TEXAN and Design mark under this section shall only receive the following benefits, and only at the sole discretion of the department, of the GO TEXAN program:]

[(1) use of the GO TEXAN and Design mark in accordance with the requirements of this section;]

[(2) inclusion in the Go TEXAN product directory listings on the GO TEXAN website on the World Wide Web, should the department produce such a directory;]

[(3) receipt of the GO TEXAN infoletter pertaining to agricultural-related news and GO TEXAN promotional opportunities, should the department produce such an infoletter; and]

[(4) joint participation in GO TEXAN sponsored fair and tradeshow events, provided that the qualifying "other product" enhances agriculture and the GO TEXAN sponsored event, as determined by the sole discretion of the department.]

(d) [(e)] Eligibility for Participation in the GO TEXAN Partner Program. Registrants and licensees admitted into the GO TEXAN membership program under this section are not eligible to receive GO TEXAN Partner Program grant funds.

§17.60. GO TEXAN Restaurant Program.

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

(e) Application Process:

(1) - (3) (No change.)

(4) An applicant must submit a GO TEXAN Restaurant Program Member application and an [a $25.00] annual GO TEXAN membership fee, based on the membership tier or sponsorship selected by the restaurant, as set forth in §17.55 of this chapter (relating to Registration of Those Entitled to Use the GO TEXAN and Design Mark), for each restaurant that applicant would like to participate in the GO TEXAN Restaurant Program. If an applicant operates multiple restaurant locations under the same name, the applicant must submit a GO TEXAN Restaurant Program Member application and pay the [a $25.00] annual GO TEXAN membership fee based on the membership tier selected by the applicant for the first or initial restaurant location, as identified in the application. Should the applicant choose to enroll additional locations under the same name, the applicant shall pay an additional $10.00 annual fee for each additional restaurant location that operates under the same name and that is enrolled in the program. GO TEXAN Restaurant Program Members will be billed the annual registration membership fees on an annual basis.

(5) (No change.)

(6) The department may assess and collect additional fees for participation in special events administered, conducted, established, organized, provided for, or sponsored by the department, whether in its own name or in cooperation with others, in connection with the GO TEXAN Restaurant Program.

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

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER G. GO TEXAN PARTNER PROGRAM RULES

4 TAC §§17.302 - 17.304

The amendments to §§17.302 - 17.304 are proposed pursuant to the Texas Agriculture Code, §46.012, which provides the depart-

ment with authority to adopt rules to administer the GO TEXAN Partner Program.

The code affected by the proposal is the Texas Agriculture Code, Chapter 46.

§17.302. Administration.

(a) The department's responsibilities under this subchapter are as follows.

(1) The department's Marketing and Promotion Division shall administer the GO TEXAN Partner Program, subject to the availability of funds.

(2) - (10) (No change.)

(b) The board's responsibilities under this subchapter are as follows.

(1) (No change.)

(2) The board shall meet no less often than bi-annually, subject to the availability of grant funds;

(3) - (6) (No change.)

§17.303. Eligibility.

(a) An eligible applicant must be a current GO TEXAN Program Tier 2, 3 or sponsorship member as defined in §17.55 of this title (relating to Registration of Those Entitled to Use the GO TEXAN and Design Mark) and:

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

(b) - (c) (No change.)

§17.304. Requirements for Participation.

To be eligible for participation in this program utilizing matching state funds under this subchapter, an applicant must:

(1) be a member in good standing of the GO TEXAN program at the Tier 2, 3 or sponsorship level as defined in §17.55 of this title (relating to Registration of Those Entitled to Use the GO TEXAN and Design Mark);

(2) - (6) (No change.)

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

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SUBCHAPTER D. CERTIFICATION OF FARMERS MARKET

4 TAC §§17.70 - 17.72

The Texas Department of Agriculture (the department) proposes amendments to Chapter 17, Subchapter D, §§17.70 - 17.72, relating to the department's farmers market certification program. The proposed amendments to §17.70 and §17.71 establish a fee scale for voluntary farmers market certification and clarify that certification is voluntary. The proposed amendment to §17.72 changes the renewal date for certification from February 1 to January 1. The amendments related to fees are necessary to comply with changes made to the department's marketing program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the department has first reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to program participants. The proposed amendments to §17.71 establish a fee for the farmers market program so that the program may continue, under the cost recovery requirement imposed by the 82nd Legislature.

Elizabeth Hadley, Assistant Commissioner for Marketing and Promotion, has determined that for the first five years the amended sections are in effect, there will be fiscal implications for state as a result of administering or enforcing the amended sections, due to the establishment of a certification fee. It is estimated that 70 percent of qualifying Texas farmers markets will apply for certification under the amended rules. At that rate, estimated revenue from farmers market certification will equal approximately $4,480 annually. The charging of a fee is necessary to enable the continued operation of a leaner, cost-efficient program due to a new Legislative requirement that this program generate revenue to completely offset its costs. The ability of the department to provide a farmers market program will be impacted if the department does not assess a fee that recovers the full cost of the program. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendments, as proposed.

Ms. Hadley has also determined that for each year of the first five years the proposed amended sections are in effect, the public benefit anticipated as a result of enforcing the amended sections will be will be achieving effective recovery of the costs of administering the farmers market certification program. There will be a cost to individuals, micro-businesses and small businesses as a result of the amended sections. The cost will depend on the weeks of operation of the farmers market per year. A fee of $50 will be charged for a market operating 1-26 weeks per year, a fee of $100 will be charged for a market operating 27-52 weeks per year, and a multiple location fee of $25 will be charged for additional locations.

Comments on the proposal may be submitted to Elizabeth Hadley, Assistant Commissioner for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments to §§17.70 - 17.72 are proposed pursuant to the Texas Agriculture Code, §12.0175, which provides the department with authority to establish programs by rule to promote and market agricultural products and other products grown, processed, or produced in the state, and charge a membership fee, as provided by department rule, for each participant in a program, and adopt rules to administer a program established under §12.0175.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§17.70. Definitions.

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

(1) (No change.)

(2) Certified farmers markets--Farmers markets that have opted to be voluntarily [~~been~~] certified by the Texas Department of Agriculture pursuant to this subchapter [~~chapter~~].

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

§17.71. Issuance of Certificate.

(a) The commissioner shall certify farmers markets in accordance with this subchapter [~~chapter~~] and the Texas Agriculture Code, Chapter 15. Upon certification of a farmers market, the commissioner shall issue[~~, at no cost to the market,~~] a farmers market certificate. Certified farmers markets agree to comply with local municipal, county and state health and safety regulations, and general requirements of the Texas Department of Agriculture.

(b) An annual certification fee will be assessed to all markets with their application. The fee will be based on the number of weeks per year the market operates. The number of weeks is calculated on a seven-day (Sunday-Saturday) basis. For any single or multiple days of operation that fall within a week, the week shall count toward the number of weeks of operation. Fees will be as follows:

(1) 1-26 weeks per year - $50;

(2) 27-52 weeks per year - $100.

(c) Farmers markets with multiple locations will be assessed a certification fee of $25 per additional location over and above the fee associated with the initial certified location. The fee of $25 is not dependent on the number of weeks of operation.

§17.72. Application Process.

(a) An applicant seeking voluntary certification must submit an application fee and a completed application on a form approved by the Texas Department of Agriculture to the state headquarters in Austin. Application forms may be obtained from the state headquarters of the Texas Department of Agriculture.

(b) (No change.)

(c) Certifications must be renewed annually. Between January [~~February~~] 1 and February 28 annually, the department shall mail to each certified farmers market a renewal form setting forth the requirements for renewal. Within 30 days of receipt of the renewal form, the farmers market shall complete and return the form to the department, together with all the items required by §17.73(2) of this title (relating to Eligibility Requirements) to be filed with the department on an annual basis.

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

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

The Texas Department of Agriculture (the department) proposes the repeal of §§18.2, 18.100 - 18.103, 18.105, 18.200 - 18.207, 18.236 - 18.239, 18.270 - 18.272, 18.290, 18.300 - 18.310, 18.400 - 18.406, 18.661, and 18.670; new §§18.2, 18.3, 18.100, 18.200, 18.300, 18.400, 18.661, and 18.670; and amendments to §18.700 and §18.702, concerning organic standards and certification. The repeals and new sections are proposed to adopt federal organic certification regulations by reference. This will remove conflicting requirements and decrease confusion for organic businesses operating in Texas and residents of Texas who consume agricultural products that have an organic claim. The proposed amendments to §18.700 remove the requirement that complaints must be submitted in writing and create the opportunity for complaints to be accepted via telephone and remove language that conflicts with federal regulations. The proposed amendments to §18.702, not associated with achieving full cost recovery, are to replace words and phrases that applicants and licensees have found to be confusing with more generally acceptable words and phrases, remove language that conflicts with federal regulations, and provide clarification concerning the requirements for refund eligibility. The proposed amendments to §18.702 also increase fees for certification.

These amendments are necessary to comply with changes made to the department's organic certification program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. In order to meet this Legislative mandate, the department has first reviewed programs for cost savings and efficiencies, then restructured programs, as needed, to provide the best service possible at a reasonable cost to the regulated industry. An increase in fees of 38 percent is proposed for the program, so that the program may continue, under the cost recovery requirement imposed by the 82nd Legislature.

The proposed amendments to §18.702 increase fees for organic certification or annual update of organic certification so that the program may continue, under the cost recovery requirement imposed by the 82nd Legislature.

The amendment to §18.702(f)(1) increases the application fee from $50 to $55.

The proposed amendment to §18.702(f)(2) increases the minimum total certification fee from $275 to $350 and introduces a maximum certification fee per land producer application or annual update of $20,000. The maximum certification fee per livestock producer application or annual update of certification is $8,000.

The amendment to §18.702(f)(2)(A) increases the land production certification fee for land in crop production with less than 1 acre from $225 to 350; 1 to less than 5 acres from $325 to $450; 5 to less than 25 acres from $500 to $650; 25 to less than 50 acres from $650 to $800; 50 to 100 acres from $800 to $1,000; and greater than 100 acres from $850 for the first 100 acres, plus $100 for each additional increment or portion of 100 acres to $1,000 for the first 100 acres, plus $150 for each additional increment or portion of 100 acres.

The proposed amendment to §18.702(f)(2)(B) increases the land producer certification fee for land not in crop up to 100 acres

from $100 to $200; and greater than 100 acres from $100 for the first 100 acres, plus $10 for each additional increment or portion of 100 acres to $200 for the first 100 acres, plus $15 for each additional increment or portion of 100 acres.

The amendment to §18.702(f)(2)(C) increases the certification fee for greenhouse, indoor or outdoor container production areas from $100 to $200 for less than 1,000 sq. ft.; 1,000 to 3,000 sq. ft. from $150 to $250; and greater than 3,000 sq. ft. from $250 for the first 3,000 sq. ft., plus $100 for each additional increment or portion of 3,000 sq. ft. to $250 for the first 3,000 sq. ft., plus $125 for each additional increment or portion of 3,000 sq. ft.

The amendment to §18.702(f)(2)(D) increases the livestock production certification fee for each species of livestock raised on less than 5 acres from $100 to $150; for each species of livestock raised on 5 to 50 acres from $150 to $200; for each species of livestock raised on greater than 50 acres from $300 to $400; number of animals in the bovine species from $50 to $100 per 100 animals; number of animals in the caprine, ovine, porcine, or equine species from $25 to $50 per 100 animals; and number of animals in the avian species from $25 to $50 per 1,000 birds.

The amendment to §18.702(f)(2)(E) increases the fee of on-farm processing of certified food ingredients from $100 to $200; on-farm processing of certified feed from $100 to $200; on-farm storage or processing of certified milk products from $100 to $200; cotton ginning from $500 to $700; textile manufacturing from $1,000 to $1,300; commercial food processing from $1,000 to $1,300; and commercial feed processing from $1,000 to $1,300.

The amendment to §18.702(f)(2)(F) increases the certification fee for distribution facilities who broker/trade food products from $700 to $950; broker/trade feed products from $700 to $950; broker/trade fiber products from $700 to $950; warehouse/store food products from $1,000 to $1,300; warehouse/store feed products from $1,000 to $1,300; warehouse/store/convert textile (cut and sew) of fiber products from $1,000 to $1,300; packing/grading/sizing of food products from $700 to $1,000; and packing/grading/sizing of feed products from $700 to $1,000.

The amendment to §18.702(f)(2)(G) increases the basic fee for retailers from $200 to $250.

The amendment to §18.702(f)(3) increases the re-inspection fee from $150 to $250.

The amendment to §18.702(f) adds a new paragraph (4) to clarify the department's policy to charge a sample collection and analysis fee of $250 for harvest samples requested by producers and not required by the department.

The amendment to §18.702(f) adds a new paragraph (5) to establish a mid-year review processing fee of $50 that would be in addition to any acreage fee increase or re-inspection fees incurred by the operation.

The amendment to §18.702(h) increases the registration fee for organic businesses from $25 to $35; organic certifying agents from $50 to $75; and transaction certificate fee from $75 to $100 per certificate.

Mary Ellen Holliman, Coordinator for the Organic Certification Program, has determined that for the first five-year period the proposed amendments related to fees are in effect, there will be fiscal implications for state government due to the increase in fees collected. There will be an estimated increase in state revenue of $123,171 annually. The charging of a fee is necessary to enable the continued operation of a leaner, cost-efficient program due to a new Legislative requirement that this program generate revenue to completely offset its costs. The ability of the department to enforce statutory requirements will be impacted if the department does not assess a fee that recovers the full cost of the program. For the first five-year period the repeal and new sections are in effect there will be no fiscal implications for state government. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the proposal.

Ms. Holliman has also determined that for each year of the first five years the proposed repeals and new sections are in effect the public benefit anticipated as a result of administering the proposed repeals and new sections will be the elimination of unnecessary rules and less confusion for the regulated community. There will be no cost to micro-businesses, small businesses or individuals required to comply with the repeals and new sections. For each year of the first five years the amendments related to fees are in effect, the public benefit anticipated as a result of administering the proposed amendments will be achieving effective recovery of the costs of administering the organic certification program. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendments would affect all 277 currently certified operations and operations applying for certification. Approximately 157 land production operations would experience a fee increase ranging from $130 to $3,385 depending on the type of production and size of the operation. Ten livestock production operations would experience a fee increase ranging from $130 to $4,855 depending on the type of livestock produced and size of the operation. Approximately 14 on-farm processor operations would experience a fee increase ranging from $5 to $305 depending on the size of the operation. Approximately 46 commercial food and feed processors would experience a $300 fee increase. Approximately 14 cotton-ginning operations would experience a $200 fee increase. Approximately 24 warehousing and storage distributors would experience a $300 fee increase. Approximately 16 distributors classified as either broker/trader or packing/grading/sizing of organic products would experience a $250 fee increase. Three retailers would experience a $50 fee increase.

Comments on the proposal may be submitted to Mary Ellen Holliman, Coordinator for Organic Certification Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

4 TAC §18.2

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

The repeal of §18.2 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.2. Terms Defined.

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

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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4 TAC §18.2, §18.3

New §18.2 and §18.3 are proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.2. Terms Defined.

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

(1) Broker--An operation that facilitates the buying and selling of an agricultural product but does possess ownership rights or handle the product.

(2) Department--The Texas Department of Agriculture.

(3) Distributor--An operation that handles an agricultural product but does not conduct any processing other than non-temperature controlled storage, shipment, and enclosing product in a container.

§18.3. Adoption by Reference.

The Texas Department of Agriculture hereby adopts by reference 7 Code of Federal Regulations, Part 205, Subpart A, Definitions, §205.2.

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

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SUBCHAPTER B. APPLICABILITY

4 TAC §§18.100 - 18.103, 18.105

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

The repeal of §§18.100 - 18.103 and §18.105 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.100. What Has To Be Certified.

§18.101. Exemptions and Exclusions from Certification.

§18.102. Use of the Term "Organic".

§18.103. Recordkeeping by Certified Operations.

§18.105. Allowed and Prohibited Substances, Methods, and Ingredients in Organic Production and Handling.

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

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4 TAC §18.100

New §18.100 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.100. Adoption by Reference.

The Texas Department of Agriculture hereby adopts by reference 7 Code of Federal Regulations, Part 205, Subpart B, Applicability, §§205.100 - 205.199.

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

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SUBCHAPTER C. ORGANIC PRODUCTION AND HANDLING REQUIREMENTS

4 TAC §§18.200 - 18.207, 18.236 - 18.239, 18.270 - 18.272, 18.290

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

The repeal of §§18.200 - 18.207, 18.236 - 18.239, 18.270 - 18.272 and 18.290 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.200. General.

§18.201. Organic Production and Handling System Plan.

§18.202. Land requirements.

§18.203. Soil Fertility and Crop Nutrient Management Practice Standard.

§18.204. Seeds and Planting Stock Practice Standard.

§18.205. Crop Rotation Practice Standard.

§18.206. Crop Pest, Weed, and Disease Management Practice Standard.

§18.207. Wild-crop Harvesting Practice Standard.

§18.236. Origin of Livestock.

§18.237. Livestock Feed.

§18.238. Livestock Health Care Practice Standard.

§18.239. Livestock Living Conditions.

§18.270. Organic Handling Requirements.

§18.271. Facility Pest Management Practice Standard.

§18.272. Commingling and Contact with Prohibited Substance Prevention Practice Standard.

§18.290. Temporary Variances.

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

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4 TAC §18.200

New §18.200 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.200. Adoption by Reference.

The Texas Department of Agriculture hereby adopts by reference 7 Code of Federal Regulations, Part 205, Subpart C, Organic production and handling requirements, §§205.200 - 205.299.

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

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General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 463-4075

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SUBCHAPTER D. LABELS, LABELING, AND MARKET INFORMATION

4 TAC §§18.300 - 18.310

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

The repeal of §18.300 - 18.310 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.300. Use of the Term, "Organic".

§18.301. Product Composition.

§18.302. Calculating the Percentage of Organically Produced Ingredients.

§18.303. Packaged Products Labeled "100 Percent Organic" or "Organic".

§18.304. Packaged Products Labeled "Made with Organic (Specified Ingredients or Food Group(s))".

§18.305. Multi-ingredient Packaged Products with Less Than 70 Percent Organically Produced Ingredients.

§18.306. Labeling of Livestock Feed.

§18.307. Labeling of Nonretail Containers Used for Only Shipping or Storage of Raw or Processed Agricultural Products Labeled as "100 Percent Organic," "Organic," or "Made with Organic (Specified Ingredients or Food Group(s))".

§18.308. Agricultural Products in Other Than Packaged Form at the Point of Retail Sale That Are Sold, Labeled, or Represented as "100 Percent Organic" or "Organic".

§18.309. Agricultural Products in Other Than Packaged Form at the Point of Retail Sale That Are Sold, Labeled, or Represented as "Made with Organic (Specified Ingredients or Food Group(s))".

§18.310. Agricultural Products Produced on an Exempt or Excluded Operation.

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 June 17, 2011.

TRD-201102253
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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4 TAC §18.300

New §18.300 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.300. Adoption by Reference.

The Texas Department of Agriculture hereby adopts by reference 7 Code of Federal Regulations, Part 205, Subpart D, Labels, labeling, and market information, §§205.300 - 205.399.

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

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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SUBCHAPTER E. CERTIFICATION

4 TAC §§18.400 - 18.406

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

The repeal of §18.400 - 18.406 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.400. General Requirements for Certification.

§18.401. Application for Certification.

§18.402. Review of Application.

§18.403. On-site Inspections.

§18.404. Granting Certification.

§18.405. Denial of Certification.

§18.406. Continuation of Certification.

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

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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4 TAC §18.400

New §18.400 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.400. Adoption by Reference.

The Texas Department of Agriculture hereby adopts by reference 7 Code of Federal Regulations, Part 205, Subpart E, Certification, §§205.400 - 205.406.

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

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Dolores Alvarado Hibbs
General Counsel
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For further information, please call: (512) 463-4075

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SUBCHAPTER F. ADMINISTRATIVE DIVISION 2. COMPLIANCE

4 TAC §18.661

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

The repeal of §18.661 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.661. Investigation of Certified 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.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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4 TAC §18.661

New §18.661 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.661. Adoption by Reference.

The Texas Department of Agriculture hereby adopts by reference 7 Code of Federal Regulations, Part 205, Subpart G, Administrative, §205.661.

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

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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DIVISION 3. INSPECTION AND TESTING, REPORTING, AND EXCLUSION FROM SALE

4 TAC §18.670

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

The repeal of §18.670 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.670. Inspection and Testing of Agricultural Product to be Sold or Labeled "Organic".

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

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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4 TAC §18.670

New §18.670 is proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.670. Adoption by Reference.

The Texas Department of Agriculture hereby adopts by reference 7 Code of Federal Regulations, Part 205, Subpart G, Administrative, §205.670.

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

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Dolores Alvarado Hibbs
General Counsel
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For further information, please call: (512) 463-4075

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DIVISION 5. MISCELLANEOUS PROVISIONS

4 TAC §18.700, §18.702

The amendments to §18.700 and §18.702 are proposed under Texas Agriculture Code, §18.002, which provides the department with the authority to adopt rules for the certification of organic products; §18.006 which requires the department to set fees for the organic certification program in amounts that enable it to recover the costs of administering the program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

§18.700. Complaints.

(a) Any person with cause to believe that any provision of this chapter or the National Organic Program Regulations has been violated may file a [~~written~~] complaint in writing, or by phone, facsimile, or e-mail with the department setting forth the facts of the alleged violation.

(b) The department may investigate [~~written~~] complaints related to [~~certified organic food or fiber involving~~] businesses certified by the department.

(c) Complaints alleging a noncompliance with 7 Code of Federal Regulations, Part 205 made by [~~Written complaints related to organic food or fiber involving~~] businesses not certified by TDA may be submitted by the department to the United States Department of Agriculture National Organic Program Compliance Division for investigation or enforcement action.

(d) The department shall maintain for ten years, records of all complaints, investigations, and remedial actions. These records shall become part of the reviewing record of any proceeding involving a certified person or applicant for certification by the department [~~or by an organic certifying agent registered under this chapter~~].

§18.702. Fees.

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

(f) Fees for certification or annual update of certification are based on the following schedules and shall become effective for applications and annual updates for the 2012 [~~2010~~] certification year:

(1) Application fee - all business types - $55. [~~$50; and~~]

(2) Certification fee - based on business types. Fees are additive, with a minimum total certification fee of $350 [~~$275~~] for Producers. The maximum certification fee per land producer application or annual update of certification is $20,000. The maximum certification fee per livestock producer application or annual update of certification is $8,000.

(A) Producer (land). Fees for land in crop production at any time during the year (including actual production acres - harvested crops, hay and livestock feed grains; and including buffer zones that are harvested and sold as conventional crops) are as follows:

(i) less than one acre: $350 [~~$225~~];

(ii) one to less than five acres: $450 [~~$325~~];

(iii) five to less than 25 acres: $650 [~~$500~~];

(iv) 25 to less than 50 acres: $800 [~~$650~~];

(v) 50 to 100 acres: $1,000 [~~$800~~]; and

(vi) greater than 100 acres: $1,000 [~~$850~~] for the first 100 acres + $150 [~~$100~~] for each additional increment or portion of 100 acres.

(B) Producer (land). Fees for land not in crop production or pasture for the entire year (including [~~pasture,~~] green manure crops, cover crops, buffer zones that are not harvested, fallow land and range land) are as follows:

(i) up to 100 acres: $200 [~~$100~~];

(ii) greater than 100 acres: $200 [~~$100~~] for the first 100 acres + $15 [~~$10~~] for each additional increment or portion of 100 acres;[~~.~~]

(iii) (No change.)

(C) Producer (land). Greenhouse, indoor or outdoor container production areas shall include actual production area and required buffer zones. Fees for greenhouse, indoor or outdoor container production are:

(i) less than 1,000 sq. ft.: $200 [~~$100~~];

(ii) 1,000 to 3,000 sq. ft.: $250 [~~$150~~]; and

(iii) greater than 3,000 sq. ft.: $250 [~~$150~~] for the first 3,000 sq. ft + $125 [~~$100~~] for each additional increment or portion of 3,000 sq. ft.

(D) Producer (livestock). Livestock production fees shall be based on the land area used to produce the livestock, with a separate fee required for each type of livestock production, plus a fee for the number of animals of each species [~~type~~]. Fees for livestock production are as follows:

(i) land area/species [~~type~~] of livestock:

(I) for each species [~~type~~] of livestock raised on less than five acres: $150 [~~$100~~];

(II) for each species [~~type~~] of livestock raised on five to 50 acres: $200 [~~$150~~];

(III) for each species [~~type~~] of livestock raised on greater than 50 acres: $400 [~~$300~~]; and

(ii) number of animals:

(I) Bovine [~~cattle, beef or dairy~~] (per 100 animals): $100 [~~$50~~];

(II) Caprine, Ovine, Porcine, or Equine [~~goats, sheep, swine~~] (per 100 animals): $50 [~~$25~~]; and

(III) Avian [~~chickens, turkeys, other poultry~~] (per 1,000 birds): $50. [~~$25; and~~]

~~*[(IV)* aquatic species (per production unit): $50.]~~

(E) Processors. Fees for certification or annual update of a certification for each processing facility are based on the following schedule (if more than one category applies, fees are additive.):

(i) certified producer with on-farm state licensed kitchen processing [~~own~~] certified food ingredients: $200 [~~$100~~];

~~*[(ii)* certified producer with on-farm state licensed kitchen processing certified food ingredients other than his own: $100;]~~

(ii) [~~(iii)~~] certified producer with on-farm processing of [~~own~~] certified feed: $200 [~~$100~~];

~~*[(iv)* certified producer with on-farm processing of certified feed other than his own: $100;]~~

(iii) [~~(v)~~] certified producer with on-farm storage or processing of [~~own~~] certified milk products: $200 [~~$100~~];

~~*[(vi)* certified producer with on-farm storage or processing of certified milk products other than his own: $100;]~~

(iv) [~~(vii)~~] cotton ginning: $700 [~~$500~~];

(v) [~~(viii)~~] textile manufacturing: $1,300 [~~$1,000~~];

(vi) [~~(ix)~~] commercial food processor: $1,300 [~~$1,000~~]; and

(vii) [~~(x)~~] commercial feed processor: $1,300 [~~$1,000~~].

(F) Distributors. Fees for certification or annual update of a certification for each distribution facility are based on the following schedule:

(i) broker/trader food products: $950 [~~$700~~];

(ii) broker/trader feed products: $950 [~~$700~~];

(iii) broker/trader fiber products: $950 [~~$700~~];

(iv) warehousing/storage of food products: $1,300 [~~$1,000~~];

(v) warehousing/storage of feed products: $1,300 [~~$1,000~~];

(vi) warehousing/storage/textile converter (cut and sew) of fiber products: $1,300 [~~$1,000~~];

(vii) packing/grading/sizing of food products: $1,000 [~~$700~~]; and

(viii) packing/grading/sizing of feed products: $1,000 [~~$700~~].

(G) Retailers. Fees for certification or annual update of certification for each retail location are based on the following schedule:

(i) basic fee, which includes handling of fresh organic produce in the produce department: $250 [~~$200~~]; and

(ii) (No change.)

(3) Re-inspection fee: $250 [~~$150~~] per re-inspection.

(4) Sample collection and analysis fee for harvest samples not required by the department: $250 per sample.

(5) Mid-year processing review fee: $50 per review. This fee is in addition to any acreage change or re-inspection fee.

(g) A portion of the certification fee may be refunded if the application is withdrawn prior to a certification decision. Refunds will be prorated based on the steps of the certification process that have been completed.

(1) - (4) (No change.)

(5) Once a certification decision is made [~~After final review~~], none of the certification fee shall be refunded.

(h) Registration Fees: Fees for application or renewal of registration are based on the following schedules:

(1) Organic businesses: $35 [~~$25~~];

(2) Organic certifying agents: $75. [~~$50;~~]

(i) Transaction Certificate Fee: $100 [~~$75~~] per certificate.

(j) Late Fees. A person who fails to submit an annual update or registration renewal application and prescribed fee on or before the due date of the certification update or registration renewal shall pay, in addition to the update or renewal fee, a late fee of:

(1) (No change.)

(2) 100 percent if received by the department [~~from at least~~] 91 [~~but less than 365~~] days after the due 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.

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TRD-201102261

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075

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CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER T. NOXIOUS AND INVASIVE PLANTS

4 TAC §19.301

The Texas Department of Agriculture (the department) proposes new §19.301 to implement the provisions of House Bill (HB) 338 passed during the 82nd Legislative Session. House Bill 338 requires public entities other than the department to provide a disclaimer with any noxious or invasive terrestrial plant species list produced by the public entity for distribution to commercial or residential landscapers, if the list includes at least one such plant species currently growing in Texas. The disclaimer must state: "THIS PLANT LIST IS ONLY A RECOMMENDATION AND HAS NO LEGAL EFFECT IN THE STATE OF TEXAS. IT IS LAWFUL TO SELL, DISTRIBUTE, IMPORT, OR POSSESS A PLANT ON THIS LIST UNLESS THE TEXAS DEPARTMENT OF AGRICULTURE LABELS THE PLANT AS NOXIOUS OR INVASIVE ON THE DEPARTMENT'S PLANT LIST." House Bill 338 specifies the format required for the disclaimer when such lists are published in printed materials such as newspapers, trade publications, notices, or circulars or when published on an internet website. House Bill 338 directs the department to adopt rules requiring the disclaimer and specifying the required format of the disclaimer when publication of the list is through billboards, radio productions, television productions, and other media not expressly listed or described in the bill. Section 19.301 lists examples of printed material and provides guidelines for implementation of the disclaimer requirement for a billboard, radio production, or a television production.

Dr. Shashank Nilakhe, State Entomologist, has determined that for the first five years the new section is in effect there will be no fiscal implication for the state or local government as a result of enforcing or administering the new section. There will be no cost to individuals, micro-businesses, or small businesses since they are not required to add the disclaimer on the printed material, or on other types of media such as a billboard, radio production or a television production. There will be a small cost to public entities to add the disclaimer on the printed material and other types of media; however, the cost cannot be determined due to the lack of data needed to make such a determination.

Dr. Nilakhe has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the new section will be that commercial or residential landscapers will become aware that a list of terrestrial plants produced by a public entity other than the department is a recommendation and that these plants can be purchased, sold or distributed legally provided they are not on the department's noxious and invasive plants list.

Written comments on the proposal may be submitted to Dr. Shashank Nilakhe, State Entomologist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

New §19.301 is proposed under the Texas Agriculture Code, §71.154, as added to Chapter 71 by HB 338, which authorizes the department to adopt rules as necessary to provide a disclaimer for inclusion on a billboard, radio production, or a television production; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules

in preparation for the implementation of legislation that has become law, but has not taken effect.

The code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.301. Disclaimer Required for Certain Plant Lists Produced by Public Entities Other Than the Department; Required Format.

(a) A public entity other than the department that produces for public distribution to commercial or residential landscapers a list of noxious or invasive terrestrial plant species that includes at least one species currently growing in Texas shall include the disclaimer prescribed by §71.154 of the Texas Agriculture Code.

(b) If the list described in subsection (a) of this section is published in a television broadcast, the disclaimer prescribed by Texas Agriculture Code, §71.154, must be included within the broadcast and either:

(1) read immediately following publication of the list; or

(2) appear visually in a legible graphic displayed for at least 15 seconds during or immediately following publication of the list.

(c) If the list described in subsection (a) of this section is published in a radio broadcast, the disclaimer prescribed by Texas Agriculture Code, §71.154, must be included within the broadcast and read immediately following publication of the list.

(d) If the list described in subsection (a) of this section is placed on a billboard, the disclaimer prescribed by Texas Agriculture Code, §71.154 must also be placed on the same billboard and the height of the disclaimer lettering must be no less than one-fifth of the height of the lettering of the list on the billboard.

(e) If the list described in subsection (a) of this section is placed on or within media not expressly listed or described in Texas Agriculture Code, §71.154 or subsections (b) - (d) of this section, the disclaimer prescribed by Texas Agriculture Code, §71.154 must be placed on or within the other media using sufficient size or duration of presentation so as to be conspicuously visible and legible to, as well as accessible by, those viewing the published list.

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 June 17, 2011.

TRD-201102245
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER A. CONTRACT FORMS

7 TAC §25.3

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §25.3, concerning requirements that apply to a non-model contract or waiver. The amended rule is proposed to implement statutory changes.

House Bill 3004 (HB 3004), 82nd Texas Legislature, 2011, amended Subchapter H of Chapter 154 of the Finance Code regarding the Prepaid Funeral Guaranty Fund. The amendments to Chapter 154 extend guaranty fund coverage to the performance of third party funeral providers under prepaid funeral benefit contracts purchased after the effective date of HB 3004. The proposed amendments to §25.3 would conform language required in prepaid funeral contracts to reflect this statutory change.

Section 25.3(g) sets out disclosures that must be included in a prepaid funeral benefits contract. The proposed amendment to §25.3(g)(4) changes the disclosure regarding the coverage provided by the Prepaid Funeral Guaranty Fund to reflect the expanded coverage provided by HB 3004. Prepaid Funeral Benefits Contracts must now inform purchasers that the Prepaid Funeral Guaranty Fund guarantees performance of not only the prepaid funeral seller, but in addition, the performance of the designated funeral provider.

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 will be to make §25.3 consistent with the new provisions of the Finance Code.

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. Any cost incurred by permit holders to update contract forms is the result of statutory change and not a result of the amendment to this rule.

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 August 1, 2011. 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 §154.051, which authorizes the commission to adopt reasonable rules concerning the filing of prepaid funeral benefits contracts and the enforcement and administration of Chapter 154; Finance Code §154.151, which requires the department to approve a sales contract form for prepaid funeral benefits before the form is used and to provide model contracts that are easily read and written in plain language.

Finance Code, §154.051 and §154.151 are affected by the proposed amended section.

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

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

(g) Default. Your proposed prepaid funeral benefits contract must explain events and consequences of default under the contract and under each insurance policy if the contract is insurance-funded, including:

(1) - (3) (No change.)

(4) [~~if the seller is not the funeral provider designated in the contract,~~] a statement that the Prepaid Funeral Guaranty Fund [~~only~~] guarantees [~~the seller's obligations and does not guarantee~~] performance of the prepaid funeral seller and the designated [~~by the~~] funeral provider, as well as associated administrative functions required by law.

(h) - (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.

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TRD-201102224
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: August 19, 2011
For further information, please call: (512) 475-1300

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SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §25.22

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §25.22, concerning Joint Memorandum of Understanding. The amended rule is proposed to update and to conform the memorandum of understanding to current practices.

Texas Occupations Code §651.159 requires the Funeral Services Commission, the Department of Insurance, and the Department of Banking to adopt by rule a joint memorandum of understanding relating to prepaid funeral services and transactions. The purpose of the memorandum of understanding is to outline the responsibilities of each agency in regulating prepaid funeral services and transactions, establish procedures regarding complaint handling, coordinate identification of deceptive trade practices and distribution of customer information, and coordinate the setting of administrative penalties.

The proposed amendments to §25.22 generally update and clarify the language throughout the memorandum of understanding. In addition, proposed amendments to subsection (a) clarify that information shared among the agencies need not be marked confidential for it to be treated as such. Proposed amendments to subsection (b) generally clarify the language and update citations. Changes to subsection (b)(2) simplify and clarify the description of the department's responsibilities by stating that all actions under Chapter 154 of the Finance Code and related agency rules are the department's responsibility.

Subsection (c)(3) is proposed to be deleted because each agency has developed procedures for resolving complaints and it is no longer necessary for the agencies to coordinate the establishment of such procedures.

Since the adoption of the current memorandum of understanding, each agency that is party to the memorandum has developed and adopted internal complaint procedures for violations related to prepaid funeral benefits and the agencies have developed procedures for investigating, sharing and referring complaints. With the passage of time, these procedures have evolved and the detailed requirements and timeline set out in subsection (d) for investigating complaints is no longer relevant. Therefore, proposed amendments to subsection (d) delete outdated and unnecessary requirements and add language that updates and reflects the current policies and practices regarding investigation of complaints.

Proposed subsection (f) updates the provisions related to providing information to consumers by deleting transition language and replacing it with language referring to websites and toll-free numbers currently in place.

Proposed subsection (g) updates the provisions related to administrative penalties by deleting outdated language and replacing it with language reflecting the agencies' current practices.

Subsection (h) describes meetings to be held to develop cooperative regulation. Mandatory meetings are no longer necessary. The agencies have over time developed procedures which adequately coordinate each agency's responsibilities in regulating prepaid funeral services and transactions. Communications are ongoing and continuous. Therefore, subsection (h) is proposed to be deleted.

Deputy Commissioner Stephanie Newberg 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 to provide updated information regarding the coordination of responsibilities related to regulation of prepaid funeral benefits.

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 August 1, 2011. 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 amendments are proposed under Occupations Code, §651.159, which requires the Funeral Services Commission, the Department of Insurance, and the Department of Banking to adopt by rule a joint memorandum of understanding relating to prepaid funeral services and transactions; and Finance Code §154.051, which provides that the department may adopt reasonable rules relating to the enforcement and administration of Finance Code Chapter 154.

Occupations Code, §651.159, is affected by the proposed amended section.

§25.22. Joint Memorandum of Understanding.

(a) Pursuant to Occupations Code, §651.159, the Texas Funeral Service Commission (herein referred to as the "TFSC"), the Texas Department of Insurance (herein referred to as the "TDI"), and the Texas Department of Banking (herein referred to as the "DOB") hereby adopt the following joint memorandum of understanding (JMOU) relating to prepaid funeral benefits as defined in Finance Code, Chapter 154 [~~services and transactions~~]. The TFSC, TDI, and DOB intend this memorandum of understanding to serve as a vehicle to assist the three agencies in their regulatory activities, and to make it as easy as possible for a consumer with a complaint to have the complaint acted upon by all three agencies, where appropriate. In order to accomplish this end, where not statutorily prohibited, the three agencies will share information between the agencies which may not be available to the public generally under the Public Information Act, Government Code, Chapter 552. Such information will be transmitted between agencies with the understanding [~~notation on the information~~] that it is considered confidential, is being furnished to the other agencies in furtherance of their joint responsibilities as state agencies in enforcing their respective statutes, and that it may not be disseminated to others except as required.

(b) Responsibilities of each agency in regulating prepaid funeral benefits [~~services and transactions~~].

(1) The Texas Funeral Service Commission is responsible for the following:

(A) licensing funeral directors, embalmers, provisional funeral directors, provisional embalmers, crematory, and funeral establishments. The TFSC may refuse to license a person or establishment which violates Finance Code, Chapter 154, under Occupations Code, §651.460(b)(3);

(B) taking action under Occupations Code, §651.460(b)(3) against any licensee violating Finance Code, Chapter 154; and[~~, under Occupations Code, §651.460(b)(3)~~];

(C) taking action under Occupations Code, §651.460(b)(3) against any funeral director in charge, crematory owner, and/or funeral establishment owner for violations of Finance Code, Chapter 154, by persons directly or indirectly connected to the crematory or funeral establishment[~~, under Occupations Code, §651.460(b)(3)~~].

(2) The Texas Department of Banking is responsible for administering Finance Code, Chapter 154 and 7 Texas Administrative Code (TAC), Chapter 25, including, but not limited to, the following:

(A) bringing enforcement actions against any person, including licensees of TFSC and TDI, who violate Finance Code, Chapter 154 and/or 7 TAC, Chapter 25; and

(B) all other actions authorized by Chapter 154 and 7 TAC, Chapter 25.

[~~(A) issuing permits to sell prepaid funeral services or funeral merchandise pursuant to Finance Code, §154.103;~~]

[~~(B) approving forms for sales contracts pursuant to Finance Code, §154.151;~~]

[~~(C) canceling or refusing to renew permits pursuant to Finance Code, §154.109; and providing notice of alleged violations to the attorney general of Texas and to sellers pursuant to Finance Code, §154.409 and §154.410;~~]

[~~(D) approving the release or withdrawal of funds under certain circumstances or for certain purposes, pursuant to Finance Code, §154.261(b);~~]

[~~(E) providing for reporting requirements and performing examinations under Finance Code, §154.052 and §154.053; and~~]

[~~(F) maintaining a guaranty fund with respect to prepaid funeral benefits owned by trusts, pursuant to Finance Code, §154.351.~~]

(3) The Texas Department of Insurance is responsible for the following:

(A) regulating [~~licensed~~] insurers that issue or propose to issue life insurance policies or annuity [~~insurance/annuity~~] contracts which may fund prepaid funeral contracts;

(B) regulating any person [~~individuals/entities~~] that performs [~~perform~~] the acts of an insurance agent [~~agent(s)~~] as defined in the Insurance Code, Chapter 4001 [~~Article 21.02~~] and Insurance Code, Chapter 101;

(C) regulating insurance policies and annuity [~~insurance/annuity~~] contracts that may fund prepaid funeral contracts;

(D) regulating unfair trade practices relating to the insurance policies and annuity [~~insurance/annuity~~] contracts that [~~which~~] may fund prepaid funeral contracts pursuant to the Insurance Code, Chapter 542 [~~Article 21.21~~];

(E) regulating unfair claims settlement practices by insurance companies pursuant to the Insurance Code, Chapter 542 [~~Article 21.21-2~~].

(c) Procedures used by each agency in exchanging information with or referring complaint to one of the other agencies.

(1) (No change.)

(2) Referral of complaints for handling. When an agency receiving a complaint refers the complaint to another agency for handling, the receiving agency will contact the complainant in writing informing him or her of the referral, provide [~~and providing~~] contact information to the reviewing agency, and encourage [~~encouraging~~] the complainant to recontact the receiving agency if she or he has any problem with the reviewing agency's processing of the complaint.

[~~(3) Complaint procedures. The three agencies will work together to establish procedures to ensure complaints will be fully resolved by the reviewing agency.~~]

(d) Procedures to be used by each agency in investigating a complaint.

(1) All agencies.

(A) Each agency will develop [~~an~~] internal complaint procedures [~~manual~~] for violations relating to prepaid funeral benefits [~~services and/or transactions~~]. The procedures [~~manual~~] should at a minimum provide for:

~~(i)~~ ~~cross-checking the other two agencies' list of licensees against the investigating agency's list;~~

~~(ii)~~ ~~background checks on disciplinary proceedings and license eligibility, including background checks into the two other agencies' complaints, disciplinary proceedings, and licensing process involving the same licensee if any, where not prohibited by law;~~

~~(iii)~~ ~~outlining of relevant law for each agency which checkpoint steps to ensure all relevant information has been obtained from complainant and references to applicable legal provisions;~~

(i) [~~(iv)~~] identification of necessary data and documents to be obtained from the complainant; and

(ii) [~~(v)~~] such other steps deemed necessary for the agency to perform an adequate and appropriate investigation.

(B) Each agency may assist either of the other agencies with investigations relating to prepaid funeral benefits.

[~~(B) Each agency will maintain its centralized complaint resolution process with a long-term goal of integrating the complaint resolution process, which includes the complaint tracking system, with the other agencies in the most effective, cost-efficient manner.~~]

[~~(C) Within four months from the final adoption of the JMOU by rulemaking; the DOB, TFSC, and TDI will develop one or more complaint and referral forms that are substantially similar in content and format to be used by each agency in processing complaints relating to prepaid funeral services and/or transactions.~~]

[~~(D) Each reviewing agency will provide periodic, no less than quarterly, status reports on the complaint investigation to the reviewing agency or agencies. In addition, the reviewing agency will contact the complainant to inform him or her of the status of the investigation.~~]

[~~(E) Each agency will develop with the other agency, or other two agencies, a written plan for conducting joint investigations where appropriate which, at a minimum, establishes a case manager for the investigation, establishes the divisions of duties among the agencies, and establishes a time-line for completion of the investigation.~~]

[~~(F) As soon as possible following the final adoption of the JMOU by rulemaking, the DOB, TFSC, and TDI will each ensure its complaint resolution procedure is accessible to the public by reviewing its procedures, forms, brochures, and letters to determine what steps, if any, are needed to remedy problems of accessibility. The DOB, TFSC, and TDI will implement the needed steps as soon as possible thereafter.~~]

[~~(G) The TDI, DOB, and TFSC commit to a long-term goal with a five-year planning horizon to develop an efficient and cost-effective way to ensure that the three agencies can readily exchange information and that there is effective and easy access by each of the three agencies to the information and data held by the other agencies relating to complaints and information regarding licensees in the prepaid funeral services area.~~]

(2) The Texas Funeral Service Commission.

(A) Complaints received by the TFSC will be logged in and investigated as required under Occupations Code, Chapter 651. A complaint about violations of Chapter 154 and/or 7 TAC, Chapter 25, will be referred to the DOB. [~~The TFSC, in accordance with Occupations Code, Chapter 651, will investigate violations of prepaid funeral services only if the investigation does not interfere with or duplicate an investigation conducted by the DOB.~~]

(B) If disciplinary action against a licensee of the TFSC is found to be appropriate, the matter will be referred to the Administrator of Consumer Affairs & Compliance Division of TFSC. [~~The TFSC will, upon request, assist the DOB and/or the TDI with investigations.~~]

(C) If the complaint involves a matter handled by either the DOB or TDI, as well as a violation of the TFSC statutes or regulations, it will be referred to the appropriate agency for further action. DOB will be primarily responsible for enforcing violations of Chapter 154 or 7 TAC, Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort.

(D) In the event that the TFSC issues an order against a person or entity who also sells or provides prepaid funeral benefits or is a licensee under the jurisdiction of TDI, the TFSC will send the DOB and the TDI a copy of the order.

(3) Texas Department of Banking.

(A) (No change.)

(B) If disciplinary action against a person who violated Finance Code, Chapter 154 or 7 TAC, Chapter 25 [~~DOB permittee~~] is appropriate, the matter will be referred to the agency's legal staff.

(C) If the complaint involves a matter handled by either the TDI or TFSC, as well as a violation of Finance Code, Chapter 154 or 7 TAC, Chapter 25 [~~the DOB statutes or regulations~~], the DOB will coordinate [~~the investigation~~] with those [~~either or both of these~~] agencies[~~, as appropriate~~]. DOB will be primarily responsible for enforcing violations of Chapter 154 or 7 TAC, Chapter 25. [~~The DOB will, upon request, assist the TFSC and/or TDI with investigations.~~]

(D) In the event that the DOB issues an order against a person or entity who is a licensee under the jurisdiction of the TFSC or the TDI, the DOB will send the TFSC and the TDI a copy of the order. [~~a licensee under the TFSC's jurisdiction is found to have violated one or more provisions of Finance Code, Chapter 154, the DOB will inform the TFSC of the violation(s) in writing and provide documentation supporting the occurrence of the violation(s).~~]

(4) Texas Department of Insurance.

(A) Complaints received by the Consumer Protection Division [~~consumer services area~~] of TDI will be logged in and investigated, except that if a complaint is solely about violations of Chapter 154 and/or 7 TAC, Chapter 25, the complaint will be referred to the DOB. Other areas of TDI [~~the agency~~] can be called upon for assistance in the investigation of the complaint where appropriate.

(B) If disciplinary or other regulatory action against a licensee of the TDI is found to be appropriate, the matter will be referred to the Compliance Intake Unit of TDI.

(C) If the complaint involves a matter handled by either the DOB or TFSC, as well as a violation of the TDI statutes or regulations, it [~~the investigation~~] will be referred to the appropriate agency for further action. DOB will be primarily responsible for enforcing violations of Chapter 154 or 7 TAC, Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort. [~~coordinated with either or both of those agencies.~~]

(D) In the event that the Commissioner of Insurance issues an order against a person that also sells, funds or provides prepaid funeral benefits, or is subject to the jurisdiction of the DOB or the TFSC, the TDI will send the DOB and the TFSC a copy of the order. [~~TDI will, upon request, assist the TFSC and/or DOB with investigations.~~]

(e) Actions the agencies regard as deceptive trade practices.

(1) The TFSC, the DOB, and the TDI regard as deceptive trade practices those actions found under [~~the Texas~~] Business and Commerce Code, §17.46.

(2) With respect to trade practices within the business of insurance, the TDI regards as deceptive trade practices those actions found under [~~the~~] Insurance Code, Chapter 541, [~~Article 21.21, and~~] other chapters [~~articles~~] of the Code and the regulations promulgated by the TDI thereunder.

(f) Information the agencies will provide consumers and when that information is to be provided.

(1) TFSC, DOB, and TDI will continue to provide consumers with the brochure entitled "Facts About Funerals" developed

by TFSC (in Spanish and in English). DOB will continue to provide consumers with information on its website in accordance with Finance Code, §154.132, including the informational brochure developed in accordance with Finance Code, §154.131. [As soon as possible after the final adoption of the JMOU by rulemaking, the agencies will update the brochure to provide information about insolvency, the guaranty funds, and consumer complaints, and make the brochure accessible under the terms of the Americans with Disabilities Act. The agencies will provide other relevant consumer brochures to each other.]

(2) DOB, TDI, and TFSC will maintain their toll-free numbers. [TDI will maintain its toll-free number, and TFSC and DOB will each work towards consumer access via a toll-free number. Each agency will include its toll-free number as a prepaid funeral consumer protection resource in the respective agencies' consumer information materials. DOB, TFSC, and TDI will routinely inform consumers of options within the agency's knowledge available to them to resolve the complaint.]

(3) TFSC, DOB, and TDI, as state agencies, are subject to the Public Information Act, [Texas] Government Code, Chapter 552. Upon written request, the three agencies will provide consumers with public information which is not exempt from disclosure under that Act. As noted in the preamble to this JMOU, the agencies may, where not statutorily prohibited, exchange information necessary to fulfill their statutory responsibilities among each other, without making such information public information under the Public Information Act.

(g) Administrative penalties each agency imposes for violations.

[(1) All agencies.]

[(A) DOB, TDI, and TFSC will create a working group to develop recommendations concerning the three agencies working together on enforcement actions using the resources of the attorney general and/or prosecutorial or investigative agencies, where appropriate.]

[(B) DOB, TDI, and TFSC will refer deceptive trade practices and other such violations to the Federal Trade Commission and/or the attorney general whenever appropriate.]

(1) [(2)] Texas Funeral Service Commission. The TFSC may impose an administrative penalty, issue a reprimand, or revoke, suspend, or place on probation any licensee who violates Finance Code, Chapter 154. TFSC administrative penalties vary based on the violation; TFSC sanctions are imposed under Occupations Code, Chapter 651. [The recommended range of administrative penalty for a violation is $1,000 to $5,000 for each violation of Finance Code, Chapter 154, by a person directly or indirectly connected to the funeral establishment, under 22 TAC §201.11(2)(D)(vi) (relating to Disciplinary Guidelines).]

(2) Texas Department of Banking. DOB administrative penalties vary based on the violation; DOB sanctions are imposed under Finance Code, Chapter 154.

[(3) Texas Department of Banking. The DOB may impose the following administrative penalties:]

[(A) cancel a permit or refuse to renew a permit pursuant to Finance Code, §154.109;]

[(B) seize prepaid funeral funds and records of a prior permit holder pursuant to Finance Code, §154.412.]

(3) [(4)] Texas Department of Insurance. TDI administrative penalties vary based on the violation; TDI sanctions are imposed under [the] Insurance Code, Chapter 82 [Article 1.10].

[(h) Meetings for developing cooperative efforts in regulation.]

[(1) DOB and TDI will develop an insolvency alert among themselves to minimize the drain of trust funds and premiums consistent with their respective statutory provisions. They will also clarify each agency's responsibility to access the respective guaranty fund vis-a-vis the other agency.]

[(2) DOB, TDI, and TFSC will develop methods to coordinate the efforts of the agencies to articulate the funeral providers' responsibility in the event of seller and/or insurance company insolvency.]

[(3) Each agency should seek input from the other agencies on any proposed agency regulations relating to prepaid funeral services and/or transactions; and, where appropriate, legislative recommendations concerning prepaid funeral services and/or transactions.]

[(4) The three agencies will provide lists of their key contact personnel and their telephone numbers to each other.]

[(5) In order to better accomplish the exchange of information and coordination of regulation described in this memorandum of understanding, the appropriate staff of the TFSC, DOB, and TDI shall meet, at a minimum, once a year to discuss matters of mutual regulatory concern and share updates of the regulations promulgated by the respective agencies.]

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 June 17, 2011.

TRD-201102225
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: August 19, 2011
For further information, please call: (512) 475-1300

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CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.13

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.13, concerning new money services businesses license applications. The amended rule is proposed to make processing of new license applications more efficient.

Under Finance Code §151.203(a)(3), the Banking Commissioner may require that an application include additional information or documentation not mentioned in the statute, for the purpose of determining whether the applicant qualifies for a license. Pursuant to that authority, the Department has long required an investigative background report, prepared by an acceptable search firm, for any principal, control shareholder, or responsible individual of an applicant, who does not or has not resided in the U.S. for at least seven years. Finance Code §151.202 sets out qualifications required to obtain a money services business license. These qualifications include demonstrating that the financial responsibility and condition, financial and business experience, competence, character, and general fitness of each principal of, person in control of, principal of a person in control of, and proposed responsible individual of the applicant is satisfactory to the Commissioner.

This section also provides standards regarding the criminal backgrounds of persons associated with the applicant. As part of the Department's application process, background checks are performed on applicants to determine if required qualifications have been met. For individuals who have long resided in the U.S., a number of background resources are available to the Department. However, for individuals who reside outside the U.S. or who have resided here for a short time, sources of background information are more limited.

Amended §33.13 would clarify for the benefit of applicants that the Department will not begin processing an application without these required search firm reports. This clarity would also eliminate delays in the processing of applications that often occur when the Department must wait for reports that applicants neglect to file with the application.

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 clearer notice to applicants as to the required application materials, and more efficient processing of applications by 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. The background reports required by the amendment are already required as part of the application process.

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 August 1, 2011. 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 amendments are proposed under Finance Code §151.102, which authorizes the commission to adopt rules to administer and enforce Chapter 151, and under Finance Code §151.203(a)(3) which authorizes the Banking Commissioner to specify requirements for the application of a new license.

Finance Code §151.203 and §151.204 are affected by the proposed amended section.

§33.13. How Do I Obtain a New License?

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

(d) What is required for the department to begin processing my application?

(1) Your application must provide and be accompanied by the following at the time you submit the application to the department:

(A) (No change.)

(B) an application fee, in the amount established by commission rule, in the form of a check payable to the Texas Department of Banking; [~~and~~]

(C) all required search firm reports; and

(D) [~~(C)~~] if you are applying for a money transmission license:

(i) security in the amount of at least $300,000 that complies with Finance Code, §151.308, and an undertaking to increase the amount of the security if additional security is required under that section; and

(ii) an audited financial statement demonstrating that you satisfy the minimum net worth requirement established by Finance Code, §151.307(a), and that, if the license is issued, you are likely to maintain the required minimum; or

(E) [~~(D)~~] if you are applying for a currency exchange license:

(i) security in the amount of $2,500 that complies with Finance Code, §151.308; and

(ii) a financial statement demonstrating your solvency.

(2) The department may refuse to process and may return to you an application submitted without all the items identified in paragraph (1) of this subsection [~~section~~]. If you submit your application fee, but fail to include one or more of the other items identified in paragraph (1), the department will return or refund the fee or, if you promptly submit an application that includes the missing items, apply the fee to your subsequent application.

(e) - (j) (No change.)

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

Filed with the Office of the Secretary of State on June 17, 2011.

TRD-201102226
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: August 19, 2011
For further information, please call: (512) 475-1300

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §84.102

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.102, concerning Definitions, §84.202, concerning Default Charge, and §84.602, concerning Filing of New Application, relating to the regulation of motor vehicle retail installment sales.

In general, the purpose of the amendments is to implement changes resulting from the enactment of House Bill (HB) 2559 by the 82nd Texas Legislature. The proposed amendments remove unnecessary language concerning commercial vehicles that will be contained in new Texas Finance Code, Chapter 353, and add clarifying language reflecting the applicability of the licensing requirements to commercial vehicle dealers.

Texas Finance Code, Chapter 348 currently encompasses retail installment transactions involving both consumer and commercial vehicles. Over time, certain provisions have been added that apply to only consumer vehicles, others that apply to solely commercial vehicles, and many that apply to both. Additionally, exceptions have often been included within generally applicable provisions to exempt one type of vehicle or the other.

HB 2559, which has been signed by the governor, eases the ability of licensees to comply with the laws related to commercial vehicle retail installment transactions by placing them into new Chapter 353. The new chapter does not change any substantive requirements currently applicable to commercial vehicles, as a retail installment contract for a commercial vehicle executed today must comply with the same rates, charges, and other legal standards as a contract completed after HB 2559 is effective. In other words, HB 2559 can be characterized as a relocation of Chapter 348 provisions regarding commercial motor vehicle installment sales into Chapter 353. In addition, the new statute also contains applicable commercial vehicle rule concepts and language from the current regulations under 7 TAC Chapter 84. The proposed amendments mirror these statutory changes.

The proposed amendments to §84.102 update a statutory reference and remove unnecessary fees concerning commercial vehicles. In §84.102(3), the definition of commercial vehicle is being revised to reference its new location under HB 2559: Texas Finance Code, §353.001. The language concerning the acquisition fee for a heavy commercial vehicle is proposed for deletion from §84.102(15), the definition for scheduled installment earnings method. Likewise, in the sum of the periodic balances method (Rule of 78s) defined in §84.102(19)(A), the heavy commercial vehicle acquisition fee will be removed. Additionally, the alternative calculation for heavy commercial vehicles under current §84.102(19)(B) is proposed for deletion, with the relettering of the remaining subparagraphs.

The proposed amendments to §84.202 serve to remove the default periods used for commercial vehicles. In §84.202(f), current paragraph (2) regarding heavy commercial vehicles will be deleted. With the elimination of current §84.202(f)(2), the remaining language under paragraph (1) will be contained in revised subsection (f), with the removal of the unnecessary tagline.

Section 84.602, which outlines the requirements for filing new license applications, has been revised to reflect the applicability of the licensing requirements of 7 TAC Chapter 84, Subchapter F to both Chapter 348 and 353 of the Texas Finance Code. References to Chapter 353 have been added to the first sentence and to §84.602(1)(B). While the new statute in Chapter 353 contains its own licensing provisions, they are identical in substance to those contained in Chapter 348. The agency believes that these amendments provide the most efficient update to the agency's rules so that commercial vehicle dealers may utilize the Subchapter F licensing provisions to obtain a Chapter 353 license.

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 proposed amendments will be that the commission's rules will implement recent legislative concepts in order to provide greater clarity, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

There is no anticipated cost to persons who are required to comply with the amendments 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 as proposed.

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 proposal is 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. Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter. Additionally, Texas Finance Code, §353.513, as enacted by HB 2559 (Acts 2011, 82nd Leg.), grants the commission the authority to adopt rules to enforce the commercial motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348 and new Chapter 353 (Acts 2011, 82nd Leg.).

§84.102. Definitions.

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

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

(3) Commercial vehicle--A motor vehicle that is not used primarily for personal, family, or household use and has the same meaning as defined by Texas Finance Code, §353.001 [~~§348.001(a-1)~~].

(4) - (14) (No change.)

(15) Scheduled installment earnings method--The scheduled installment earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal balance. Under this method, a finance charge refund is calculated by deducting the earned finance charges from the total finance charges. If prepayment in full or demand for payment in full occurs between payment due dates, a daily rate equal to 1/365th of the annual rate is multiplied by the unpaid principal balance. The result is then multiplied by the actual number of days from the date of the previous scheduled installment through the date of prepayment or demand for payment in full to determine earned finance charges for the abbreviated period. In addition to the earned finance charges calculated in this paragraph, the creditor may also earn [~~a $150 acquisition fee for a heavy commercial vehicle, or~~] a $25 acquisition fee [~~for other vehicles,~~] so long as the total of the earned finance charges and the acquisition fee do not exceed the finance charge disclosed in the contract. The creditor is not required to refund unearned finance charges if the refund is less than $1.00. The scheduled installment earnings method may be used with either an irregular payment contract or a regular payment contract. The computation of finance

charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(16) - (18) (No change.)

(19) Sum of the periodic balances method (Rule of 78s).

(A) Under this method, the finance charge refund is calculated as follows:

(i) Subtract an acquisition fee not greater than [~~$150 for a heavy commercial vehicle, or~~] $25 [~~for other vehicles,~~] from the total finance charge.

(ii) Multiply the amount computed in clause (i) of this subparagraph by the refund percentage computed below. The result is the finance charge refund.

(iii) Compute the refund percentage by:

(I) Computing the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full; that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Dividing the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

[~~(B) As an alternative for heavy commercial vehicles, as defined in the Texas Finance Code, the sum of the periodic balances method may be computed as follows:~~]

[~~*(i)* Multiply the total finance charge by a refund percentage determined as follows:~~]

[~~*(I)* Compute the sum of the unpaid monthly balances under the contract's schedule of payments beginning:~~]

[~~(-a-) On the first day, after the date of the prepayment or demand for payment in full; that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract; or~~]

[~~(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;~~]

[~~*(II)* Divide the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.~~]

[~~*(ii)* From the result derived in clause (i) of this subparagraph, deduct an acquisition fee not to exceed $150.~~]

(B) [~~(C)~~] The creditor is not required to give a finance charge refund if it would be less than $1.00.

(C) [~~(D)~~] The sum of the periodic balances method may not be used with an irregular payment contract.

(20) - (22) (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 June 17, 2011.

TRD-201102216
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 936-7621

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SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §84.202

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. Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter. Additionally, Texas Finance Code, §353.513, as enacted by HB 2559 (Acts 2011, 82nd Leg.), grants the commission the authority to adopt rules to enforce the commercial motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348 and new Chapter 353 (Acts 2011, 82nd Leg.).

§84.202. Default Charge.

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

(f) Default period.

[~~(1)~~] [~~Ordinary vehicles and non-heavy commercial vehicles.~~] A default charge may not be assessed until after the 15th 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 17th of the month.

[~~(2) Heavy commercial vehicles. A default charge may not be assessed until after 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.~~]

(g) - (i) (No change.)

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

Filed with the Office of the Secretary of State on June 17, 2011.

TRD-201102217
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 936-7621

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SUBCHAPTER F. LICENSING

7 TAC §84.602

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. Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

Additionally, Texas Finance Code, §353.513, as enacted by HB 2559 (Acts 2011, 82nd Leg.), grants the commission the authority to adopt rules to enforce the commercial motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348 and new Chapter 353 (Acts 2011, 82nd Leg.).

§84.602. Filing of New Application.

An application for issuance of a new motor vehicle sales finance license issued under Texas Finance Code, Chapter 348 or 353 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 in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

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

(A) (No change.)

(B) List of Registered Offices for a Motor Vehicle Sales Finance License. Each additional location, other than the licensed location shown on the Application for Motor Vehicle Sales Finance License, must be listed. The applicant should provide the assumed name (DBA), physical address, telephone number, and the person responsible for day-to-day operations for each registered office. A registered office is required for any additional assumed name that the licensee uses at a single location to engage in a Texas Finance Code, Chapter 348 or 353 transaction.

(C) - (L) (No change.)

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

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

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SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

7 TAC §§84.301, 84.302, 84.308

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.301, concerning Definitions, §84.302, concerning Authorized Credit Insurance and Debt Cancellation Agreements, and §84.308, concerning Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle, offered in connection with motor vehicle retail installment sales contracts.

The purpose of these amendments to 7 TAC Chapter 84 is to implement recent legislation enacted by the 82nd Texas Legislature affecting the regulation of motor vehicle retail installment sales, including the following bills: House Bill (HB) 2931 (debt cancellation agreements) and HB 2559 (commercial vehicles).

The following paragraphs provide a general introduction regarding each legislative bill, followed by a general purpose paragraph for the proposed amendments stemming from each bill. Individual purpose paragraphs for each particular amended provision will then provide references to the bill requiring changes to that provision, along with additional detail as necessary.

The 2009 Texas Legislature authorized debt cancellation agreements for motor vehicle installment sales. A debt cancellation agreement is an agreement that the holder of the contract will cancel the remaining amount owed on the contract if the vehicle is stolen or totaled. Some debt cancellation agreements require that the buyer maintain insurance on the vehicle. For these agreements, if the vehicle is stolen or totaled, the holder will cancel only the difference between the insurance coverage on the vehicle and the remaining amount owed. Debt cancellation agreements are not considered to be insurance.

In 2010, the commission adopted rules detailing the provisions that may be included in a debt cancellation agreement as well as provisions regarding reasonable fees. Currently, the rules authorize three models: one in which insurance is required, and two in which it is not required.

House Bill (HB) 2931, as enacted by the 82nd Texas Legislature, provides a new statutory framework for debt cancellation agreements that require insurance. The bill also requires the agency to approve or disapprove debt cancellation agreement forms within 45 days after they are submitted to the agency. HB 2931 does not affect debt cancellation agreements where the buyer is not required to obtain insurance. These agreements still have to comply with the rules adopted by the commission in 2010.

Turning to the amendments relating to commercial vehicles, Texas Finance Code, Chapter 348 currently encompasses retail installment transactions involving both consumer and commercial vehicles. Over time, certain provisions have been added that apply to only consumer vehicles, others that apply to solely commercial vehicles, and many that apply to both. Additionally, exceptions have often been included within generally applicable provisions to exempt one type of vehicle or the other.

HB 2559, enacted by the 82nd Texas Legislature and signed by the Governor, eases the ability of licensees to comply with the laws related to commercial vehicle retail installment transactions by placing them into new Chapter 353 of the Texas Finance Code. The new chapter does not change any substantive requirements currently applicable to commercial vehicles, as a retail installment contract for a commercial vehicle executed today must comply with the same rates, charges, and other legal standards as a contract completed after HB 2559 is effective. In other words, HB 2559 can be characterized as a relocation of Chapter 348 provisions regarding commercial motor vehicle installment sales into Chapter 353. In addition, the new statute also contains applicable commercial vehicle rule concepts and language from the current regulations under 7 TAC Chapter 84.

In general, the purpose of the amendments to 7 TAC Chapter 84 implementing HB 2931 is to remove the current provisions on the debt cancellation model in which insurance is required, as this type of debt cancellation agreement is now covered by the statutory provisions found in Texas Finance Code, Chapter 348, Subchapter G. The general purpose of the amendments implementing HB 2559 is to remove unnecessary references to commercial vehicles from §84.301 and §84.302 as they are no longer needed.

In §84.301, the definition of debt cancellation agreement for total loss or theft of motor vehicle, subsection (c)(2) regarding commercial vehicles is proposed for deletion as it is no longer necessary under HB 2559. The remaining language will remain under subsection (c) with the elimination of the ordinary vehicles tagline and paragraph (1) designation.

Subsection (g) of §84.301 contains the first of several deletions related to the current debt cancellation model under §84.308 that requires insurance. To implement HB 2931, current §84.301(g)(1) under the definition of total loss or theft is proposed for deletion. As a result, the remaining paragraphs will be renumbered accordingly. In addition, internal references to paragraphs within §84.308 that are also being renumbered (as explained later in this preamble) are being updated to correspond with the proposed new designations.

As with §84.301(c)(2), §84.302(g)(2) regarding authorized insurance and surplus lines insurance companies is also proposed for deletion to remove the unnecessary reference to commercial vehicles as per HB 2559. With the elimination of current §84.302(g)(2), the remaining language under paragraph (1) will be contained in revised subsection (g), with the removal of the unnecessary tagline. The proposed deletion of subsection (h)(2) under debt cancellation agreements follows the same pattern, with similar technical corrections.

Subsection (h) of §84.302 also includes revisions implementing HB 2931. The second sentence of current subsection (h)(1) has been revised and reorganized. The language regarding compliance and citing Texas Finance Code, §348.124 and §84.308 has been relocated, with the revisions providing proposed new paragraphs (1) and (2), listing the applicable statutory and accompanying rule authorization for debt cancellation agreements not requiring insurance, and the new statutory reference for those requiring insurance under new Subchapter G of Chapter 348. Thus, the proposed new language reads as follows: "A debt cancellation agreement may be offered in connection with a Chapter 348 motor vehicle retail installment sales transaction and included as a term of, or modification to, the retail installment sales contract if the debt cancellation agreement is written in compliance with: (1) Texas Finance Code, §348.124 and §84.308 of this title; or (2) Texas Finance Code, Chapter 348, Subchapter G." Additionally, the remaining sentence of current §84.302(h)(1) has been deleted as unnecessary.

The first change to §84.308 concerns the title of the section. As the rule no longer covers all "Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle," that title will be deleted and replaced with the following: "Debt Cancellation Agreements Not Requiring Insurance." Furthermore, a scope provision has been added to subsection (a), stating: "This section applies only to debt cancellation agreements that do not require insurance coverage. This section does not apply to a debt cancellation agreement under Subchapter G of Chapter 348."

Continuing the implementation of HB 2931, §84.308(c)(1) is proposed for deletion, which results in the removal of the list of authorized provisions for debt cancellation agreements requiring insurance. The remaining paragraphs of subsection (c) have been renumbered accordingly. Additionally, technical corrections have been made to the introductory sentence of §84.308(c) in order to reference the remaining two debt cancellation models in the rule not requiring insurance, as opposed to three models.

As with subsection (c), subsection (e)(1) of §84.308 regarding fees will be deleted, along with its accompanying figure. As a result, the remaining paragraphs of §84.308(e) have been appropriately renumbered. Additional technical corrections involving the renumbering of internal references are found in current §84.308(c)(3)(G), (e)(2), and (3). The corresponding figures in current §84.308(e)(2) and (3) will also be renumbered to correspond with their proposed new designations.

In §84.308(h) regarding the calculation of the amount to be cancelled, paragraph (1) will be deleted to complete the elimination of the insurance model from the rule. Consequently, the remaining subparagraphs of subsection (h) have been renumbered.

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 rules as amended.

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 that the commission's rules will implement recent legislative concepts in order to provide greater clarity. This greater clarity will bring increased stability in the industry by providing uniform parameters and standards which can have the effect of lowering the cost of credit. Additional public benefits resulting from the proposed amendments are that the commission's rules will be more easily understood by licensees required to comply with the rules, and that the rules will be more easily enforced.

Licensees continue to have the option of not offering debt cancellation agreements (either with or without the insurance requirement under HB 2931), in which case, there will be no fiscal implications for those licensees. For licensees who decide to provide debt cancellation agreements in connection with their motor vehicle retail installment sales contracts, the fees charged in conjunction with the debt cancellation agreements are anticipated to cover the costs associated with changing the agreements to fulfill the requirements of HB 2931. However, licensees do have the option to add other provisions to their agreements not described by the revised statute. The agency cannot predict the potential costs of these additional provisions (e.g., research, drafting). Thus, due to the fees that licensees may charge offsetting the costs of the debt cancellation agreements, a minimal or neutral cost will result to persons who are required to comply with the proposal. There will be no effect on individuals required to comply with the amendments 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 amendments, 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 proposal is 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. Additionally, the amendments removing language regarding debt cancellation agreements requiring insurance are proposed under Texas Finance Code, Chapter 348, Subchapter G, Certain Debt Cancellation Agreements, as enacted by HB 2931 (Acts 2011, 82nd Leg.). Also, Texas Finance Code, §353.513, as enacted by HB 2559 (Acts 2011, 82nd Leg.), grants the commission the authority to adopt rules to enforce the commercial motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348 and new Chapter 353 (Acts 2011, 82nd Leg.).

§84.301. Definitions.

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

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

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

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

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

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

(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) 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) 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.~~]

(1) [~~(2)~~] Holder bears complete responsibility for canceling the debt. Under §84.308(e)(1) [~~§84.308(e)(2)~~] of this title (relating to Debt Cancellation Agreements Not Requiring Insurance), 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)(1) [~~§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.

(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. Under §84.308(e)(2) [~~§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)(2) [~~§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.

§84.302. Authorized Credit Insurance and Debt Cancellation Agreements.

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

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

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

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

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

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

(g) Authorized insurance and surplus lines insurance companies.

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

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

(h) Debt cancellation agreements. Debt cancellation agreements are not credit insurance.

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

(1) Texas Finance Code, §348.124 and §84.308 of this title; or

(2) Texas Finance Code, Chapter 348, Subchapter G.

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

§84.308. Debt Cancellation Agreements Not Requiring Insurance [~~for Total Loss or Theft of Ordinary Vehicle~~].

(a) Purpose and scope. The Texas Finance Code allows a debt cancellation agreement to be included in a motor vehicle retail installment sales contract involving an ordinary vehicle subject to Texas Finance Code, Chapter 348 as an itemized charge. This section outlines the parameters under which a retail seller or holder may provide a debt cancellation agreement for total loss or theft of an ordinary vehicle in connection with a Chapter 348 retail installment sales contract. This section applies only to debt cancellation agreements that do not require insurance coverage. This section does not apply to a debt cancellation agreement under Subchapter G of Chapter 348.

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

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

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

(c) Authorized debt cancellation agreement for total loss or theft of an ordinary vehicle provisions. A debt cancellation agreement under this section may 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 setting forth the maximum term of the debt cancellation agreement (e.g., 84 months);]

[(L) contain a statement that the debt cancellation agreement may cover a portion of the deductible of the primary physical damage insurance, up to a limit of $1,000;]

[(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.]

(1) [(2)] Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for canceling the debt after total loss or theft 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 loss occurring outside the continental United States of America, Alaska, or Hawaii (holder 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 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) 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) [~~(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)(2) [~~(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) Copy of debt cancellation agreement for total loss or theft of ordinary vehicle provided to retail buyer. If a retail buyer purchases a debt cancellation agreement for total loss or theft of an ordinary vehicle, the retail seller must provide the retail buyer, within a reasonable amount of time not to exceed 10 days from the date of the retail installment sales contract, a true and correct copy of the agreement that clearly sets forth:

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

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

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

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

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

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

~~[(1) Debt cancellation agreement for total loss or theft of ordinary vehicle that includes insurance coverage as part of retail~~

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

(1) [~~(2)~~] Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for canceling the debt after total loss or theft. The following figure contains a rate schedule of maximum fees that are deemed to be reasonable for debt cancellation agreements for total loss or theft of an ordinary vehicle that are in compliance with subsection (c)(1) [~~(c)(2)~~] of this section.
Figure: 7 TAC §84.308(e)(1)
[~~Figure: 7 TAC §84.308(e)(2)~~]

(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)(2) [~~(c)(3)~~] of this section.
Figure: 7 TAC §84.308(e)(2)
[~~Figure: 7 TAC §84.308(e)(3)~~]

(f) Refund or credit of unearned debt cancellation agreement fee.

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

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

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

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

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

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

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

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

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

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

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

(h) Calculation of amount to be cancelled under debt cancellation agreement for total loss or theft of ordinary vehicle. The calculation of the amount to be 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;]~~

~~*[(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 immediately 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;]~~

~~*[(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.]~~

(1) [~~(2)~~] Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for canceling the debt after total loss or theft. The 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.

(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.

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

(1) Insurance refunds and other cancelable items. Examples of refunds that should be calculated as of the date of loss include credit life premium, credit accident and health insurance premium, credit involuntary unemployment insurance premium, collateral protection insurance premium, and service contract refunds. The retail installment sales contract may permit an administrator or provider to receive any refunds that are received by the holder after the settlement of the debt cancellation agreement, if those refunds were included in the amount received by the holder from the administrator. Refunds that were not part of the amount received by the holder from the administrator must be either applied to the retail buyer's account or given to the retail buyer.

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

(j) Assignment and delegation.

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

(2) Good faith reliance. A holder may in good faith rely on a computation by the administrator of the balance waived, unless the holder has knowledge that the computation is not correct. If a computation by the administrator of the balance waived is not correct, the holder must, within a reasonable time of learning that the computation is incorrect, make the necessary corrections or cause the corrections to be made to the retail buyer's account. This section does not prevent the holder from obtaining reimbursement from the administrator or others responsible for the debt cancellation agreement or computation.

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

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

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

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

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

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

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

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

Filed with the Office of the Secretary of State on June 17, 2011.

TRD-201102219
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 936-7621

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CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §88.102, concerning Filing of New Application, §88.109, concerning Applicability, and §88.306, concerning Fees for Debt Management Services, and the repeal of §88.301, concerning Definition, and §88.303, concerning Cancellation of Debt Management Services Agreement.

In general, the purpose of the amendments and repeals is to implement Senate Bill (SB) 141, as enacted by the 82nd Texas Legislature and signed by the governor. With SB 141, the legislature has broadened the scope of Texas Finance Code, Chapter 394, Subchapter C, Consumer Debt Management Services, to include debt settlement services. The bill also outlines specific requirements regarding fees and cancellation.

The following paragraphs provide a general introduction regarding SB 141, followed by a purpose paragraph summarizing the proposed amendments and repeals. Individual purpose paragraphs for each particular amended provision will then provide additional detail as necessary.

SB 141 amends several provisions of Chapter 394 of the Finance Code relating to debt relief providers. Currently, Chapter 394 applies only to the debt management model, in which a company accepts payments from a consumer, manages the money in a trust account, and negotiates lower payments to the consumer's creditors. After SB 141 goes into effect, Chapter 394 will also apply to the debt settlement model, in which the money is placed into an account that the company does not control, and the company obtains concessions whereby the debt is settled for less than the principal amount owed.

SB 141 also contains detailed provisions limiting the fees charged by debt relief providers. The bill allows three different fee structures. The first two fee structures are based on provisions in the Uniform Debt-Management Services Act. Under these two structures, the components of the fee are limited to specific dollar amounts that rise with the Consumer Price Index, and the agency is required to publish the fees annually. The third fee structure, which prohibits advance fees, is designed for providers that fall within the Federal Trade Commission's recently amended Telemarketing Sales Rule. Under the third fee structure, the provider may charge a reasonable fee that is a percentage of the amount saved as a result of the settlement. The bill also contains a new section describing the refund that the provider must give to the consumer if the consumer cancels the arrangement.

In accordance with SB 141, the proposed amendments revise the rules to encompass debt settlement services under the agency's regulatory authority and distinguish where certain provisions are applicable to debt management services and others are applicable to debt settlement services. Consequently, the applicability section has been significantly revised to reflect this change in the statute. Additionally, the proposed repeal of §88.301 and §88.303, as well as deletions from §88.306, remove language that is inconsistent with SB 141.

Section 88.102(b)(5) has been revised to reflect the bond filing requirements contained in SB 141. While the bond amounts required for providers of debt management services have not changed, language has been added to distinguish applicability of the existing amounts to these providers. For providers of debt settlement services, bond provisions have been added to implement the separate bond amounts required by SB 141. Accompanying technical corrections regarding formatting and to improve grammar have also been made throughout paragraph (5) of §88.102(b).

Section 88.109 regarding applicability has experienced significant revisions due to the changes made by SB 141 to the definitions of "debt management services," which now includes debt settlement services, and "provider." Most of the existing language in subsection (a) is proposed for deletion as it would conflict with the scope of the amended statute. Section 88.109(a) has been streamlined to reference the revised definition of provider contained in Texas Finance Code, §394.202(10).

Section 88.109(b), which lists areas excluded from 7 TAC Chapter 88, has also been revised to implement SB 141. Aside from technical corrections, paragraphs (1) and (2) remain to exclude parties listed in Texas Finance Code, §394.203 and money services businesses. Section 88.109(b)(3) is proposed for deletion as its language concerning lack of control of consumer funds is inconsistent with the revised statute.

Section 88.301 contains only one definition: "Debt management service plan." This section is proposed for repeal as SB 141 has made it obsolete. The defined term is outdated because it is restricted to cases where the provider receives funds.

Section 88.303 is also proposed for repeal as the current rule is inconsistent with the new statute. SB 141 describes the refund that the provider must give the consumer upon cancellation as provided in new Texas Finance Code, §394.2095.

Section 88.306 relates to fees for debt management services. The majority of this section has been rendered unnecessary by the extensive fee provisions added to Texas Finance Code, §394.210 by SB 141. Subsection (a) is proposed for deletion, as the revised statute outlines three different fee structures. The remaining language in §88.306 will be that of current subsection (b) regarding services not directly related to debt management services or educational services concerning personal finance. A provider may not charge for these unrelated services. Additionally, the tagline and subsection (b) designation will be deleted to provide appropriate formatting.

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 rule revisions.

For each year of the first five years the amendments and repeals are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will reflect current statutory provisions and that there will be enhanced compliance with the credit laws and consistency in debt management services provided in Texas. Additional public benefits resulting from the proposal will be enhanced protection for consumers and

the availability of uniform, reliable procedures for providers of debt management and debt settlement services.

As enacted by SB 141, there are separate bond requirements applicable to providers of debt management services and providers of debt settlement services. Debt settlement providers were not covered under the prior statute and did not previously have to provide a bond or register with the agency. Consequently, for debt settlement providers, there will be costs associated with the bond and registration in order to comply with the new statutory provisions. The statute requires a $50,000 bond for debt settlement providers. Section 88.107, not included in this rule proposal, requires a non-refundable registration fee of $250 for all debt management services providers. These requirements, as applicable to debt settlement providers, are imposed by the Texas Legislature through the enactment of SB 141 and are not a result of the proposed amendments and repeals.

For debt management providers currently regulated by the agency, there is no anticipated cost to persons who are required to comply with the amendments and repeals as proposed. Thus, aside from the costs to debt settlement providers required by the new statutory provisions, the agency does not anticipate any additional costs to persons who are required to comply with these rule revisions.

For both debt management and debt settlement providers, there will be no adverse economic effect on small or micro businesses resulting from this proposal. There will be no effect on individuals required to comply with the amendments and repeals as proposed.

Comments on the proposed amendments 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. REGISTRATION PROCEDURES

7 TAC §88.102, §88.109

The amendments are proposed under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.102. Filing of New Application.

(a) (No change.)

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

(1) - (4) (No change.)

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

(A) a Surety Bond in the prescribed form:

(i) At initial application:

(I) A provider that receives and holds money paid by or on behalf of a consumer for disbursement to the consumer's creditors must provide a bond in the amount of:

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

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

(II) A provider that does not receive and hold money paid by or on behalf of a consumer for disbursement to the consumer's creditors must provide a bond in the amount of $50,000.

(ii) At annual renewal:

(I) A provider that receives and holds money paid by or on behalf of a consumer for disbursement to the consumer's creditors must provide a bond:

(-a-) in an amount that is equivalent to or exceeds the average daily balance, but is not less than $25,000, if [~~If~~] the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is less than $100,000;[~~, the bond amount must be equivalent to or exceed the average daily balance, but not be less than $25,000.~~]

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

(II) A provider that does not receive and hold money paid by or on behalf of a consumer for disbursement to the consumer's creditors must provide a bond in the amount of $50,000; or

(B) evidence of insurance meeting the requirements of Texas Finance Code, §394.206 and clauses (i) - (iii) of this subparagraph, as follows:

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

(I) employee dishonesty;

(II) depositor's forgery;

(III) computer fraud; and

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

(iii) The fidelity insurance policy and the professional insurance policy must cover losses sustained by a Texas resident that are attributable to a debt management service or a debt management services agreement. Both the fidelity insurance policy and the professional insurance policy must contain a loss payee clause or rider stating that any loss or claim arising out of an action which occurred within the scope of Texas Finance Code, Chapter 394 may be payable in favor of the State of Texas.

(6) - (8) (No change.)

§88.109. Applicability.

(a) The rules contained in this chapter of this title are applicable to a [~~debt management services~~] provider as defined by Texas Finance Code, §394.202(10). [~~who is engaged in the business of receiving funds from or controlling the funds of consumers for the purpose of distributing those funds to the creditors of consumers. If a person or entity that is engaged in the business receives and takes into its control~~

~~the funds of consumers, or has authority over consumer accounts, for the purpose of distribution to the creditors of consumers in any manner that does not require the discretion and action of consumers, the person or entity will be considered a debt management services provider.~~]

(b) The rules contained in this chapter of this title do not apply to:

(1) the exceptions as provided by Texas Finance Code, §394.203; or

(2) transactions subject to the Money Services Act, Texas Finance Code, Chapter 151.[~~; or~~]

[~~(3) business relationships or agreements that purport to assist consumers with their debts to the extent that consumer funds are not deposited into an account under the control of the person or business entity who is assisting the consumers with their debts.~~]

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

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

7 TAC §88.301, §88.303

(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.)

The repeals are proposed under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.301. Definition.

§88.303. Cancellation of Debt Management Services Agreement.

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

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7 TAC §88.306

The amendments are proposed under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.306. Fees for Debt Management Services.

[~~(a) Allowable fees. A provider may not charge or receive from a consumer, directly or indirectly (except for "fair share" and other such creditor or lender fees or contributions), a fee except for the following:~~]

[~~(1) if the consumer does not enter into a debt management services agreement with the provider:~~]

[~~(A) a fee, not to exceed $50, for a counseling session, an educational program, or materials and supplies provided by the provider to the consumer;~~]

[~~(B) subparagraph (A) of this paragraph does not apply to any services provided pursuant to a federal mandate or program;~~]

[~~(2) if the consumer enters into a debt management services agreement with the provider:~~]

[~~(A) an initial enrollment fee not to exceed $100, for services associated with the establishment of a debt management services agreement with the provider (e.g., setting up an account and consultation);~~]

[~~(B) a monthly service or maintenance fee not to exceed 10% of the consumer's scheduled monthly payment to creditors, allowing a minimum of $10, up to a maximum of $50 per month;~~]

[~~*(i)* if the consumer makes a payment in an amount less than the amount scheduled, the provider may charge a monthly service or maintenance fee that is calculated on the scheduled amount;~~]

[~~*(ii)* if the consumer makes a payment in addition to the scheduled payment during the month of the scheduled payment, the provider may charge an additional fee that is calculated on the monthly service or maintenance fee for the scheduled amount;~~]

[~~(C) a fee to cover the provider's out-of-pocket costs for providing credit reports to the consumer.~~]

[~~(b)~~] [~~Services not directly related to debt management services or educational services concerning personal finance.~~] A provider may not charge a consumer for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt management services or educational services concerning personal finance, unless approved by the commissioner in advance.

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 June 17, 2011.

TRD-201102222
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 936-7621

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.121

The Credit Union Commission (the Commission) proposes amendments to §91.121, concerning Complaint Notification. The amendments update the Credit Union Department's (Department's) website address and alter the content of the complaint notification to include the credit union's address and telephone number or e-mail address.

The amendments are proposed to reflect the State of Texas's internet domain name change and to encourage members to contact the credit union first if they have a complaint.

Betsy Loar, General Counsel, 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 amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. Any costs to the credit union system or to individuals are a result of the required statewide internet domain name change.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and under Texas Finance Code §15.409 which requires the Commission to adopt rules for directing complaints to the Department.

The specific section affected by the proposed amendments is Texas Finance Code, §15.409.

§91.121. Complaint Notification.

(a) Definitions.

(1) "Privacy notice" means any notice which a credit union gives regarding a member's right to privacy, as required by a state or federal law.

(2) For purposes of subsection (b) of this section and unless the context reads otherwise, "notice" means a complaint notification in the form set forth in subsection (b)(1) of this section.

(b) Required Notice.

(1) Credit unions must provide their members with the following notice describing the process for filing complaints: "If you have a problem with the services provided by this credit union, please contact us at: (Your Name) Credit Union, Mailing Address, Telephone Number or e-mail address. The [~~"This~~] credit union is incorporated under the laws of the State of Texas and under state law is subject to regulatory oversight by the Texas Credit Union Department. [~~If you have a dispute with (Your Name) Credit Union, you should first contact the credit union.~~] If any [~~the~~] dispute is not resolved to your satisfaction, you may also file a complaint against the credit union by contacting the Texas Credit Union Department at [~~through one of the means indicated below: By U.S. Mail:~~] 914 East Anderson Lane, Austin, Texas 78752-1699, Telephone Number: (512) 837-9236, Website:www.cud.texas.gov [~~www.tcud.state.tx.us~~]."

(2) The title of this notice shall be "COMPLAINT NOTICE" and must be in all capital letters and boldface type.

(3) The credit union must provide the notice as follows:

(A) In each office where a credit union typically conducts business on a face-to-face basis, the notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a member with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included in plain view on a bulletin board on which required communications to the membership (such as equal housing posters) are posted.

(B) If a credit union maintains a website, it must include the notice or a link to the notice in a reasonably conspicuous place on the website.

(C) If a credit union distributes a newsletter, it must include the notice on approximately the same date at least once during each calendar year in any newsletter distributed to its members.

(D) If a credit union does not have an Internet website or does not distribute a newsletter, the notice must be included with any privacy notice the credit union is required to give or send its members.

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 June 20, 2011.

TRD-201102283
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 837-9236

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SUBCHAPTER H. INVESTMENTS

7 TAC §91.801

The Credit Union Commission (the Commission) proposes amendments to §91.801, concerning Investments in Credit Union Service Organizations. The amendments clarify that credit union service organizations (CUSOs) must comply with any applicable state or federal licensing requirements. The amendments also increase the time from 15 days to 20 days to notify the commissioner of certain CUSO activities, elaborate on the information needed in the notice, and require prior written approval if the investment causes the credit union's aggregate CUSO investments to exceed 25% of the credit union's net worth. Finally, the amendments specify when the commissioner can order a credit union to divest a CUSO.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, 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 amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and under Texas Finance Code §124.351 and §124.352 which address permitted investments and investment limits.

The specific sections affected by the proposed amendments are Texas Finance Code, §124.351 and §124.352.

§91.801. Investments in Credit Union Service Organizations.

(a) Definition. When used in this section, a credit union service organization (CUSO) is an organization whose primary purpose is to strengthen or advance the credit union movement, serve or otherwise assist credit unions or their operations, and provide products or services authorized by [~~subsection (f) of~~] this section to credit unions and their members.

(b) A credit union by itself, or with other parties, may organize, invest in or make loans to a CUSO only if it is structured and operated in a manner that demonstrates to the public that it maintains a legal existence separate from the credit union. A credit union and a CUSO must operate so that:

(1) their respective business transactions, accounts, and records are not intermingled;

(2) each observes the formalities of its [~~their~~] separate corporate or other organizational procedures;

(3) each is adequately capitalized as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) each is held out to the public as a separate and distinct enterprise;

(5) all transactions between them are at arm's [~~arms~~] length and consistent with sound business practices as to each of them; [~~and~~]

(6) unless the credit union has guaranteed a loan to the CUSO, all borrowings by the CUSO indicate that the credit union is not liable; and[~~.~~]

(7) all activities of the CUSO comply with any licensing or registration requirements of applicable federal or state law.

(c) Notice.

(1) A credit union shall provideat least twenty days' written notice to the commissioner of its intent to make an initial investment in a CUSO, make an initial loan to a CUSO, make a material change in its ownership interest in [~~to~~] a CUSO [~~CUSO's organizational structure~~], or perform new activities in an existing CUSO [~~at least 15 days prior to commencing such activity~~]. The written notice shall [~~must~~] include:

(A) a complete description of the credit union's proposed investment in or loan to the CUSO;[~~,~~]

(B) a description of the activities [~~activity~~] to be conducted by the CUSO;[~~,~~]

(C) an explanation of how the CUSO will primarily serve credit unions or members of credit unions, or how the activities of the CUSO could be conducted directly by a credit union or are incidental to the conduct of the business of a credit union; and

(D) a representation [~~and undertaking~~] that the activity will be conducted in accordance with applicable law the requirements of this section, and in a manner that will limit [~~potential~~] exposure of the credit union to no more than the loss of funds invested in, or loaned to, the CUSO.

(2) The credit union shall provide any additional information reasonably requested by the commissioner[~~, which may include a written legal opinion that the CUSO has either been established in a manner that will limit the credit union's potential exposure, or that the new activity or change to its organizational structure will not result in the credit union's potential exposure being more than the loss of funds invested in or loaned to the CUSO~~].

(d) Limitations. The board of directors of a credit union that organizes, invests in, or lends to any CUSO shall establish, in writing, the maximum amount relative to the credit union's net worth, that will be invested in or loaned to any one CUSO. The maximum amount invested in any one CUSO may not exceed the statutory limit established by Texas Finance Code §124.352(b). Total investments in and total loans to CUSOs will be measured consistent with generally accepted accounting principles (GAAP) and shall not, in the aggregate, exceed 10% of the total unconsolidated assets of the credit union, unless the credit union receives the prior written approval of the commissioner. The amount of loans to CUSOs, cosigned, endorsed, or otherwise guaranteed by the credit union, shall be included in the aggregate for the purpose of determining compliance with the limitations of [~~set forth in~~] this section.

(e) Approval. A credit union shall obtain the prior written approval of the commissioner for a proposed investment or loan to a CUSO that will cause the total aggregate investments in, and loans to, that CUSO to exceed 25% of the credit union's net worth. In addition to the supporting information required under subsection (c) of this section, the request for approval shall include the following:

(1) a description of the organizational structure and management of the CUSO;

(2) the names and ownership interests of each CUSO owner with an ownership interest of more than 20% of the CUSO;

(3) a detailed summary of the type and estimated market value for any collateral securing the credit union's loans or loan commitments to the CUSO, if applicable;

(4) a pro forma analysis of the CUSO's projected growth and earnings for the next two calendar years; and

(5) an assessment of the credit union's ability to make the proposed CUSO investment or loan commitment without endangering the safety and soundness of the credit union.

(f) [~~(e)~~] Prohibitions. No credit union may invest in or make loans to a CUSO:

(1) if any officer, director, committee member, or employee of the [such] credit union or any member of the immediate family of such persons owns or makes an investment in or has made or makes a loan to the CUSO;

(2) unless the organization is structured as a corporation, limited liability company, registered limited liability partnership, or limited partnership, and the credit union has obtained [a] written legal advice [opinion] that the CUSO is established in a manner that will limit the credit union's potential exposure to no [not] more than the amount [loss] of funds invested in or loaned to the [such] CUSO;

(3) if the CUSO engages in any revenue producing activity other than the performance of services for credit unions or members of credit unions, and such activity equals or exceeds one half (1/2) of the CUSO's total revenue;

(4) unless prior to investing in or making a loan to a CUSO the credit union obtains a written agreement which requires the CUSO to follow GAAP, render financial statements to the credit union at least quarterly, and provide the department, or its representatives, complete access to the CUSO's books and records at reasonable times without undue interference with the business affairs of the CUSO;

(5) if the CUSO is not adequately bonded or insured for its operations;

(6) if the CUSO does not obtain an annual opinion audit, by a licensed Certified Public Accountant, on its financial statements in accordance with generally accepted auditing standards, unless the investment in or loan to the CUSO by any one or more credit unions does not exceed $100,000 or the CUSO is wholly owned and the CUSO is included in the annual consolidated financial statement audit of its parent credit union; or

(7) if any director of the credit union is an employee of the CUSO, or anticipates becoming an employee of the CUSO upon its formation.

(g) [(f)] Permissible activities and services. The commissioner may, based upon supervisory, legal, or safety and soundness reasons, limit any CUSO activities or services, or refuse to permit any CUSO activities or services. Otherwise, a credit union may invest in or loan to a CUSO that is engaged in providing products and services that include, but are not limited to:

(1) operational services including credit and debit card services, cash services, wire transfers, audits, ATM and other EFT services, share draft and check processing and related services, shared service center operations, electronic data processing, development, sale, lease, or servicing of computer hardware and software, alternative methods of financing and related services, other lending related services, and other services or activity, including consulting, related to the routine daily operations of credit unions;

(2) financial services including financial planning and counseling, securities brokerage and dealer activities, estate planning, tax services, insurance services, administering retirement, or deferred compensation and other employee or business benefit plans;

(3) internet based or related services including sale and delivery of products to credit unions or members of credit unions; or

(4) any other product, service or activity deemed economically beneficial or attractive to credit unions or credit union members if approved, in writing, by the commissioner.

(h) [(g)] Compensation. A credit union director, senior management employee, or committee member or immediate family member of any such person may not receive any salary, commission, or other income or compensation, either directly or indirectly, from a CUSO affiliated with their credit union, unless received in accordance with a written agreement between the CUSO and the credit union. The agreement shall describe the services to be performed, the rate of compensation (or a description of the method of determining the amount of compensation) and any other provisions deemed desirable by the CUSO and the credit union. The agreement, and any amendments, must be approved by the board of directors of the credit union and the board of directors (or equivalent governing body) of the CUSO prior to any performance of service or payment and annually thereafter. For purposes of this section, senior management employee shall include the chief executive officer, any assistant chief executive officers ([e.g.] vice presidents and above), and the chief financial officer. Immediate[; and immediate] family shall include a person's spouse or any other person living in the same household.

(i) [(h)] Examination fee. If the commissioner requests a CUSO [is requested by the commissioner] to make its books and records available for inspection and examination, the CUSO shall pay a supplemental examination fee as prescribed in §97.113(e) of this title (relating to Supplemental examination fees). The commissioner may waive the supplemental examination fee or reduce the fee [as he deems appropriate].

(j) [(i)] Exception [Exclusion]. A credit union which has a net worth ratio greater than six percent (6%) and is deemed adequately capitalized by its insuring organization may invest in or make loans to a CUSO that is not limited by the restriction set forth in subsection (f) [(e)](3) of this section,[;] provided the activities of the CUSO are [exclusively] limited to activities which could be conducted directly by a credit union or are incidental to the conduct of the business of a credit union. Notwithstanding this exception [exclusion], all other provisions of the act and this chapter applicable to a CUSO apply. In the event a credit union's net worth declines below the required thresholds, the credit union may not renew, extend the maturity of, or restructure an existing loan, advance additional funds, or increase the investment in the CUSO without the prior written approval of the commissioner.

(k) [(j)] Divestiture. The commissioner may order a credit union to reduce or eliminate its investment or loan commitments to a CUSO if the credit union is no longer in compliance with the provisions of this section and the investment or loan commitment is deemed to represent a threat to the continued safety and soundness of the credit union. If the limitations in subsection (d) of this section are reached or exceeded solely because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, divestiture is not required. A credit union may continue to invest up to the limitation without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

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 June 20, 2011.

TRD-201102273
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 837-9236

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7 TAC §91.802

The Credit Union Commission (the Commission) proposes amendments to §91.802, concerning Other Investments. The amendments adjust ratings thresholds for several types of permissible investments, update terms, and clarify that rating categories are minimum standards and must be supported with the credit union's own credit analysis to demonstrate that the investment presents an acceptable credit risk. The amendments also edit the rule for clarity.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, 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 amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and under Texas Finance Code §124.351 and §124.352 which address permitted investments and investment limitations.

The specific sections affected by the proposed amendments are Texas Finance Code, §124.351 and §124.352.

§91.802. Other Investments.

(a) Definitions. Unless the context clearly indicates otherwise, these [~~The following~~] words and terms, when used in this section, shall have the following meanings[~~, unless the context clearly indicates otherwise~~].

(1) Asset-backed security--A bond, note, or other obligation issued by a financial institution, trust, insurance company, or other corporation secured by either a pool of loans, extensions of credit which are unsecured or secured by personal property, or a pool of personal property leases.

(2) Bailment for hire contract--A contract whereby a third party, bank, or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers; also known as a custodial agreement.

(3) Bankers' acceptance--A time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

(4) Cash forward agreement--An agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of 30 days from the trade date.

(5) Counterparty--An entity with which a credit union conducts investment-related activities in such a manner as to create a credit risk exposure for the credit union to the entity.

(6) Eurodollar deposit--A deposit denominated in U.S. dollars in a foreign branch of a United States financial institution.

(7) Federal funds transaction--A short-term or open-ended transfer of funds to a financial institution.

(8) Financial institution--A bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation, a federal or state-chartered credit union, or the National Credit Union Central Liquidity Facility.

(9) Investment--Any security, obligation, account, deposit, or other item authorized for investment by the Act or this section. For the purposes of this section, the term does not include an investment authorized by §124.351(a)(1) of the Act.

(10) Mortgage related security--A security which meets the definition of mortgage related security in United States Code Annotated, Title 15, §78c(a)(41).

(11) Nationally recognized statistical rating organization (NRSRO)--A rating organization such as Standard and Poor's, Moody's, or Fitch which is recognized by the Securities and Exchange Commission.

(12) Ordinary care--The degree of care, which an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

(13) Investment repurchase transaction--A transaction in which a credit union agrees to purchase a security from a counterparty and to resell the same or any identical security to that counterparty at a later date and at a specified price.

(14) Borrowing repurchase transaction--A transaction whereby a credit union either:

(A) agrees to sell a security to a counterparty and to repurchase the same or any identical security from that counterparty at a future date and at a specified price; or

(B) borrows funds from a counterparty and collateralizes the loan with securities owned by the credit union.

(15) Security--An investment that has a CUSIP number or that is represented by a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

(A) either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;

(B) is of a type commonly traded on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or traded as a medium for investment; and

(C) either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

(16) Settlement date--The date originally agreed to by a credit union and a vendor for settlement of the purchase or sale of a security.

(17) Trade date--The date a credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

(18) Yankee dollar deposit--A deposit in a United States branch of a foreign bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, that is licensed to do business in

the state in which it is located, or a deposit in a state chartered, foreign controlled bank.

(b) Policy. A credit union may invest funds not used in loans to members, subject to the conditions and limitations of the written investment policy of the board of directors. The investment policy may be part of a broader, asset-liability management policy. The board of directors must review and approve the investment policy at least annually to ensure that the policies adequately address the following issues:

(1) The types of investments that are authorized to be purchased [~~by the board of directors~~].

(2) The aggregate [~~A specific~~] limit on the amount that may be invested in any single investment or investment type, set as a percentage of net worth.

(3) The delegation of investment authority to the credit union's officials or employees, including the person or persons authorized to purchase or sell investments, and a limit of the investment authority for each individual or committee.

(4) The [~~A list of~~] authorized broker-dealers or other third-parties that may be used to purchase or sell investments, and the [~~an~~] internal process for assessing the credentials and previous record of the individual or firm.

(5) The [~~An appropriate~~] risk management framework given [~~for~~] the level of risk in the investment portfolio. This will include specific methods for evaluating, monitoring, and managing the credit risk, interest-rate risk, and liquidity risk from the investment activities.

(6) The [~~A list of~~] authorized third-party safekeeping agents.

(7) If the credit union operates a trading account, the policy shall specify the persons authorized to engage in trading account activities, trading account size limits, stop loss and sale provisions, time limits on inventoried trading account investments, and internal controls that specify the segregation of risk-taking and monitoring activities related to trading account activities.

(8) The procedure for reporting to the board of directors investments and investment activities that become noncompliant with the credit union's investment policy subsequent to the initial purchase.

(c) Authorized activities.

(1) General authority. A credit union may contract for the purchase or sale of a security provided that delivery of the security is by regular-way settlement. Regular-way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for that type of security. All purchases and sales of investments must be delivery versus payment (i.e., payment for an investment must occur simultaneously with its delivery).

(2) Cash forward agreements. A credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(A) the period from the trade date to the settlement date does not exceed 90 days;

(B) if the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(C) if the credit union is the seller, it owns the security on the trade date; and

(D) the cash forward agreement is settled on a cash basis at the settlement date.

(3) Investment repurchase transactions. A credit union may enter an investment repurchase transaction provided:

(A) the purchase price of the security obtained in the transaction is at or below the market price;

(B) the repurchase securities are authorized investments under Texas Finance Code §124.351 or this section;

(C) the credit union has entered into signed contracts with all approved counterparties;

(D) the counterparty is rated in one of the two [~~three~~] highest long-term or counterparty rating categories by a [~~an~~] NRSRO; and

(E) the credit union receives a daily assessment of the market value of the repurchase securities, including accrued interest, and maintains adequate margin that reflects a risk assessment of the repurchase securities and the term of the transaction.

(4) Borrowing repurchase transactions. A credit union may enter into a borrowing repurchase transaction, which is a borrowing transaction subject to the Act, provided:

(A) any investments purchased by the credit union with either borrowed funds or cash obtained by the credit union in the transaction are authorized investments under Texas Finance Code §124.351 and this section;

(B) the credit union has entered into signed contracts with all approved counterparties; [~~and~~]

(C) investments referred to in subparagraph (A) of this paragraph [~~paragraph (4)(A) of this subsection~~] mature no later than the maturity date of the borrowing repurchase transaction; and

(D) the counterparty is rated in one of the two [~~three~~] highest long-term or counterparty rating categories bya [~~an~~] NRSRO.

(5) Federal funds. A credit union may enter into a federal funds transaction with a financial institution, provided that the interest or other consideration received from the financial institution is at the market rate for federal funds transactions and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.

(6) Yankee dollars. A credit union may invest in yankee dollar deposits.

(7) Eurodollars. A credit union may invest in eurodollar deposits.

(8) Bankers' acceptance. A credit union may invest in bankers' acceptances.

(9) Open-end Investment Companies (Mutual Funds). A credit union may invest funds in an open-end investment company established for investing directly or collectively in any investment or investment activity that is authorized under Texas Finance Code §124.351 and [~~or~~] this section, including qualified money market mutual funds as defined by Securities and Exchange Commission regulations.

(10) Government-sponsored enterprises. A credit union may invest in government-sponsored enterprise obligations such as Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Farm Credit Bank, and the Student Loan Marketing Association.

(11) Commercial paper. A credit union may invest in commercial paper issued by a corporation [~~corporations~~] domiciled within the United States. The paper must have a short-term or commercial paper rating in the highest rating category assigned [~~and having a rating of no less than A1 or P1~~] by [~~Standard & Poor's or Moody's, respectively, or an equivalent rating by~~] a NRSRO.

(12) Corporate bonds. A credit union may invest in [~~domestically-issued~~] corporate bonds issued by a corporation domiciled within the United States. The bonds must have a long-term rating [~~which are rated~~] in [~~one of~~] the [~~two~~] highest rating category assigned [~~categories~~] by a NRSRO [~~(e.g. Standard & Poor's ratings AAA, and AA,~~] and have remaining maturities of five years or less.

(13) Municipal bonds. A credit union may invest in municipal bonds which are rated [~~in one of~~] the [~~two~~] highest rating category assigned [~~categories~~] by a NRSRO and have remaining maturities of five years or less.

(14) Mortgage related securities. With the exception of "accrual bonds" (or Z-bonds) or the residual interest of the mortgage related security, a credit union may invest in mortgage related securities that have a long-term rating in the highest rating category assigned[~~, which are rated in one of the two highest rating categories~~] by a NRSRO and that are backed by mortgages secured by real estate upon which is located a residential dwelling, a mixed residential and commercial structure, or a residential manufactured home.

(15) Asset-backed securities. Provided the underlying collateral is domestic- and consumer-based, a credit union may invest in asset-backed securities that have a long-term rating in the highest rating category assigned [~~rated in one of the two highest rating categories~~] by a NRSRO.

(d) Documentation.[~~:~~] A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgment in exercising the investment powers under the Act and this rule. Except for investments that are issued, insured or fully guaranteed as to principal and interest by the U.S. Government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation, a credit union must conduct and document a credit analysis of the issuing entity and/or investment before purchasing the investment. The credit union must update the credit analysis at least annually as long as the investment is held. Credit and other due diligence documentation for each investment shall be maintained as long as the credit union holds the investment and until it has been both audited and examined. Before purchasing or selling a security, a credit union must obtain either price quotations on the security (or a similarly-structured security) from at least two broker-dealers or a price quotation on the security (or similarly-structured security) from an industry-recognized information provider.

(e) Classification. A credit union must classify a security as hold-to-maturity, available-for-sale, or trading, in accordance with generally accepted accounting principles and consistent with the credit union's documented intent and ability regarding the security.

(f) Purchase or Sale of Investments Through a Third-Party.

(1) A credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or is a financial institution whose broker-dealer activities are regulated by a federal or state regulatory agency.

(2) Before purchasing an investment through a broker-dealer, a credit union must analyze and annually update the following information.

(A) The background of the primary sales representative and the local broker-dealer firm with whom the credit union is doing business, using information available from federal or state securities regulators and securities industry self-regulatory organizations, such as the Financial Industry Regulatory Authority [~~National Association of Securities Dealers~~] and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer firm, its affiliates, or associated personnel.

(B) If the broker-dealer is acting as the credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, long-term or counterparty ratings that have been assigned by NRSROs, reports of NRSROs [~~nationally-recognized statistical rating organizations~~], relevant disclosure documents such as annual independent auditor reports, and other sources of financial information.

(3) Paragraphs [~~Requirements~~] (1) and (2) of this subsection do not apply when a credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other financial institution.

(g) Discretionary Control Over Investments and Investment Advisers.

(1) Except as provided in paragraph (2) of this subsection, a credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated discretionary control to an investment adviser when the credit union reviews all recommendations from the investment adviser and is required to authorize a recommended purchase or sale transaction before its execution.

(2) A credit union may delegate discretionary control over the purchase and sale of investments in an aggregate amount not to exceed 100% of its net worth at the time of delegation to persons other than the credit union's officials or employees, provided each such person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b).

(3) Before transacting business with an investment adviser to which discretionary control has been granted, and annually thereafter, a credit union must analyze the adviser's background and information available from federal and state securities regulators and securities industry self-regulatory organizations, including any enforcement actions against the adviser, associated personnel, and the firm for which the adviser works.

(4) A credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

(5) A credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and their performance.

(h) Investment Practice Permitted to Federal Credit Unions. If an applicant credit union proposes to make the same type of investment which a federally chartered credit union has been granted permission to make, the commissioner shall grant the application unless the commissioner finds that due to the financial position or the state of manage-

ment of the applicant credit union, the proposed investments or deposits would not be sound or prudent investment practices for the applicant credit union. The commissioner may instead grant the application conditionally, grant in modified form, or deny the application.

(i) Modification or Revocation of Investment Authority. If the commissioner finds that due to the financial condition or management of a credit union, an investment practice authorized by this section has ceased to be a safe and prudent practice, the commissioner shall inform the board of directors of the credit union, in writing, that the authority to engage in the practice has been revoked or modified. The credit union's directors and management shall immediately take steps to begin liquidating the investments in question or make the modification required by the commissioner. The commissioner for cause shown may grant the credit union a definite period of time to comply with the commissioner's orders. Credit unions which continue to engage in investment practices after their authority to do so has been revoked or modified will be treated as if the authority to engage in the practice had never been granted, and their actions may be deemed an unsound practice and a willful violation of an order of the commissioner and may be grounds for appropriate supervisory action against the credit union, its directors or officers.

(j) Waivers.

(1) The commissioner in the exercise of discretion may grant a written waiver, consistent with safety and soundness principles, of a requirement or limitation imposed by this subchapter. A decision to deny a waiver is not subject to appeal. A waiver request must contain the following:

(A) A copy of the credit union's investment policy;

(B) The higher limit or ratio sought;

(C) An explanation of the need to raise the limit or ratio; and

(D) Documentation supporting the credit union's ability to manage this activity.[;]

(2) In determining action on a waiver request made under subsection (a) of this section, the commissioner will consider the:

(A) Credit union's financial condition and management, including compliance with regulatory net worth requirements. If significant weaknesses exist in these financial and managerial factors, the waiver normally will be denied.

(B) Adequacy of the credit union's policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, if the waiver is approved.

(C) Credit union's record of investment performance. If the credit union's record of performance is less than satisfactory or otherwise problematic, the waiver normally will be denied.

(D) Credit union's level of risk. If the level of risk poses safety and soundness problems or material risks to the insurance fund, the waiver normally will be denied.

(k) NRSRO Credit Ratings. The reference to and use of NRSRO credit ratings in this rule provides a minimum threshold and is not an endorsement of the quality of the ratings. Credit unions must conduct their own independent credit analyses to determine that each security purchased presents an acceptable credit risk, regardless of the rating.

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

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Harold E. Feeney
Commissioner
Credit Union Department
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7 TAC §91.803

The Credit Union Commission (the Commission) proposes amendments to §91.803, concerning Investment Limits and Prohibitions. The amendments edit the rule for clarity.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, 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 amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and under Texas Finance Code §124.351 and §124.352, which address permitted investments and limitations on investments.

The specific sections affected by the proposed amendments are Texas Finance Code, §124.351 and §124.352.

§91.803. Investment Limits and Prohibitions.

(a) Limitations. A credit union may [~~not~~] invest no more [~~an amount that is greater~~] than 50% of its net worth with any single obligor or related obligors. This limitation does not apply to [~~except for~~] investments issued by, or fully guaranteed as to principal and interest by, the United States or an agency, enterprise, corporation, or instrumentality of the United States, or to [~~in~~] any trust or trusts established for investing, directly or collectively, in such securities, obligations, or instruments. For the purposes of this section, obligor is defined as an issuer, trust, or originator of an investment, including the seller of a loan participation.

(b) Designated Depository. As a single exception to [~~Notwithstanding~~] subsection (a) of this section, a credit union's board of directors may[~~, as a single exception to this section, will be allowed to~~] establish the maximum [~~total~~] aggregate deposit limit for a single financial institution approved by the board as the credit union's designated depository. This deposit limit shall be a percentage of net worth and must be based on the credit union's liquidity trends and funding needs as documented by its asset/liability management policy. This authority is contingent upon[~~, provided that~~] the credit union [~~has~~] appropri-

ately documenting [~~documented~~] its due diligence to demonstrate that the investments in this designated depository do not pose a safety and soundness concern. The credit union's board of directors shall review and approve at least annually the maximum [~~total~~] aggregate deposit limit for its designated depository. The review shall include a current due diligence analysis of the financial institution.

(c) Prohibited Activities.

(1) Definitions.

(A) Adjusted trading--selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

(B) Collateralized mortgage obligation (CMO)--a multi-class bond issue collateralized by mortgages or mortgage-backed securities.

(C) Fair value--the price at which a security can be bought or sold in a current, arms length transaction between willing parties, other than in a forced or liquidation sale.

(D) Real estate mortgage investment conduit (REMIC)--a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(E) Residual interest--the remainder cash flows from a CMO/REMIC, or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

(F) Short sale--the sale of a security not owned by the seller.

(G) Stripped mortgage-backed security (SMBS)--a security that represents either the principal-only or the interest-only portion of the cash flows of an underlying pool of mortgages or mortgage-backed securities. Some mortgage-backed securities represent essentially principal-only cash flows with nominal interest cash flows or essentially interest-only cash flows with nominal principal cash flows. These securities are considered SMBSs for the purposes of this rule.

(H) Zero coupon investment--an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

(2) A credit union may not:

(A) Purchase or sell financial derivatives, such as futures, options, interest rate swaps, or forward rate agreements;

(B) Engage in adjusted trading or short sales;

(C) Purchase stripped mortgage backed securities, residual interests in CMOs/REMICs, mortgage servicing rights, commercial mortgage related securities, or small business related securities;

(D) Purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;

(E) Purchase investments whereby the underlying collateral consists of foreign receivables or foreign deposits; or

(F) Purchase securities used as collateral by a safekeeping concern.

(d) Investment pilot program.

(1) The commissioner may authorize a limited number of credit unions to engage in other types of investment activities under an investment pilot program. A credit union wishing to participate in an investment pilot program shall submit a request that addresses the following items:

(A) Board policies approving the activities and establishing limits on them;

(B) A complete description of the activities, with specific examples of how the credit union will conduct them and how they will benefit the credit union;

(C) A demonstration of how the activities will affect the credit union's financial performance, risk profile, and asset-liability management strategies;

(D) Examples of reports the credit union will generate to monitor the activities;

(E) A projection of the associated costs of the activities, including personnel, computer, audit, etc.;

(F) A description of the internal systems to measure, monitor, and report the activities, and the qualifications of the staff and/or official(s) responsible for implementing and overseeing the activities; and

(G) The internal control procedures that will be implemented, including audit requirements.

(2) In connection with a request to participate in an investment pilot program, the commissioner will consider the general nature and functions of credit unions, as well as the specific financial condition and management of the applicant credit union, as revealed in the request, examinations, or such other information as may be available to the commissioner. The commissioner may approve the request, approve the request conditionally, approve it in modified form, or deny it in whole or in part. A decision by the commissioner concerning participation in an investment pilot program is not appealable.

(3) The commissioner may find that an investment pilot program previously authorized is no longer a safe and prudent practice for credit unions generally to engage in, or has become inconsistent with applicable state or federal law, or has ceased to be a safe and prudent practice for one or more particular credit unions in light of their financial condition or management. Upon such a finding, the commissioner will send written notice informing the board of directors of any or all of the credit unions engaging in such a practice that the authority to engage in the practice has been revoked or modified. When the commissioner so notifies any credit union, its directors and officers shall forthwith take steps to liquidate the investments in question or to make such modifications as the commissioner requires. Upon demonstration of good cause, the commissioner may grant a credit union some definite period of time in which to arrange its affairs to comply with the commissioner's direction. Credit unions which continue to engage in investment practices where their authority to do so has been revoked or modified will be deemed to be engaging in an unsound practice.

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

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Harold E. Feeney
Commissioner
Credit Union Department
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7 TAC §91.804

The Credit Union Commission (the Commission) proposes amendments to §91.804, concerning Custody And Safekeeping. The amendments clarify and update terms and provide an example of information a credit union should consider when evaluating a safekeeper.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, 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 amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and under Texas Finance Code §124.351 which sets out permitted investments for credit unions.

The specific section affected by the proposed amendments is Texas Finance Code, §124.351.

§91.804. Custody And Safekeeping.

(a) A credit union's purchased investments and repurchased collateral must be in its possession, recorded as owned by the credit union through the federal reserve book-entry system, or be held by a board-approved safekeeper under a bailment for hire contract or a custodial arrangement subject to regulation by the Securities and Exchange Commission. Any safekeeper used by a credit union must be regulated and supervised by either the Securities and Exchange Commission or a federal or state financial institution regulatory agency. For the purposes of this section a bailment for hire contract has the same meaning as in §91.802 (relating to Other Investments). Annually, a credit union must analyze the ability of any safekeeper used by the credit union to fulfill its custodial responsibilities, as evidenced by capital strength and financial conditions. The credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating organizations (NRSROs), relevant disclosure documents such as annual independent auditor reports, and other sources of financial information. At least monthly, a credit union must obtain and reconcile a statement of purchased investments and repurchased collateral held in safekeeping.

(b) A credit union that invests funds in a certificate of deposit in a financial institution as defined in §91.802 (relating to Other Investments) shall hold such certificate of deposit in the name of the credit union or, if held by a safekeeper or registered broker-dealer, in the safekeeper's or registered broker-dealer's name as custodial nominee[~~custodian~~] for a credit union [~~or the credit union's registered broker or dealer~~]. Any certificate of deposit held by a safekeeper or registered broker-dealer as custodial nominee [~~custodian~~] for a credit union [~~or the credit union's registered broker or dealer~~] must be eligible for extended or flow-through insurance coverage to the credit union through either the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

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

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7 TAC §91.805

The Credit Union Commission (the Commission) proposes amendments to §91.805, concerning Loan Participation Investments. The amendments clarify that a credit union purchasing a participation interest in a non-member loan must report that interest in accordance with generally accepted accounting principles. The amendments also notify the credit union of the requirement to comply with Part 741 of the National Credit Union Administration, if applicable.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, 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 amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and under Texas Finance Code §124.351 which sets out permitted investments for credit unions.

The specific section affected by the proposed amendments is Texas Finance Code, §124.351.

§91.805. Loan Participation Investments.

(a) A credit union may purchase a participation interest in a non-member loan from a corporation, credit organization, or financial organization, as permitted by §124.351(a)(8) of the Act, provided the credit union [~~it~~]:

(1) is specifically empowered to purchase such investments in the board's written investment policy;

(2) does not obtain an interest greater than 90% of the face amount of each individual loan, if the borrower is not a member of the credit union or a member of another participating credit union;

(3) uses the same underwriting standards for loan participation investments as it does for loans originated by the credit union; and

(4) limits its aggregate investment in loan participation investments [~~participations~~] to an amount no greater [~~less~~] than 50% of the credit union's net worth.

(b) Financial Reporting. A participation interest in a non-member loan purchased under this section shall be reported in accordance with generally accepted accounting principles.

(c) Other Requirements. A credit union purchasing a loan participation investment must also comply with applicable requirements contained within Part 741 of the National Credit Union Administration Rules and Regulations.

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

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SUBCHAPTER K. RESIDENTIAL MORTGAGE LOAN ORIGINATORS EMPLOYED BY A CUSO

7 TAC §§91.2000 - 91.2007

The Credit Union Commission (Commission) proposes new Chapter 91, Subchapter K, §§91.2000 - 91.2007, concerning Residential Mortgage Loan Originators Employed by a CUSO. The new subchapter describes certain requirements for residential mortgage loan originators, and explains the process the Credit Union Department (Department) will use in examining, inspecting, and investigating these employees of credit union subsidiary organizations (CUSOs).

Section 91.2000, concerning Definitions and Licensing, defines credit union subsidiary organization, residential mortgage loan originator, and Nationwide Mortgage Licensing System and Registry, and sets out the licensing, supervision, and examination for residential mortgage loan originators.

Section 91.2001, concerning Books and Records; Examinations; Reimbursement of Travel Costs, requires residential mortgage loan originators to maintain books and records and make them available to the commissioner for examination. The rule also requires a CUSO to reimburse the Department for any out-of-state travel costs incurred in connection with an examination.

Section 91.2002, concerning Complaints and Investigations, requires the commissioner to investigate complaints and, if appropriate, refer the matter to the Department of Savings and Mortgage Lending for action.

Section 91.2003, concerning Enforcement Action, describes the actions the commissioner may take to ensure compliance with Finance Code Chapters 156 and 180.

Section 91.2004, concerning Annual Mortgage Call Reports; §91.2005, concerning Loan Status Form; and §91.2006, concerning Required Disclosures, describe reports, forms, and disclosures the CUSO or residential mortgage loan originator must provide.

Finally, §91.2007, concerning False, Misleading or Deceptive Practices, prohibits a residential mortgage loan originator from using any advertising that is inaccurate or misleading.

The new rules are proposed to comply with the Department's new oversight of CUSO employees that engage in residential mortgage loan originations.

Betsy Loar, General Counsel, has determined that for the first five year period the proposed new rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Loar has also determined that for each year of the first five years the proposed new rules are in effect, the public benefits anticipated as a result of enforcing the rules will be greater clarity and ease of use of the rules. There will be no effect on small or micro businesses as a result of adopting the rules. There is no economic cost anticipated to the credit union system or to individuals for complying with the rules if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new rules are proposed under Texas Finance Code §15.4024, which permits the Commission to adopt and enforce rules for the commissioner to examine, inspect, or investigate employees of credit union subsidiary organizations who are licensed to act as residential mortgage loan originators.

The specific sections affected by the proposed new rule is Texas Finance Code, §15.4024.

§91.2000. Definitions and Licensing.

(a) Definitions.

(1) Credit union subsidiary organization (CUSO) shall have the same meaning as provided in Finance Code §180.002.

(2) Residential mortgage loan originator shall have the same meaning as provided in Finance Code §180.002.

(b) Licensing. A residential mortgage loan originator employed by a CUSO shall be licensed as required by Finance Code Chapters 156 and 180, and shall comply with all requirements for obtaining, renewing, and maintaining a license under those chapters and under 7 TAC Chapter 81.

(c) Supervision and Examination. The commissioner shall examine, inspect, investigate, and enforce compliance with all legal and regulatory requirements applicable to residential mortgage loan originators employed by a CUSO. The commissioner may examine, inspect,

or investigate the employees of a CUSO as frequently as the commissioner considers it necessary or advisable to safeguard the public or to efficiently enforce applicable law.

§91.2001. Books and Records; Examinations; Reimbursement of Travel Costs.

(a) A residential mortgage loan originator employed by a CUSO shall maintain, at the location specified in his or her application, books and records as required by 7 TAC §81.10, and shall promptly make the books and records available to the department on request. The department, through its examiners, shall periodically examine these books and records. The examination shall be conducted in a manner consistent with 7 TAC §81.12.

(b) If the Department must travel out-of-state to conduct an examination of a residential mortgage loan originator employed by a CUSO because the required records are maintained at a location outside of the state, the CUSO will be required to reimburse the department for the actual costs the department incurs in connection with such out-of-state travel including transportation, lodging, meals, and any other reasonably related costs.

§91.2002. Complaints and Investigations.

If the commissioner receives a signed written complaint alleging improper acts or omissions by a residential mortgage loan originator employed by a CUSO, the commissioner shall investigate as set out in Finance Code §15.409 and 7 TAC §81.11. If the investigation finds grounds for suspending or terminating the residential mortgage loan originator's license, the commissioner shall promptly refer the matter to the Department of Savings and Mortgage Lending for further action.

§91.2003. Enforcement Action.

To ensure the effective supervision and enforcement of Finance Code Chapters 156 and 180 and all applicable rules, the commissioner may take any of the following actions:

(1) order restitution against a residential mortgage loan originator employed by a CUSO for violations of applicable laws;

(2) impose an administrative penalty on a residential mortgage loan originator employed by a CUSO, subject to Finance Code §180.202; or

(3) issue orders or directives as provided by Finance Code §180.203.

§91.2004. Annual Call Reports.

A CUSO that employs one or more residential mortgage loan originators must file an annual call report as required by 7 TAC §81.15. The report must be filed with the Department of Savings and Mortgage Lending, with a copy to the commissioner.

§91.2005. Loan Status Form.

A residential mortgage loan originator shall provide the appropriate loan status form as prescribed by 7 TAC §81.2 to a prospective mortgage loan applicant.

§91.2006. Required Disclosures.

A residential mortgage loan originator employed by a CUSO shall provide the following notice to a residential mortgage loan applicant with an application for a residential mortgage loan: "COMPLAINTS REGARDING RESIDENTIAL MORTGAGE LOAN ORIGINATORS EMPLOYED BY A CREDIT UNION SERVICE ORGANIZATION SHOULD BE SENT TO THE CREDIT UNION DEPARTMENT, 914 EAST ANDERSON LANE, AUSTIN, TEXAS 78752. TELEPHONE INQUIRIES MAY BE DIRECTED TO THE CREDIT UNION DEPARTMENT AT (512) 837-9236."

§91.2007. False, Misleading or Deceptive Practices.

A residential mortgage loan originator employed by a CUSO may not use any advertising (which includes print, electronic, or broadcast media, displays and signs, stationery, and other promotional material) or make any representation which is inaccurate or deceptive in any particular, or which in any way misrepresents its services or contracts, or which violates the requirements of 7 TAC §81.8 and §81.9.

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

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

SUBCHAPTER J. SUMMARY PROCEEDINGS

16 TAC §22.183

The Public Utility Commission of Texas (commission) proposes an amendment to §22.183, relating to Failure to Attend Hearing and Disposition by Default. The proposed amendment will allow the presiding officer to issue a default order if the party that does not bear the burden of proof fails to respond to the notice for an opportunity for hearing. Currently, §22.183 allows disposition by default only if a hearing is held and the party fails to appear for the hearing. Project Number 39316 is assigned to this proceeding.

Jason Haas, Legal 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 section.

Mr. Haas 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 more efficient processing of proceedings before the commission. Currently, the commission must hold a hearing, and only if the party fails to attend the hearing can the presiding officer issue a default order. The amendment will allow the presiding officer to issue a default order if the party fails to respond to the notice that the party has the opportunity for a hearing, reducing the administrative burden before issuing a default order. 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 is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Mr. Haas 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. The request for a public hearing must be received by August 1, 2011.

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, by August 1, 2011. Sixteen copies of comments on the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by August 15, 2011. 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 amended rule. The commission will consider the costs and benefits in deciding whether to adopt the amendment. All comments should refer to Project Number 39316.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 2007 and Supp. 2010) (PURA) and Administrative Procedure Act (APA), Texas Government Code §2001.004 (Vernon 2008 and Supp. 2010), which require the commission to adopt procedural rules.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052, and APA §2001.004.

§22.183. [Failure to Attend Hearing and] Disposition by Default.

(a) Default. A default occurs when a party who does not have the burden of proof fails to request a hearing within 30 days after service of notice of an opportunity for a hearing. [Disposition by default. If a party who does not have the burden of proof fails to appear for hearing, the presiding officer may proceed in that party's absence on a default basis. In the proposal for decision or final order, the factual allegations listed in the notice of hearing will be deemed admitted.]

(b) Default order. Upon default, the presiding officer may issue a default order - either a proposal for decision or a final order - disposing of the proceeding without a hearing. A default order requires adequate proof that: [Notice of default proceeding. Any default proceeding under this section requires adequate proof of the following:]

(1) The notice of the opportunity for a hearing [Proof that proper notice of hearing was provided to the defaulting party pursuant to Tex. Gov't Code, Chapter 2001. Such notice must have] included a disclosure in at least twelve-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default, if the defaulting party fails to timely request a [appear at the] hearing; and [or]

(2) The notice of opportunity for a hearing was sent by certified mail to: [If it is not possible to prove actual receipt of notice, a hearing may proceed on a default basis if there is credible evidence that:]

(A) [the notice of hearing was sent by certified mail, return receipt requested to] the party's last known address in the commission's records, if the party has a license, certificate, or registration approved by the commission; [and]

(B) [the notice of hearing was sent by certified mail, return receipt requested to] the registered agent for process for the party on file with the Secretary of State, if the party does not have a license, certificate, or registration approved by the commission and is registered with the Secretary of State; or[.]

(C) an address for the party identified after reasonable investigation, if subparagraphs (A) and (B) of this paragraph do not apply.

(c) Exceptions and replies Any party may file exceptions to a default proposal for decision and replies to exceptions pursuant to §22.261(d) of this title (relating to Proposals for Decision). [Admission of evidence. The party with the burden of proof shall submit evidence to the presiding officer in accordance with the requirements of this section.]

(d) Motions for rehearing. Any party may file a motion for rehearing to a default final order pursuant to §22.264 of this title (relating to Rehearing). [Motion to set aside a default. Not later than 10 days after the hearing has concluded, if a dismissal, proposal for decision, or a proposed final order has not been issued, a party may file a motion to set aside a default and reopen the record. The presiding officer may grant the motion, set aside the default and reopen the record for good cause shown.]

(e) Late hearing request. If a party requests a hearing after the deadline to request a hearing, but before a default order has become final, the presiding officer may grant the request for good cause shown. [Default proposal for decision or order. Upon the failure of the defaulting party to appear at the hearing, the presiding officer may issue a default proposal for decision or final order, as applicable. Parties may file exceptions and replies to exceptions to a default proposal for decision pursuant to §22.261 of this title (relating to Proposals for Decision) and may file a motion for rehearing to a default final order pursuant to §22.264 of this title (relating to Rehearing).]

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 June 17, 2011.

TRD-201102208
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) §§83.10, 83.20, 83.21, 83.25, 83.31, 83.70 - 83.72, 83.74, 83.80 and 83.120, and the repeal of §83.75 regarding the cosmetology program.

The Department is proposing amendments to Chapter 83 in response to its required four-year rule review and the Texas Commission of Licensing and Regulation's (Commission) rule simplification initiative.

The proposed rule changes are necessary to eliminate the definition and licensing requirements relating to registered examination proctors; eliminate continuing education licensing requirements for licenses expiring before September 1, 2008; modify the number of continuing education courses required for license

renewal; expand the ways for cosmetology schools to track student hours; clarify the definition of school withdrawal and termination and eliminate the specific number of practical applications that students must perform along with the requirement that schools record and transmit that information to the Department.

The Department published a Notice of Intent to Review its cosmetology program rules as part of the four-year rule review required under Texas Government Code §2001.039, in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10064). A subsequent notice was published in the December 10, 2010, issue of the *Texas Register* (35 TexReg 11079), which extended the public comment period until January 13, 2011.

The Department received public comments in response to its Notice of Intent to Review. The re-adoption notice stated that the Department would address those public comments along with the suggested changes resulting from the Department's own review in a future proposed rulemaking. In addition to those suggested changes, the Texas Commission of Licensing and Regulation, has directed the Department's advisory boards to review their respective program rules with a goal of simplifying the rules and eliminating any unnecessary or obsolete rules.

The current proposal reflects the public comments submitted in response to the Notice of Intent to Review, the Department's own review of the rules, and input and recommendations from the Cosmetology Advisory Board (Advisory Board) on the rule review proposal and the rule simplification initiative. The Department's responses to the public comments that were submitted in response to the Notice of Intent to Review are specifically addressed in this proposal.

§83.10

The proposal amends §83.10. Definitions, by deleting current §82.10(20), "registered examination proctor" defined as "an individual authorized by the department to evaluate or grade practical examinations..." The Department does not use registered examination proctors to grade exams. It is more cost effective to contract with PSI Exams for this service because the company also develops and administers examinations for all occupational licenses that the Department regulates. As a result, the rules requiring registration and regulation of examination proctors are unnecessary.

The proposal also renumbers the remaining definitions as applicable to reflect the deleted definition.

Three public comments were submitted on §83.10 in response to the Notice of Intent to Review. One individual urged reform of the registered examination proctor qualifications and registration. The Department did not incorporate the commenter's suggestions into this proposal but instead is recommending that the examination proctor registrant definition and all rules referencing the term be eliminated.

Another individual strongly felt that the term facialist should be changed to aesthetician because the term "aesthetician" is more widely used in the industry. The Department did not make any changes in response to this public comment. This suggestion would require a statutory change by the legislature.

A third individual submitted a public comment suggesting that the term "approved program" be added to §83.10 as "a program approved by the Department to provide training for a specialty license that is subject to regulation under the act". The Department did not make any changes in response to this public comment. This suggestion would require a statutory change by the legislature.

§83.20

The proposal deletes §83.20(f)(1) - (5), eligibility requirements for registered examination proctors.

Four public comments were submitted on §83.20 in response to the Notice of Intent to Review. One individual suggested that standardizing the written exam by using the NIC exam will make discussions of reciprocity more relevant since 36 states currently adhere to NIC testing. The Department did not make any changes in response to this public comment because the decision to contract with testing services is not determined by rule.

The same individual questioned whether weaving, braiding and wig specialty should be removed from the definition of cosmetology. A second individual stated that the braiding and weaving license be combined and the hours increased to 750 because it takes more practice for someone to learn to braid or weave than it does to learn to cut, color, or relax hair.

The Department did not make any changes in response to these public comments however the Commission's rule simplification initiative is an ongoing project and the Advisory Board and the Department will consider curriculum recommendations at a later date.

A representative of Southeast Texas Career Institute commented that all instructors should be required to complete 750 hours in methods of teaching instead of having the option to substitute two years of practical experience for 500 hours of training in teaching methods. This would ensure that instructor learn effective teaching methods. The Department did not make any changes in response to this public comment. This suggestion would require a statutory change by the legislature.

A fourth individual commented that an apprenticeship program should be an educational requirement for licensure. The Department did not make any changes in response to this public comment. This suggestion would require a statutory change by the legislature.

§83.21

The proposal amends §83.21(g) to eliminate the requirement that applicants wear a smock/lab coat with sleeves when taking the practical examination. The Advisory Board's opinion is that the requirement is not necessary to ensure safety or sanitation during testing.

One public comment was submitted on §83.21 in response to the Notice of Intent to Review. A representative of Regency Beauty Institute commented that these subparagraphs make no reference to requiring students to complete the remainder of their 1500 clock hours prior to taking the written exam and as such, the rule leads students to believe that they can move forward with taking their written and practical exam with only 1000 hours completed. The individual suggests that the rule be clarified to indicate that schools must certify a student's graduation prior to registration for the practical exam. The Department did not make any changes in response to this public comment however the Commission's rule simplification initiative is an ongoing project and the Advisory Board and the Department will consider this recommendation at a later date.

§83.22

One public comment was submitted on §83.22 in response to the Notice of Intent to Review which questioned why there should be separate licenses for barbers and cosmetologists since there is no difference between the two occupations except that barbers can shave clients. The Department did not make any changes in response to this public comment. This suggestion would require a statutory change by the legislature.

The same commenter suggested that new salons be permitted to open if they have submitted a completed application certifying that they have complied with TDLR requirements and paid the fee since allowing opening prior to inspection would create jobs more quickly for cosmetologists. The Department did not make any changes in response to this public comment however the Commission's rule simplification initiative is an ongoing project and the Advisory Board and the Department will consider this recommendation at a later date.

A second individual was concerned about the complications of moving a shop from one location to another without closing the business for a few days stating that it is not practical and that some leniency should be given to shop owners so they don't have to close their business. The Department did not make any changes in response to this public comment however the Commission's rule simplification initiative is an ongoing project and the Advisory Board and the Department will consider this recommendation at a later date.

§83.25

The proposal amends §83.25 by eliminating subsections (b) - (d) which refer to continuing education licensing requirements for licenses that expire before September 1, 2008. These subsections were included as transition provisions and are no longer necessary because all licenses issued prior to September 1, 2008, have expired.

Section 83.25 is amended based upon the Advisory Board's review of the continuing education requirements. The Advisory Board's opinion is that the overall number of continuing education hours should be reduced from six to four. The number of sanitation hours required for operators and specialty instructors are decreased from two to one and three hours must be earned in any topic listed in subsections (g) including sanitation, law and rules other than sanitation, and the curriculum subjects listed in §83.120.

Three public comments were submitted on §83.25 in response to the Notice of Intent to Review. One cosmetologist submitted a comment suggesting that continuing education requirements for renewal should be eliminated.

A second individual suggested that the Department find a way for continuing education to be reduced or streamlined and a third individual commented that there is no justifiable reason to require continuing education for license renewal and questioned the exemption for licensees over 65 years of age if continuing education requirements are really necessary. The Advisory Board has proposed reducing the continuing education requirements and has incorporated the suggestions into this proposal.

§83.28

One public comment was submitted on §83.28 in response to the Notice of Intent to Review. The commenter stated that the reciprocity requirements are too stringent and that Texas should allow all out-of-state qualified cosmetologists to obtain a license. The Department did not make any changes in response to this public comment. The requirements for allowing out-of-state qualified cosmetologists to obtain a license are set out in §83.28(a)(1)(A).

§83.31

The proposal deletes §83.31(b)(3), license terms for examination proctor registration.

§83.65

One individual commented on §83.65 in response to the Notice of Intent Review. The individual suggested barring cosmetology school owners from sitting on the Advisory Board as one of several ways to make obtaining a license less expensive and improve the quality of graduates. The Department did not make any changes in response to this public comment. This suggestion would require a statutory change by the legislature.

§83.70

The proposal amends §83.70(e) to expand the options a license holder has when displaying her/his license. The amendment will allow the licensee to either post the license at her/his work station or make it available at the salon reception desk.

The proposal eliminates §83.70(i) which requires licensees to make appointments to provide services to incapacitated or deceased persons through a salon. The Advisory Board believes that eliminating this subsection will make it more convenient for a licensee because she/he will be able to make arrangements to directly schedule the service without using an intermediary salon.

§83.71

The proposal eliminates §83.71(e)(1)(D) and (6)(D) which currently requires salons to provide hand-held hair dryers to salon employees. The Advisory Board recommends this change to reflect the standard practice in the industry that stylists use their own hand-held hair dryers when working.

§83.72

The proposal amends §83.72 to provide an additional way for beauty culture schools to track student hours. Currently, schools may only track student hours by using a time clock. The proposed amendments give schools the option of using credit hours to track student hours. The amendments establish procedures for schools that elect to use credit hours. Schools choosing to change from clock to credit hours will be required to submit their curriculum to the Department for approval before making the change to ensure that the proposed curriculum hours are equivalent to clock hours.

One public comment was submitted by an instructor at the Odessa College Cosmetology High School Department on §83.72 in response to the Notice of Intent to Review. The cosmetology instructor favored eliminating clock hours for cosmetology students because it would put more focus on learning instead of accumulating hours in a subject area and would allow instructor input when scheduling exams based upon student mastery of subject matter instead of hours accumulated. The instructor believes that this change would help to reduce failure rates. The Department incorporated the commenter's suggestion into the proposal by providing an additional method of tracking student hours by credit so that schools may have the option of using either clock hours or credit hours.

A second public comment was received from Regency Beauty Institute on §83.72(f) in response to the Notice of Intent to Review requesting that the requirement that a full-time instructor

be on staff and on duty during business hours be amended to include part-time instructors. The Department did not make any changes in response to this public comment. This suggestion would require a statutory change by the legislature.

§83.74

The proposal amends §83.74(b), (c), and (i) - (k) to change the term "credit hours" to "credit" so that the term will include both clock hours and credit hours.

The Department proposes to amend §83.74(g) to define the terms "withdrawal or termination" by the number of hours scheduled according to the contract the student has signed with the school and not the clock hours the student has earned during class attendance. The amendment creates a method of calculating withdrawal or termination that does not solely reference clock hours but also includes credit hours.

§83.75

The proposal repeals §83.75. Responsibilities of Registered Examination Proctors. This rule is obsolete and unnecessary and is being repealed in response to the Commission's directive to simplify and eliminate any unnecessary or obsolete rules.

§83.80

The proposal deletes §83.80(a)(12), (b)(12) and (j), registration, examination and renewal fees of registered examination proctors.

One public comment was submitted on §83.80 in response to the Notice of Intent to Review. The individual stated that "the extravagant costs of licensing fees for out-of-state applicants needs to be lowered for anyone who has already taken and successfully passed a test in their previous state." In the alternative, fees should be lowered for individuals who are required to test in Texas. The Department did not make any changes in response to this public comment. The Department is required to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The fees currently in place are commensurate with the amount required by the Department to cover costs.

§83.120

The proposal amends §83.120(d) to eliminate the requirement that each cosmetology student complete minimum practical applications of the curriculum according to the practical applications of the curriculum set out in subsection (d). The current rule requiring that cosmetology students complete the same number of practical applications does not take into account the aptitude of the individual student and the amount of time it may or may not take a student to achieve mastery of a specific application. The elimination of the practical application minimum requirements will allow schools to consider the needs of each student, individually, when assigning practical applications.

William H. Kuntz, Jr., Executive Director, has determined that, for the first five-year period the proposed amendments and repeal are in effect there will be no foreseeable implications relating to cost or revenues of state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments and repeal are in effect, the public benefit will be enhanced by making current rules more accessible and understandable to the cosmetology industry as a result of repealing obsolete or unnecessary rules.

The reduction in continuing education hours may have some negative financial impact on small or micro-businesses who provide continuing education courses for cosmetologists. The Department does not monitor the fees that continuing education providers charge for hours or courses but a review of on-line courses shows an average price of $55 to $65 for a six hour course. The estimated fees could be reduced by approximately one-third if course hours and/or fees are reduced to reflect the reduction in continuing education hours. The Department does not regulate the fees that continuing education providers charge and some providers may choose to raise fees in response to the reduction in hours.

Conversely, there will be costs and time savings to approximately 187,000 licensees who will benefit from the reduction in hours, many of whom are also small business. The amount of savings to each licensee will vary depending upon the course in which the licensee chooses to enroll.

The Department has considered not reducing continuing education hours or reducing them by one hour instead of two, however the Advisory Board believes that the benefit to license holders out-weighs any possible negative impact to continuing education providers.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

16 TAC §§83.10, 83.20, 83.21, 83.25, 83.31, 83.70 - 83.72, 83.74, 83.80, 83.120

The amendments are proposed under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Department's governing body, the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1601, 1602 and 1603. No other statutes, articles, or codes are affected by the proposal.

§83.10. Definitions.

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

(1) - (15) (No change.)

(16) Manicurist--A manicurist may perform only those services defined in Texas Occupations Code §1602.002(10) and (11).

(17) - (19) (No change.)

~~[(20) Registered Examination Proctor--An individual authorized by the department to evaluate or grade a practical examination for the department for a license issued under Texas Occupations Code, Chapter 1602.]~~

(20) [~~(21)~~] Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(21) [~~(22)~~] Shampoo Apprentice--A person authorized to perform the practice of cosmetology as defined in Texas Occupations Code §1602.002(3), relating to shampooing and conditioning a person's hair.

(22) [~~(23)~~] Specialty Instructor--An individual authorized by the department to offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(7), (9), and/or (10). Specialty instructors may only teach the subject matter in which they are licensed.

(23) [~~(24)~~] Specialty Salon--A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(2), (4), (7), (9), or (10) is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.

(24) [~~(25)~~] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

(25) [~~(26)~~] Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

§83.20. License Requirements--Individuals.

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

~~[(f) To be eligible for a registered examination proctor registration, an applicant must:]~~

~~[(1) have held an active instructor license for at least two of the five years preceding the application;]~~

~~[(2) hold an active instructor license;]~~

~~[(3) obtain a certificate of completion from a department-approved training course;]~~

~~[(4) submit a completed application on a department-approved form; and]~~

~~[(5) pay the applicable fee under §83.80.]~~

(f) [~~(g)~~] A license application is valid for one year from the date it is filed with the department.

§83.21. License Requirements--Examinations.

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

(g) Examinees are required to wear [~~a smock/lab coat with sleeves and~~] closed toe shoes for the practical examination.

(h) (No change.)

§83.25. License Requirements--Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

~~[(b) To renew an operator or instructor license that expires prior to September 1, 2008, a licensee must complete a total of 12 hours of continuing education through department approved courses, of which 4 hours must be in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83.]~~

~~[(c) To renew a manicure instructor specialty license, manicurist specialty license, facial instructor specialty license, facialist specialty license, hair weaving specialty certificate, hair braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate that expires prior to September 1, 2008, a licensee must complete a total of 8 hours of continuing education through department-approved courses, of which 4 hours must be in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83.]~~

~~[(d) If a licensee holds an instructor license, facial instructor specialty license, or manicure instructor specialty license that expires prior to September 1, 2008, then, of the total hours required under subsections (b) or (c), the licensee must complete 2 hours in Methods of Teaching in accordance with §83.120.]~~

(b) [~~(e)~~] To renew an operator license, manicurist specialty license, facialist specialty license, hair weaving specialty certificate, hair braiding specialty certificate, wig specialty certificate, or shampoo/conditioning specialty certificate [~~that expires on or after September 1, 2008~~], a licensee must complete a total of 4 [~~6~~] hours of continuing education through department-approved courses. The continuing education hours must include the following:

(1) 1 hour [~~2 hours~~] in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83; and

~~[(2) 2 hours in the Act and 16 Texas Administrative Code, Chapter 83, addressing topics other than Sanitation; and]~~

(2) [~~(3)~~] 3 [~~2~~] hours in any topics listed in subsection (g) [~~(j)~~].

(c) [~~(f)~~] To renew an instructor license, manicure instructor specialty license, or facial instructor specialty license [~~that expires on or after September 1, 2008,~~] a licensee must complete a total of 4 [~~6~~] hours of continuing education through department-approved courses. The continuing education hours must include the following:

(1) 1 hour [~~2 hours~~] in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83; and

~~[(2) 2 hours in the Act and 16 Texas Administrative Code, Chapter 83, addressing topics other than Sanitation; and]~~

(2) [~~(3)~~] 3 [~~2~~] hours in methods of teaching in accordance with §83.120.

(d) [~~(g)~~] For a timely or a late renewal, a licensee must complete the required continuing education hours within the two year period immediately preceding the renewal date.

(e) [~~(h)~~] A licensee may receive continuing education hours in accordance with the following:

(1) A licensee may not receive continuing education hours for attending the same course more than once.

(2) A licensee will receive continuing education hours for only those courses that are registered with the department, under procedures prescribed by the department.

(f) [~~(i)~~] A licensee shall retain a copy of the certificate of completion for a course for two years after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(g) [~~(j)~~] To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Sanitation required under the Act and 16 TAC Chapter 83;

(2) the Act and 16 TAC Chapter 83, addressing topics other than Sanitation;

(3) the curriculum subjects listed in 16 TAC §83.120.

(h) [~~(k)~~] A registered course may be offered until the expiration of the course registration or until the provider ceases to hold an active provider registration, whichever occurs first.

(i) [~~(l)~~] A provider shall pay to the department a continuing education record fee of $5 for each licensee who completes a course

for continuing education credit. A provider's failure to pay the record fee for courses completed may result in disciplinary action against the provider, up to and including revocation of the provider's registration under Chapter 59 of this title.

(j) [~~(m)~~] Notwithstanding subsections (b) and (c) [~~- (f)~~] a licensee may satisfy the continuing education requirement for renewal by completing two hours of Sanitation in department-approved courses, if the licensee:

(1) is at least 65 years of age; and

(2) has held a cosmetology license for at least 15 years.

§83.31. Licenses--License Terms.

(a) (No change.)

(b) The following licenses have a term of one (1) year:

(1) private beauty culture school license; and

(2) public secondary or postsecondary beauty culture school certificate.[~~; and~~]

[~~(3) examination proctor registration.~~]

(c) A shampoo apprentice permit expires one (1) year from the date of issuance and is not renewable.

§83.70. Responsibilities of Individuals.

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

(e) Individual licenses and booth rental (independent contractor) licenses may [~~must~~] be posted at the licensee's work station in the public view or be made available in a notebook at the salon reception desk.

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

[~~(i) Cosmetology services may be performed on incapacitated or deceased persons provided that the appointment is made through the salon. Licensees must have their license in their possession while performing the service.~~]

(i) [~~(j)~~] Licensees shall wear clean top and bottom outer garments and footwear while performing services authorized under the Act. Outer garments include tee shirts, blouses, sweaters, dresses, smocks, pants, jeans, shorts, and other similar clothing and do [~~does~~] not include lingerie or see-through fabric.

§83.71. Responsibilities of Beauty Salons, Specialty Salons, Dual Shops, and Booth Rentals.

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

(e) In addition to the requirements of subsection (d):

(1) beauty salons shall provide the following equipment for each licensee present and providing services:

(A) one working station;

(B) one styling chair; and

(C) a sufficient amount of shampoo bowls.[~~; and~~]

[~~(D) one hand-held hair dryer or hood hair dryer, with or without chair.~~]

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

(6) hair weaving salons shall provide the following equipment for each licensee present and providing services:

(A) one work station;

(B) one styling chair; and

(C) a sufficient amount of shampoo bowls for licensees providing hair weaving services.[~~; and~~]

[~~(D) one chair dryer/handheld dryer for each three licensees providing hair weaving services.~~]

(7) - (8) (No change.)

(f) - (j) (No change.)

§83.72. Responsibilities of Beauty Culture Schools.

(a) - (g) (No change.)

(h) Schoolsmay [~~must~~] use a time clock to track student hours and maintain a daily record of attendance or schools may use credit hours [~~with each student personally punching the time clock~~].

(i) Schools using time clocks [~~Beauty culture schools~~] shall post a sign at the time clock that states the following department requirements:

(1) Each student must personally punch the time clock [~~in/out for himself/herself~~]. No student may allow another person to clock in or out on his/her behalf [~~of that student~~].

(2) No credit shall be given for any times written in, except in a documented case of time clock failure or other situations approved by the department.

(3) If a student is in or out of the facility for lunch, he/she must clock out.

(4) Students leaving the facility for any reason, including smoke breaks, must clock out, except when an instructional area on a campus is located outside the approved facility, that area is approved by the department and students are under the supervision of a licensed instructor.

(j) Students are prohibited from preparing hour reports or supporting documents. Student-instructors may prepare hour reports and supporting documents; however only school owners and school designees, including licensed instructors, may electronically submit information to the department in accordance with this chapter. No student permit holder, including student-instructors, may electronically submit information to the department under this chapter.

(k) A school must properly account for the credit [~~clock hours~~] granted to each student. A school shall not engage in any act directly or indirectly that grants or approves student credit [~~hours~~] that is [~~are~~] not accrued in accordance with this chapter. A school must maintain and have available for a department and/or student inspection the following documents for a period of the student's enrollment through 48 months after the student completes the curriculum, withdraws, or is terminated:

(1) daily record of attendance;

(2) [~~student clock hours as demonstrated by~~] the following documents if a time clock is used;

(A) time clock record(s);

(B) time clock failure and repair record(s); and

(C) field trip records in accordance with §83.120(d)(5); and

[~~(3) practical applications of the curriculum; and~~]

(3) [~~(4)~~] all other relevant documents that account for a student's credit [~~accrued clock hours and practical applications~~] under this chapter.

(l) Schools using time clocks [~~At least one time per month, schools~~] shall, at least one time per month, submit to the department an electronic record of each student's accrued clock hours in a manner and format prescribed by the department. A school's initial submission of clock hours shall include all hours accrued at the school. [~~Upon graduation, a school shall affirm in an electronic manner and format prescribed by the department that a student completed the practical applications, if any, prescribed by the department's minimum standards or the school's published standards.~~] Delayed data submission(s) are permitted only upon department approval, and the department shall prescribe the period of time for which a school may delay the electronic submission of data, to be determined on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(m) Schools using credit hours shall, at the end of the course or module, submit to the department an electronic record of each student's accrued credit hours in a manner and format prescribed by the department.

(n) Schools switching from clock hours to credit hours shall submit to the department their curriculum for approval before making the change.

(o) [~~(m)~~] Except for a documented leave of absence, schools shall electronically submit a student's withdrawal or termination to the department within 10 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school shall terminate a student who does not attend a cosmetology curriculum for 30 days.

(p) [~~(n)~~] Public schools shall electronically submit a student's accrual of 500 hours in math, lab science, and English.

(q) [~~(o)~~] All areas of a school or campus are acceptable as instructional areas for a public cosmetology school, provided that the instructor is teaching cosmetology curricula required under §83.120.

(r) [~~(p)~~] A private cosmetology school may provide cosmetology instruction to public high school students by contracting with the Texas Education Agency and complying with Texas Education Agency law and rules. A public high school student receiving instruction at a private cosmetology school in accordance with a contract between the private cosmetology school and the Texas Education Agency is considered to be a public high school student enrolled in a public school cosmetology program for purposes of the Act and department rules.

(s) [~~(q)~~] Schools may establish school rules of operation and conduct, including rules relating to absences and clothing, that do not conflict with this chapter.

(t) [~~(r)~~] Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following:

(1) desks and chairs or table space for a minimum of 10 students (plus one desk or chair or table space for additional students enrolled an in attendance per theory class);

(2) charts covering, bones, muscles, nerves, skin, and nails;

(3) medical dictionary;

(4) minimum visual aid requirements: television and VCR or DVD;

(5) a dispensary of not less than 50 contiguous square feet with a double sink with hot and cold running water and space for storage and dispensing of supplies and equipment;

(6) six shampoo bowls and six shampoo chairs;

(7) eight heat processors or hand-held hair dryers;

(8) one heat cap or therapeutic light;

(9) eight dozen cold wave rods;

(10) three electric irons, or marcel stoves and irons;

(11) sixteen styling stations covered with a non-porous material that can be cleaned and disinfected, with mirror, and 16 styling chairs (swivel or hydraulic);

(12) twelve mannequins with sufficient hair with table or attached to styling stations;

(13) if using a time clock to track student hours, one day/date formatted computer time clock;

(14) one pair of professional hand clippers;

(15) three professional hand held dryers;

(16) four manicure tables and four stools;

(17) a suitable receptacle for used towels/linen;

(18) four covered trash cans in lab area;

(19) one large wet disinfectant soaking container;

(20) a clean, dry, debris-free storage area;

(21) if teaching facial courses:

(A) facial chair;

(B) magnifying lamp;

(C) woods lamp;

(D) dry sanitizer;

(E) steamer;

(F) brush machine for cleaning;

(G) vacuum machine that includes spray device;

(H) high frequency for disinfection, product penetration, stimulation;

(I) galvanic for eliminating encrustations, product penetration;

(J) paraffin bath and paraffin wax; and

(22) if providing manicure or pedicure nail services, a department-approved sterilizer.

(u) [~~(s)~~] Cosmetology establishments shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

§83.74. Responsibilities--Withdrawal, Termination, Transfer, School Closure.

(a) A student desiring to transfer from one school to another must withdraw from the first school prior to the transfer. Enrollment in two or more schools of cosmetology at the same time is prohibited.

(b) A student transferring to a school who desires to claim credit [~~hours and practical applications~~] earned must inform the school transferred to prior to enrollment of his/her prior attendance and must furnish to that school and the department a record of credit [~~hours~~] claimed [~~and practical applications completed~~]. This record may be in the form of a transcript from the prior school or an extract from records of the department.

[(c) A student may not graduate until all previously accrued hours, upon re-entry to that school or transferring from another school, have been reported.]

[(d) A student may withdraw from school at any time by notifying the school in writing.]

(c) [(e) Upon withdrawal, and provided that the agreed tuition and fees have been tendered, a student is entitled to an official transcript of credit earned [hours taken and practical application performed] at the school withdrawn from. The transcript [and practical applications] must be ready for pickup or, if mailed, postmarked within ten calendar days of the school's receipt of notice of withdrawal. A copy of the transcript [and practical applications] must be kept in the student's file for 48 months and the copy must be made available at the request of the department.

(d) [(f)] A student who withdraws from a cosmetology school is entitled to a refund in accordance with Texas Occupations Code, Chapter 1602.

(e) [(g)] Withdrawal or termination during the first week shall be defined by the number of hours scheduled according to the contract the student has signed with the school and not the clock hours the student has earned during class attendance. [If scheduled clock hours are 40 hours per week, then the week is defined to be 40 clock hours; for part time students, the amount of scheduled clock hours per week defines the week.]

[(h) Enrollment is defined as the time elapsed between the actual starting date and the date of the student's last day of attendance.]

(f) [(i)] If a school closes or ceases operation before the class credit is earned [hours are completed,] the student is entitled to a tuition refund in accordance with Texas Occupations Code, Chapter 1602.

(g) [(j)] Any student of an out-of-state private or public cosmetology school may submit a request to the department to transfer the completed credit [hours of instruction] to a Texas school. A transcript must be submitted on the prescribed form and certified by the school in which the instruction was given. Portions of the curricula of the department not taught in another state must be taken in an approved Texas school prior to taking the Texas examination.

(h) [(k)] A student enrolled for a specialty course may withdraw and transfer credit [hours] acquired to the operator course not to exceed the amount of hours of that subject in the operator curriculum. Students enrolled in the operator course may withdraw and transfer up to the maximum specialty hours within the operator curriculum for that course. [Once a license is obtained, hours may not be transferred to another course.]

§83.80. Fees.

(a) Application fees.

(1) - (11) (No change.)

[(12) Examination Proctor Registration--$25]

(12) [(13)] Beauty and specialty salons--$106

(13) [(14)] Booth Rental (Independent Contractor) License--$67

(14) [(15)] Private Beauty Culture School--$500

(15) [(16)] Dual Shop--$130

(16) [(17)] Mobile Shop--$106

(17) [(18)] Temporary Beauty Salon, Specialty Salon, or Dual Shop License--$20

(b) Renewal fees.

(1) - (11) (No change.)

[(12) Examination Proctor Registration--$25]

(12) [(13)] Beauty and specialty salons--$69

(13) [(14)] Booth Rental (Independent Contractor) License--$67

(14) [(15)] Private Beauty Culture School--$200

(15) [(16)] Dual Shop--$100

(16) [(17)] Mobile Shop--$69

(c) - (i) (No change.)

[(j) Registered Examination Proctor Department training course--$50]

(j) [(k)] Late renewals fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(k) [(l)] All fees are nonrefundable, except as otherwise provided by law or commission rule.

§83.120. Technical Requirements--Curriculum.

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

[(d) Practical Applications of the Curriculum]
[Figure: 16 TAC §83.120(d)]

(d) [(e)] Field Trips.

(1) Cosmetology related field trips are permitted under the following conditions for students enrolled in the following courses and the guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip curriculum hours:

(A) a maximum of 75 hours out of the 1,500 hours operator course;

(B) a maximum of 50 hours out of the 1,000 hours operator course;[.]

(C) a maximum of 30 hours for the manicure course;

(D) a maximum of 30 hours for the facial course; and

(E) a maximum of 30 hours for students taking the 750 hour instructor course.

(3) Unless provided by this subsection, field trips are not allowed for specialty courses.

(4) Students must be under the supervision of a licensed instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(5) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(6) No hours are allowed for travel.

(7) Prior department approval is not required.

[(f) The changes in this section, as adopted by the commission on June 14, 2006, shall apply to students who enroll in a cosmetology school on or after September 1, 2006.]

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 June 20, 2011.

TRD-201102280
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 463-7348

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16 TAC §83.75

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

The repeal is proposed under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Department's governing body, the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, 1602 and 1603. No other statutes, articles, or codes are affected by the proposed repeal.

§83.75. Responsibilities of Registered Examination Proctors.

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

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William H. Kuntz, Jr.
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Texas Department of Licensing and Regulation
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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.152

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.152, Application for License. The purpose of the proposed amendments is to correct an erroneous citation to a statute in 16 TAC §401.152(d) by substituting the statutory citation §466.156(a) for §466.014(e), which is nonexistent; and to reflect the statutory treatment of application filing fees, as provided in Government Code §466.152.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated will be that the rule will be clarified to contain the correct statutory reference, and will reflect the statutory treatment of filing fees required by Government Code §466.152.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Pete Wassdorf, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.152 Application for License.

(a) An applicant for a license under this subchapter must apply to the Commission using forms provided by the Commission. The director may determine not to consider any application unless all requested information has been supplied by the applicant.

(b) The executive director or his/her designee shall develop all forms and related documents including, but not limited to, an application form, release form to obtain a credit report, and/or any other background information relating to the applicant required to determine the applicant's eligibility for a license and whether the granting of a license to the applicant will best serve the public convenience. An applicant must disclose all criminal convictions for those individuals of whom an investigation is authorized under the Government Code, §466.201, and which are requested in the application.

(c) An applicant shall, under penalty of perjury, complete, sign, date, and submit all forms and related information and documents required. By signing and submitting the application form, the applicant agrees to allow the director to investigate the credit, criminal, and tax background of the applicant and other matters as authorized under the State Lottery Act, Government Code, Chapter 466.

(d) Every application for a license submitted under this subchapter shall be accompanied by a license fee in an amount to be established by the director. If the director denies an application for a license based on a factor listed in §401.153(a) of this title, the director shall refund one half of the application fee to the applicant. If the di-

rector denies an application based on another factor, the director may not refund any part of the application fee.

(e) [~~(d)~~] Every license application submitted to the director under this subchapter shall be accompanied by security as authorized by the Government Code, §466.156(a) [~~§466.014(e)~~], in a form and amount determined by the director. The director may reduce or waive the amount of security required, if feasible, after consideration of the possible loss to the state from the operation of the applicant in connection with the lottery, whether the applicant is a minority business as defined by Government Code, §466.107, or any other factor the director finds relevant. If the director determines that the purposes of the Act would be best served through establishment and maintenance of a pooled fund for purposes of reimbursing the division for losses arising from the operation of licensed sales agents, the director may require security in the form of a mandatory contribution by each applicant. Any amount so contributed shall be refunded by the director to the applicant upon denial of the related application for any reason. The amount of any such contribution may, at the director's discretion, be refunded after receipt of a license by an applicant under this subchapter, if the licensee does not sell a ticket while licensed. Once a licensee has begun ticket sales under said license, that licensee's contribution under this subsection may not be refunded. Depending upon the losses required to be reimbursed by such a fund, the director may require additional contributions to such a fund as a condition of any license application, including a license renewal application.

(f) [~~(e)~~] All applications submitted under this subchapter shall be available for public inspection during business hours, provided that criminal history information and other information confidential by law shall not be available for inspection. Any person seeking to inspect any application shall furnish a written request to the director specifically stating the information sought to be inspected. The director may respond to such requests orally or in writing in order to arrange for the inspection of the requested documents after a reasonable time is allowed for the division to review the documents and delete confidential information.

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

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5275

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16 TAC §401.153

The Texas Lottery Commission (Commission) proposes an amendment to 16 TAC §401.153, Qualifications for License. The purpose of the proposed amendment is to correct an erroneous reference to a chapter of the Education Code in 16 TAC §401.153(b)(3)(B) by substituting the Education Code reference "Chapter 52" for "Chapter 53", which was an incorrect reference.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendment will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendment. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendment as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed amendment will be in effect, the public benefit anticipated will be that the rule will be clarified to contain the correct statutory reference.

The Commission requests comments on the proposed amendment from any interested person. Comments on the proposed amendment may be submitted to Pete Wassdorf, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendment is proposed under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.153. Qualifications for License.

(a) Before issuing a license to any person under this subchapter, the director shall consider:

(1) the financial responsibility and security of the applicant and the business or activity in which the applicant is engaged. Consideration of this factor may include the analysis of the applicant's credit record, compliance with tax laws of other jurisdictions, status of permits and licenses, results of criminal background check, adequacy of security procedures against theft, whether the location is fixed and permanent, whether the applicant can provide appropriate security, and any other factor that may assist the director in such evaluation;

(2) the public accessibility of the applicant's place of business or activity. Consideration of this factor may include analysis of the applicant's hours of operation, proximity to major transit routes, proximity to large employers, public parking availability, and any other factor that may assist the director in such evaluation;

(3) the sufficiency of existing sales agents to serve the public convenience. Consideration of this factor may include analysis of number and proximity of other sales agents in a given market area, and/or number of "minority businesses" (as that term is defined in the Government Code, §466.107(b)) licensed in a given market area, with the possibility that additional licenses for any given market area may be denied if the area is determined to be adequately served by existing licensees;

(4) whether individuals under 18 years of age constitute a majority of the applicant's customers or as customers provide a majority of the applicant's sales volume;

(5) the volume of expected lottery sales at the applicant's place of business or activity; and

(6) any other factor that is helpful in determining whether the applicant's experience, character, and general fitness are such that the applicant's participation as a sales agent will not detract from the integrity, security, honesty, or fairness of the operation of the lottery.

An example of the type of factor considered in this regard is the analysis of the type of product sold or form of service provided by the applicant.

(b) The director may grant or deny an application for a license under this subchapter based on any one or more factors listed in subsection (a) of this section. In addition, the director shall deny an application for a license under this subchapter upon a finding that the applicant:

(1) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense;

(2) is or has been a professional gambler. A "professional gambler" is a person whose profession is, or whose major source of income derives from, playing games of chance for profit;

(3) has been finally determined to be:

(A) delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

(B) in default on a loan made under Chapter 52 [~~53~~], Education Code;

(C) in default on a loan guaranteed under Chapter 57, Education Code; or

(D) any reasons listed in Chapter 232, Family Code as cause for license suspension;

(4) has a spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of a person described in paragraph (1), (2), or (3) of this subsection;

(5) has violated the Act or a rule adopted by the commission in furtherance of the State Lottery Act;

(6) is not an individual, and an individual described in one or more of paragraphs (1) - (5) of this subsection:

(A) is an officer or director of the applicant;

(B) holds more than 10% of any class of issued and outstanding stock in the applicant;

(C) holds an equitable ownership interest greater than 10% in the applicant;

(D) is a creditor of the applicant to the extent of more than 10% of the applicant's outstanding debt at any time after the application is filed but before the director acts to grant or deny the license;

(E) is the owner or lessee of a business that the applicant conducts or through which the applicant will conduct a ticket sales agency;

(F) shares or will share in the profits, other than stock dividends, of the applicant or sales agent;

(G) participates in managing the affairs of the applicant; or

(H) is an employee of the applicant who is or will be involved in selling tickets or handling money from the sale of tickets;

(7) provided false or misleading information on the application form, or failed to provide information required as part of the application;

(8) failed to provide fingerprint identification for individuals for which such identification is requested in a form acceptable to the division following the division's request for such identification;

(9) has previously had a sales agent's license revoked, unless the director is satisfied the person will comply with the State Lottery Act and the rules under this chapter; or

(10) failed to certify to the director the applicant's compliance with the federal Americans With Disabilities Act.

(c) Without limiting the foregoing grounds for denial of a license under this subchapter, the director shall deny a license to any person whose location for the sales agency is either:

(1) a location licensed for games of bingo under the Bingo Enabling Act (Occupations Code, Chapter 2001);

(2) on land owned by the State of Texas; or a political subdivision of this state and on which is located a public primary or secondary school, an institution of higher education, or an agency of the state; or

(3) a location for which a person holds a wine and beer retailer's permit, mixed beverage permit, mixed beverage late hours permit, private club registration permit, or private club late hours permit issued under the Alcoholic Beverage Code, Chapter 25, 28, 29, 32, or 33.

(d) Any applicant whose application is denied under this subchapter, or who is granted a license the terms of which are more restricted than those applied for, shall be notified by the director in writing of the denial or restriction and of the reasons therefore. The applicant may appeal the director's decision in accordance with rules adopted by the commission for that purpose.

(e) A license issued under this chapter may by its terms limit the type of games and/or method of sales authorized by the license. A determination of appropriate limitations on any license are within the director's sole discretion, provided that the director shall furnish the licensee with a written explanation or the reasons for any such limitations.

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

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Texas Lottery Commission
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CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.110

The Texas Lottery Commission (Commission) proposes new 16 TAC §402.110, Temporary Increase of License Fees. The purpose of the proposed new rule is to increase temporarily the license fees for licenses to conduct bingo and for commercial licenses to lease bingo premises in order to fund the redesign of the automated charitable bingo system (ACBS).

Specifically, the new rule temporarily sets license fees, based on the amount of annual gross receipts, for: (1) those with a license

to conduct bingo that is active and effective on or after September 1, 2011; and (2) those with a commercial license to lease bingo premises that is active and effective on or after September 1, 2011. Additionally, the new rule expires on September 1, 2013.

Kathy Pyka, Controller, has determined that the proposed new rule would be in effect for fiscal years 2012 and 2013 and will result in an estimated $2.5 million in revenue for the redesign of the automated charitable bingo system. The fee increase will expire September 1, 2013. There are approximately 33 bingo lessors that would be considered either small or micro businesses as defined by Chapter 2006, Government Code. The proposed rule would increase fees for fiscal years 2012 and 2013 by 50% for lessor license holders. As a result of this proposed rule it has been determined that there would be minimal long term adverse economic effect on those businesses or on local or state employment. The proposed rule would not have a disparate affect on micro businesses as compared to small businesses because the same percentage license fee increase is applied consistently to these businesses. The agency recognizes that a license fee increase to a license is a financial impact particularly to those licensed to conduct bingo. However, the automated charitable bingo system is used daily by agency staff for the administration and regulation of charitable bingo and not redesigning the system creates a future risk for the agency of an inability to administer and regulate charitable bingo. Historically, as part of the agency's legislative appropriations request for fiscal years 2010-2011, the agency requested an alternative method of funding the redesign of the automated charitable bingo system through general revenue funding. This approach was not approved. Alternative methods of achieving the purpose of the rule were considered by the agency. In connection with this proposed rule, the first alternative method the agency considered was not to increase licenses fees. The agency rejected this alternative because without the increased license fees, funds would not be generated to pay for the redesign of the automated charitable bingo system. The second alternative method is to increase the conductor license fee by 25% each year and to double the lessor license fee for each year of the biennium, as well as increasing a lessor license fee in administrative hold to $5,000 each year and a conductor license fee in administrative hold to $3,750 each year. The agency rejected this alternative because the funding from the license fees for licenses in administrative hold would not likely be realized and therefore, the purpose of the rule would not be achieved. The third alternative method is to increase the license fee on a percentage basis for both conductor's licenses and commercial lessor licenses based on gross receipts and gross rental receipts for each license classification, respectively. This method was rejected because it would result in certain license classifications paying more than other licensees in the same license classifications, and could result in a possible inequity among persons in the same license classification.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated with implementing a conversion and redesign of the ACBS is it would provide a necessary management tool for the enforcement and regulation of bingo conducted in this state. This would put the agency in a better position to fairly enforce all statutes and regulations, to determine all proceeds derived from bingo are used for an authorized purpose, and to ultimately maintain the integrity of the charitable bingo industry throughout the State of Texas.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on July 14, 2011, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Texas Occupations Code, Chapter 2001.

§402.110. Temporary Increase of License Fees.

(a) This section will be effective only upon enactment of a General Appropriations Bill with a contingency provision that appropriates to the Lottery Commission $1,250,000 in 2012 and $1,250,000 in 2013 in General Revenue.

(b) The fee for a license to conduct bingo that is active and effective on or after September 1, 2011 shall be as follows:

(1) Class A (annual gross receipts of $25,000 or less)--$150;

(2) Class B (annual gross receipts of more than $25,000 but not more than $50,000)--$300;

(3) Class C (annual gross receipts of more than $50,000 but not more than $75,000)--$450;

(4) Class D (annual gross receipts of more than $75,000 but not more than $100,000)--$600;

(5) Class E (annual gross receipts of more than $100,000 but not more than $150,000)--$900;

(6) Class F (annual gross receipts of more than $150,000 but not more than $200,000)--$1,350;

(7) Class G (annual gross receipts of more than $200,000 but not more than $250,000)--$1,800;

(8) Class H (annual gross receipts of more than $250,000 but not more than $300,000)--$2,250;

(9) Class I (annual gross receipts of more than $300,000 but not more than $400,000)--$3,000; and

(10) Class J (annual gross receipts of more than $400,000)--$3,750.

(c) The fee for a commercial license to lease bingo premises that is active and effective on or after September 1, 2011 shall be as follows:

(1) Class A (annual gross receipts of $25,000 or less)--$150;

(2) Class B (annual gross receipts of more than $25,000 but not more than $50,000)--$300;

(3) Class C (annual gross receipts of more than $50,000 but not more than $75,000)--$450;

(4) Class D (annual gross receipts of more than $75,000 but not more than $100,000)--$600;

(5) Class E (annual gross receipts of more than $100,000 but not more than $150,000)--$900;

(6) Class F (annual gross receipts of more than $150,000 but not more than $200,000)--$1,350;

(7) Class G (annual gross receipts of more than $200,000 but not more than $250,000)--$1,800;

(8) Class H (annual gross receipts of more than $250,000 but not more than $300,000)--$2,250;

(9) Class I (annual gross receipts of more than $300,000 but not more than $400,000)--$3,000; and

(10) Class J (annual gross receipts of more than $400,000)--$3,750.

(d) The license fees in subsections (b) and (c) of this section are based on a one year license.

(e) A licensee with a license to conduct bingo or to lease bingo premises that was issued for a two-year period, with an effective date between September 1, 2010 and August 31, 2011, will be required to pay the increased license fee indicated in subsections (b) and (c) of this section on the first anniversary of the date the license became effective.

(f) A licensee with a license to conduct bingo or to lease bingo premises issued with an effective date on or after September 1, 2011 that is effective for two years shall pay an amount equal to two times the license fee indicated in subsections (b) and (c) of this section.

(g) A licensee with a license to conduct bingo or to lease bingo premises issued with an effective date on or after September 1, 2012 that is effective for two years shall pay the increased license fee indicated in subsections (b) and (c) of this section for the first year of the two year license period.

(h) Notwithstanding any other rule establishing license fees for licenses to conduct bingo or lease bingo premises, the license fees set out in this section control. This section shall be in effect September 1, 2011 through August 31, 2013 and automatically expire on September 1, 2013.

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 June 14, 2011.

TRD-201102166
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 344-5275

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.12

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Architectural Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Architectural Examiners proposes the repeal of §1.12, concerning Joint Advisory Committee of the Texas Board of Architectural Examiners and the Texas Board of Professional Engineers. The repeal is necessary to eliminate the implementation of the joint advisory committee of architecture, engineering and landscape architecture. The proposed repeal is responsive to House Bill 2284 by the 82nd Legislature. The Bill repeals §1051.212 of the Texas Occupations Code, which was the enabling legislation for the creation and functions of the joint advisory committee. The repeal is effective September 1, 2011. In the absence of authority delegated by the legislature, the board had no power or authority to continue the operations of the joint advisory committee.

Cathy L. Hendricks, Executive Director, has determined that for the first five-year period the repeal is in effect, the repeal will have no fiscal impact upon state government and no fiscal impact on local government.

Ms. Hendricks also has determined that for the first five-year period after the rule is repealed the public will benefit from the removal of obsolete and unauthorized rules within the administrative code.

The repeal of the rule will have no impact upon individuals required to comply with it. The repeal will have no fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The repeal is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to adopt rules to implement Chapter 1051, Texas Occupations Code.

The proposed repeal does not affect any other statutes.

§1.12. Joint Advisory Committee of the Texas Board of Architectural Examiners and the Texas Board of Professional Engineers.

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 June 20, 2011.

TRD-201102266
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 305-9040

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CHAPTER 7. ADMINISTRATION

22 TAC §7.10

The Texas Board of Architectural Examiners proposes an amendment to §7.10, concerning General Fees. The amendment is necessary to impose an administrative fee of $150 for applying for placement on a list of engineers who are authorized to engage in the practice of architecture. The proposed rule amendment would allow the agency to recover the cost of fulfilling new responsibilities under House Bill 2284 by the 82nd Legislature. The Bill creates a new process for engineers who were licensed on January 1, 2011 and who had adequately and safely prepared architectural plans for the construction of three projects in excess of the agency's thresholds to apply for placement upon a list of engineers who may engage in the practice of architecture. The fee charged pursuant to the amendment will expire on December 31, 2011. Under the bill there is a deadline of January 1, 2012, for an engineer to apply for placement on the list.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant fiscal impact upon state government and no fiscal impact on local government.

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public will benefit from having a cost-effective process for ensuring that only qualified engineers who can demonstrate the ability to design safe and adequate buildings are listed as authorized to engage in the practice of architecture. The amendment would cover the costs of evaluating the applications and having a committee of the Board evaluate the projects to determine if they would be adequate and safe.

The $150 administrative fee would have a $150 impact for each engineer who applies. The amendment will have no fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.651, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to regulate the practice of architecture and the authority to set a fee for board action involving an administrative expense in an amount that is reasonable and necessary to cover that cost, respectively.

The proposed amendment does not affect any other statutes.

§7.10. General Fees.

(a) FAILURE TO TIMELY PAY A REGISTRATION RENEWAL WILL RESULT IN THE AUTOMATIC CANCELLATION OF REGISTRATION BY OPERATION OF LAW.

(b) The following fees shall apply to services provided by the Board in addition to any fee established elsewhere by the rules and regulations of the Board or by Texas law:
Figure: 22 TAC §7.10(b)

(c) The Board cannot accept cash as payment for any fee.

(d) An official postmark from the U.S. Postal Service or other delivery service receipt may be presented to the Board to demonstrate the timely payment of any fee.

(e) If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check due to insufficient funds, errors in touring, or bank account number, the fee shall be considered unpaid and any applicable late fees or other penalties accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(f) A Registrant who is in Good Standing or was in Good Standing at the time the Registrant entered into military service shall be exempt from the payment of any fee during any period of active duty service in the U.S. military. The exemption under this subsection shall continue through the remainder of the fiscal year during which the Registrant's active duty status expires.

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 June 20, 2011.

TRD-201102267
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 305-9040

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.15

The Texas Funeral Service Commission (commission) proposes an amendment to §201.15, concerning Joint Memorandum of Understanding. The amendment is proposed to conform language with the codification of certain Vernon Civil Statutes.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Robbins has also determined that for the first five-year period the amendment is in effect the public benefit will be that the Joint Memorandum of Understanding with the Texas Department of Banking and the Texas Department of Insurance continues. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted in writing for a 30-day period to O. C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to crob@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§201.15. Joint Memorandum of Understanding.

(a) Pursuant to [~~Texas~~] Occupations Code §651.159 [~~Chapter 651~~], the Texas Funeral Service Commission (herein referred to as the

"TFSC"), the Texas Department of Insurance (herein referred to as the "TDI"), and the Texas Department of Banking (herein referred to as the "DOB") hereby adopt the following joint memorandum of understanding (JMOU) relating to prepaid funeral benefits as defined in Finance Code Chapter 154 [services and transactions]. The TFSC, TDI, and DOB intend this memorandum of understanding to serve as a vehicle to assist the three agencies in their regulatory activities, and to make it as easy as possible for a consumer with a complaint to have the complaint acted upon by all three agencies, where appropriate. In order to accomplish this end, where not statutorily prohibited, the three agencies will share information between the agencies which may not be available to the public generally under the [Texas] Public Information Act, Government Code Chapter 552 [§§552.001 - 552.321]. Such information will be transmitted between agencies with the understanding [notation on the information] that it is considered confidential, is being furnished to the other agencies in furtherance of their joint responsibilities as state agencies in enforcing their respective statutes, and that it may not be disseminated to others except as required.

(b) Responsibilities of each agency in regulating prepaid funeral benefits [services and transactions]:

(1) The [the] Texas Funeral Service Commission is responsible for the following:

(A) licensing funeral directors, embalmers, provisional funeral directors, provisional embalmers, crematory, and funeral establishments. The TFSC may refuse to license a person or establishment which violates Finance Code Chapter 154, under Occupations Code §651.460(b)(3); [that violates Chapter 154, Texas Finance Code under Texas Occupations Code 651.460 (b)(3).]

(B) taking action under Occupations Code §651.460(b)(3) against any licensee violating Finance Code Chapter 154; and [, Texas Finance Code under Texas Occupations Code 651.460 (b)(3).]

(C) taking action under Occupations Code §651.460(b)(3) against any funeral director in charge, crematory owner, and/or funeral establishment owner for violations of Finance Code Chapter 154, [Texas Finance Code,] by persons directly or indirectly connected to the crematory or funeral establishment[, under Texas Occupations Code 651. 460(b)(3)].

(2) The Texas Department of Banking is responsible for administering Finance Code Chapter 154, and 7 Texas Administrative Code (TAC) Chapter 25 [Texas Finance Code], including, but not limited to, the following:

(A) bringing enforcement actions against any person, including licensees of TFSC and TDI, who violate Finance Code Chapter 154 and/or 7 TAC Chapter 25; and

(B) all other actions authorized by Finance Code Chapter 154 and 7 TAC Chapter 25.

[(A) issuing permits to sell prepaid funeral services or funeral merchandise pursuant to Chapter 154, Texas Finance Code.]

[(B) approving forms for sales contracts pursuant to Chapter 154, Texas Finance Code.]

[(C) canceling or refusing to renew permits pursuant to Chapter 154, Texas Finance Code; providing notice of alleged violations to the attorney general of Texas and to sellers pursuant to Chapter 154, Texas Finance Code;]

[(D) approving the release or withdrawal of funds under certain circumstances or for certain purposes, pursuant to Chapter 154, Texas Finance Code;]

[(E) providing for reporting requirements and performing examinations under Chapter 154, Texas Finance Code;]

[(F) maintaining a guaranty fund with respect to prepaid funeral benefits owned by trusts, pursuant to Chapter 154, Texas Finance Code;]

(3) The Texas Department of Insurance is responsible for the following:

(A) regulating [licensed] insurers that issue or propose to issue life insurance policies or [/] annuity contracts which may fund prepaid funeral contracts;

(B) regulating individuals/entities that perform the acts of an insurance agent(s) as defined in the Insurance Code, Articles 21.02 and Chapter 101[, TIC];

(C) regulating insurance/annuity contracts that may fund prepaid funeral contracts;

(D) regulating unfair trade practices relating to the insurance/annuity contracts which may fund prepaid funeral contracts pursuant to the Insurance Code, Article 21.21;

(E) regulating unfair claims settlement practices by insurance companies pursuant to the Insurance Code Chapter 542 [, Article 21.21.2].

(c) Procedures used by each agency in exchanging information with or referring complaint to one of the other agencies.

(1) Exchanging information. If, upon receipt of a complaint, or during the course of an investigation, an agency (referred to as the receiving agency) receives any information that might be deemed of value to another of the agencies (referred to as the reviewing agency), the receiving agency will contact the reviewing agency and will forward the relevant information to the reviewing agency at its request.

(2) Referral of complaints for handling. When an agency receiving a complaint refers the complaint to another agency for handling, the receiving agency will contact the complainant in writing informing him or her of the referral, provide [and providing] contact information to the reviewing [agency, and encouraging the complainant to re-contact the receiving agency if she or he has any problem with the reviewing] agency's processing of the complaint.

(3) Complaint procedures. The three agencies will work together to establish procedures to ensure complaints will be fully resolved by the reviewing agency.

(d) Procedures to be used by each agency in investigating a complaint.

(1) All agencies.

(A) Each agency will develop [an] internal complaint procedures [manual] for violations relating to prepaid funeral benefits [services and/or transactions]. The procedures [manual] should at a minimum provide for:

[(i) cross-checking the other two agencies' list of licensees against the investigating agency's list;]

[(ii) background checks on disciplinary proceedings and license eligibility including background checks into the two other agencies' complaints, disciplinary proceedings, and licensing process involving the same licensee if any, where not prohibited by law;]

[(iii) outlining of relevant law for each agency with check-point steps to ensure all relevant information has been obtained from complainant and references to applicable legal provisions;]

(i) [~~(iv)~~] identification of necessary data and documents to be obtained from the complainant; and

(ii) [~~(v)~~] such other steps deemed necessary for the agency to perform an adequate and appropriate investigation.

(B) Each agency may assist either of the other agencies with investigations relating to prepaid funeral benefits.

[~~(B) Each agency will maintain its centralized complaint resolution process with a long-term goal of integrating the complaint resolution process, which includes the complaint tracking system, with the other agencies in the most effective, cost-efficient manner.~~]

[~~(C) Within four months from the final adoption of the JMOU by rule making, the DOB, TFSC, and TDI will develop one or more complaint and referral forms that are substantially similar in content and format to be used by each agency in processing complaints relating to prepaid funeral services and/or transactions.~~]

[~~(D) Each reviewing agency will provide periodic, no less than quarterly, status reports on the complaint investigation to the receiving agency or agencies. In addition, the reviewing will contact the complainant to inform him or her of the status of the investigation.~~]

[~~(E) Each agency will develop with the other agency, or other two agencies, a written plan for conducting joint investigations where appropriate which, at a minimum, establishes a case manager for the investigation, establishes the divisions of duties among the agencies, and establishes a timeline for completion of the investigation.~~]

[~~(F) As soon as possible following the final adoption of the JMOU by rule making the DOB, TFSC, and TDI will each ensure its complaint resolution procedure is accessible to the public by reviewing its procedures, forms, brochures, and letters to determine what steps, if any, are needed to remedy problems of accessibility. The DOB, TFSC, and TDI will implement the needed steps as soon as possible thereafter.~~]

[~~(G) The TDI, DOB, and TFSC commit to a long-term goal with a five-year planning horizon to develop an efficient and cost-effective way to ensure that the three agencies can readily exchange information and that there is effective and easy access by each of the three agencies to the information and data held by the other agencies relating to complaints and information regarding licenses in the prepaid funeral services area.~~]

(2) The Texas Funeral Service Commission.

(A) Complaints received by the TFSC will be logged in and investigated as required under Occupations Code, Chapter 651. A complaint about violations of Finance Code Chapter 154 and/or 7 TAC Chapter 25, will be referred to the DOB.

(B) If disciplinary action against a licensee of the TFSC is found to be appropriate, the matter will be referred to the Administrator of Consumer Affairs & Compliance Division of TFSC.

(C) If the complaint involves a matter handled by either the DOB or TDI, as well as a violation of the TFSC statutes or regulations, it will be referred to the appropriate agency for further action. DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort.

[~~(A) The TFSC, in accordance with Texas Occupations Code, Chapter 651, will investigate violations of prepaid funeral services only if the investigation does not interfere with or duplicate an investigation conducted by the DOB.~~]

[~~(B) The TFSC will, upon request, assist the DOB and/or the TDI with investigations.~~]

(3) Texas Department of Banking.

(A) Complaints received by the Special Audits [~~Audit~~] Division will be entered into a complaint log and assigned a reference number. If, after agency notice to the subject of the complaint, the complaint is not resolved, the DOB will investigate.

(B) If disciplinary action against a person who violated Finance Code Chapter 154 or 7 TAC Chapter 25 [~~DOB permittee~~] is appropriate, the matter will be referred to the agency's legal staff.

(C) If the complaint involves a matter handled by either the TDI or TFSC, as well as a violation of Finance Code Chapter 154 or 7 TAC Chapter 25, [~~the DOB statutes or regulations,~~] the DOB will coordinate [~~the investigation~~] with those [~~either or both of these~~] agencies DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25[~~, as appropriate. The DOB will, upon request, assist the TFSC and/or TDI with investigations~~].

(D) In the event that the DOB issues an order against a person or entity who is a licensee under the jurisdiction of the TFSC or the TDI, the DOB will send the TFSC and the TDI a copy of the order [~~a license under the TFSC's jurisdiction is found to have violated one or more provisions of Chapter 154, Texas Finance Code, the DOB will inform the TFSC of the violation(s) in writing and provide documentation supporting the occurrence of the violation(s)~~].

(4) Texas Department of Insurance.

(A) Complaints received by the Consumer Protection Division [~~Services area~~] of [~~the~~] TDI will be logged in and investigated, except that if a complaint is solely violations of Finance Code Chapter 154 and/or 7 TAC Chapter 25, the complaint will be referred to the DOB. Other areas of TDI [~~the agency~~] can be called upon for assistance in the investigation of the complaint where appropriate.

(B) If disciplinary or other regulatory action against a licensee of the TDI is found to be appropriate, the matter will be referred to the Compliance Intake Unit of [~~the~~] TDI.

(C) If the complaint involves a matter handled by either the DOB or TFSC, as well as a violation of the TDI statutes or regulations,it [~~the investigation~~] will be referred to the appropriate agency for further action. DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort [~~coordinated with either or both of those agencies~~].

(D) In the event that the Commissioner of Insurance issues an order against a person that also sells, funds or provides prepaid funeral benefits or is subject to the jurisdiction of the DOB or the TFSC, the TDI will send the DOB and the TFSC a copy of the order [~~The TDI will, upon request, assist the TFSC and/or DOB with investigations~~].

(e) Actions the agencies regard as deceptive trade practices.

(1) The TFSC, the DOB, and the TDI regard as deceptive trade practices those actions found under [~~the Texas~~] Business and Commerce Code §17.46[~~, sec. 17.46~~].

(2) With respect to trade practices within the business of insurance, the TDI regards as deceptive trade practices those actions found under [~~the~~] Insurance Code Chapter 541, [~~Article 21.21, and~~] other chapters [~~articles~~] of the Code and the regulations promulgated by the TDI there under [~~thereunder~~].

(f) Information the agencies will provide consumers and when that information is to be provided.

(1) [~~The~~] TFSC, DOB, and TDI will continue to provide consumers with the brochure entitled "Facts About Funerals" developed by TFSC (in Spanish and in English). DOB will continue to provide consumers with information on its website in accordance with Finance Code §154.132, including the informational brochure developed in accordance with Finance Code §154.131. [~~As soon as possible after the final adoption of the JMOU by rule making, the agencies will update the brochure to provide information about insolvency, the guaranty funds, and consumer complaints, and make the brochure accessible under the terms of the American with Disabilities Act. The agencies will provide other relevant consumer brochures to each other.~~]

(2) DOB, TDI, and TFSC will maintain their toll free numbers. [~~The TDI will maintain its toll-free number, and TFSC and DOB will each work toward consumer access via a toll-free number. Each agency will include its toll-free number as a prepaid funeral consumer protection resource in the respective agency's consumer information materials. The DOB, TFSC, and TDI will routinely inform consumers of options within the agency's knowledge available to them to resolve the complaint.~~]

(3) [~~The~~] TFSC, DOB, and TDI, as state agencies, are subject to the [~~Texas~~] Public Information Act, Government Code Chapter 552 [~~§§552.001 - 552.321~~]. Upon written request, the three agencies will provide consumers with public information which is not exempt from disclosure under that Act. As noted in the preamble to this JMOU, the agencies may, where not statutorily prohibited, exchange information necessary to fulfill their statutory responsibilities among each other, without making such information public information under the Public Information Act [~~Open Records Act~~].

(g) Administrative penalties each agency imposes for violations.

[~~(1) All agencies.~~]

[~~(A) The DOB, TDI, and TFSC will create a working group to develop recommendations concerning the three agencies working together on enforcement actions using the resources of the attorney general and/or prosecutorial or investigative agencies, where appropriate.~~]

[~~(B) The DOB, TDI, and TFSC will refer DTPA and other such violations to the Federal Trade Commission and/or the attorney general whenever appropriate.~~]

(1) [~~(2)~~] Texas Funeral Service Commission. The TFSC may impose an administrative penalty, issue a reprimand, or revoke, suspend, or place on probation any licensee who violates Finance CodeChapter 154. TFSC administrative penalties vary based on the violation; TFSC sanctions are imposed under Occupations Code Chapter 651. [~~, Texas Finance Code. The recommended range of administrative penalty for a violation of Chapter 154, Texas Finance Code is $1,000 - $5,000 for each violation of Chapter 154, Texas Finance Code by a person directly or indirectly connected to the funeral establishment, under 201.11(2)(D)(vi) of this title (relating to Disciplinary Guidelines).~~]

(2) Texas Department of Banking. DOB administrative penalties vary based on the violation; DOB sanctions are imposed under Finance Code Chapter 154.

[~~(3) Texas Department of Banking. The DOB may impose the following administrative penalties:~~]

[~~(A) cancel a permit or refuse to renew a permit pursuant to Chapter 154, Texas Finance Code.~~]

[~~(B) seize prepaid funeral funds and records of a prior permit holder pursuant to Chapter 154, Texas Finance Code.~~]

(3) [~~(4)~~] Texas Department of Insurance. TDI administrative penalties vary based on the violation; TDI sanctions are imposed under [~~the~~] Insurance Code Chapter 82 [~~, Article 1.10~~].

[~~(h) Meetings for developing cooperative efforts in regulation.~~]

[~~(1) The DOB and TDI will develop an insolvency alert among themselves to minimize the drain of trust funds and premiums consistent with their respective statutory provisions. They will also clarify each agency's responsibility to access the respective guaranty fund vis-à-vis the other agency.~~]

[~~(2) The DOB, TDI, and TFSC will develop methods to coordinate the efforts of the agencies to articulate the funeral provider's responsibility in the event of seller and/or insurance company insolvency.~~]

[~~(3) Each agency should seek input from the other agencies on any proposed agency regulations relating to prepaid funeral services and/or transactions; and, where appropriate, legislative recommendations concerning prepaid funeral services and/or transactions.~~]

[~~(4) The three agencies will provide lists of their key contact personnel and their telephone numbers to each other.~~]

[~~(5) In order to better accomplish the exchange of information and coordination of regulation described in this memorandum of understanding, the appropriate staff of the TFSC, DOB, and TDI shall meet, at a minimum, once a year, to discuss matters of mutual regulatory concern and share updates of the regulations promulgated by the respective agencies.~~]

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 June 17, 2011.

TRD-201102198
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 936-2469

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CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.2

The Texas Funeral Service Commission (commission) proposes an amendment to §203.2, concerning Clarification of First Call Definition. The amendment is proposed to change some of the language. Additional language is added to include funeral home to the First Call.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Robbins has also determined that for the first five-year period the amendment is in effect the public benefit will be to consumers who have been charged for items when it was not the consumer who was responsible for the costs. The proposed amendment

will also clarify for practitioners when a First Call begins. There will be no effect on small businesses or individuals.

Comments on the proposal may be submitted in writing for a 30-day period to O. C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, or faxed to (512) 479-5064, or submitted electronically to crob@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.2. Clarification of First Call Definition.

(a) (No change.)

(b) Transportation of a body sent to a morgue, or a funeral home for identification or autopsy at the request of a justice of the peace, medical examiner, or other official under Chapter 49, Texas Code of Criminal Procedure does not constitute a First Call. Any expenses or items used specifically for the transportation of a body to a morgue, or a funeral home are not items of choice for the consumer, including storage, and are therefore not the responsibility of the consumer to pay.

(c) Commercial embalming establishment licensees are prohibited from authorizing first calls or dealing directly with the public for services or merchandise; such first calls must be authorized by a licensed funeral establishment as defined in §651.351 [~~Chapter 651~~], Texas Occupations Code, [~~§351,~~] prior to such removal. Any such removal must bear the name of the funeral establishment authorizing the removal on the release form.

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 June 17, 2011.

TRD-201102200
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 936-2469

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22 TAC §203.41

The Texas Funeral Service Commission (commission) proposes an amendment to §203.41, concerning In-Casket Identification. The amendment is proposed to ensure identification of each deceased person is included in the casket.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins also has determined that for each of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be to ensure that inside of each casket contains a durable, waterproof identification of the deceased person, including the person's name, date of birth, and date of death. There will be no effect on large, small or micro-business. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to O. C. "Chet" Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to crob@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.41. In-Casket Identification.

(a) The inside of each casket should contain a durable, waterproof identification of the deceased person, including the person's name, date of birth, and date of death. [~~Each funeral home shall ensure each casket contains a durable, waterproof identification of the deceased person, including the person's name, date of birth, and date of death. This information shall be inside the casket.~~]

(b) Funeral homes are exempt from subsection (a) of this section if the deceased, family of the deceased, religious norms or cultural norms oppose such inclusion. A funeral home must keep a record of each instance of use of this exemption and on what grounds the exemption was applied.

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 June 17, 2011.

TRD-201102199
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 936-2469

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TITLE 25. HEALTH SERVICES

PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

CHAPTER 479. FACILITIES: STANDARDS AND INSPECTIONS

25 TAC §479.1, §479.4

The Anatomical Board of the State of Texas (Board) proposes amendments to §479.1 and §479.4, concerning the rules and procedures of the distribution of bodies.

The Board's proposed amendment to §479.1 is to implement Health and Safety Code §692A.011(a)(4) as amended by House Bill 2027 in the 81st Legislative Session. Section 692A.011(a)(4) provides that the use of a gift of a whole body to an eye or tissue bank must be coordinated through the Anatomical Board of the State of Texas. The Board's proposed amendment to §479.4 is to clarify that the Board will not review applications for approval of crematories at member institutions.

An amendment to §479.1 is proposed to add the requirement that tissue banks receiving whole body donations under Health

and Safety Code Chapter 692A may only transfer those donations to institutions in categories approved by the Board.

An amendment to §479.4 is proposed to remove the requirement that a crematory be approved by the Board.

Vaughan Lee, Chairman, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications on state and local government as a result of enforcing or administering the sections as proposed.

Dr. Lee has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed.

Dr. Lee has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit as a result of enforcing or administering the sections is to effectively regulate the disposition/dispersion of bodies in Texas, all of which will protect and promote public health, safety, and welfare.

Comments on the proposal may be submitted in writing either in person or by courier to Len Cleary, Ph.D., Secretary/Treasurer, Anatomical Board of the State of Texas, P.O. Box 20745, Houston, Texas 77225-0745. Comments will be accepted for 30 days following publication of the proposed amendments in the *Texas Register.*

The proposed amendment to §479.1 is authorized by Health and Safety Code §692A.011(a)(4) as amended by House Bill 2027 in the 81st Legislative Session. Section 692A.011(a)(4) provides that the donation of a whole body to an eye or tissue bank must be coordinated through the Anatomical Board of the State of Texas. The proposed amendment to §479.4 is authorized by the Board's general rulemaking power under Health and Safety Code §691.022(b).

The proposed amendments affect the Texas Administrative Code, Title 25, Chapter 479.

§479.1. Institutions Authorized to Receive and Hold Bodies.

(a) Approved categories. Institutions or organizations authorized by the board to receive and hold bodies include accredited medical schools or colleges, dental schools or colleges, health science centers, hospitals, schools of mortuary science, chiropractic schools or colleges, osteopathic medical schools or colleges. Tissue banks receiving donations under Health and Safety Code, Chapter 692A may only transfer those donations to institutions in approved categories.

(b) (No change.)

§479.4. Final Disposition of the Body and Disposition of the Remains.

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

(c) Cremation. Cremation shall occur at a professional crematorium or at the board-member institution in its own crematory[~~, if the crematory has been approved by the board~~].

(1) Cremation at a professional crematorium. If a professional crematorium is utilized, the crematory must be registered with, or if required by law, licensed by the Texas Funeral Service Commission.

(2) Cremation at a board-member institution. An institution may operate its own crematory [~~if approved by the board~~]. The crematory shall be under the direct control of the Department of Anatomy or the institution's department to which the anatomical program is attached and may be used for no purpose other than the cremation of human remains.

(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 June 20, 2011.

TRD-201102263
Len Cleary, Ph.D.
Secretary/Treasurer
Anatomical Board of the State of Texas
Earliest possible date of adoption: July 31, 2011
For further information, please call: (713) 500-5631

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CHAPTER 485. AUDIT PROCEDURES

25 TAC §485.1

The Anatomical Board of the State of Texas (Board) proposes amendments to §485.1, concerning audit procedures.

The amendment to §485.1 requires that member institutions use an audit template prescribed by the Board and requires that an audit using that template must be conducted at an interval of five years, coincidental with regularly scheduled Board inspections.

Vaughan Lee, Chairman, has determined that for each fiscal year of the first five years the section is in effect, there will be no fiscal implications on state or local government as a result of enforcing or administering the section as proposed.

Dr. Lee has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the section as proposed.

Dr. Lee has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the sections. The public benefit as a result of the enforcing or administering the sections is to effectively enforce and regulate audit procedures of Board member institutions, all of which will protect and promote public health, safety and welfare.

Comments on the proposal may be submitted in writing either in person or by courier to Len Cleary, Ph.D., Secretary/Treasurer, Anatomical Board of the State of Texas, P.O. Box 20745, Houston, Texas 77225-0745. Comments will be accepted for 30 days following publication of the proposed amendments in the *Texas Register.*

The proposed amendment to §485.1 is authorized by the Board's general rule making power under Health and Safety Code §691.022(b).

The proposed amendments affect the Texas Administrative Code, Title 25, Chapter 485.

§485.1. Audit Procedures.

Each member institution shall conduct an audit of its procedures and methods for receiving, storing, using, and transporting bodies or anatomical specimens and disposing of remains. This audit must be conducted at an [~~a minimum~~] interval of 5 years, coincidental with regularly scheduled Board inspections. The audit shall be performed by the institution's audit department or a professional audit firm according to an audit template prescribed by the Board. The template shall be reviewed by the Board at each Annual Meeting. The results of the audit shall be filed with the secretary-treasurer within 30 days of its completion. A follow-up report shall be filed with the secre-

tary-treasurer no more than 1 year later. [~~The audit, at a minimum, shall include:~~]

[~~(1) A records review to determine that the receipt and shipment of bodies and anatomical specimens are acknowledged by appropriate filing of records with the board;~~]

[~~(2) An inventory of bodies and anatomical specimens on hand verified by SAB number and a determination that records of the board reflect that the bodies or specimens are in the possession of the institution;~~]

[~~(3) A review of crematory contracts, if any, and a determination that the contracting crematory is properly licensed in the State;~~]

[~~(4) A determination of proper payment of assessment and transfer fees to the board when due;~~]

[~~(5) A review of shipping documents for verification that shipments have been approved by the board and a determination that the records of both the institution and the board reflect the location where the bodies or anatomical specimens were shipped;~~]

[~~(6) A review of the supervisory chain of command to determine the existence of actual oversight to assure that bodies and anatomical specimens are treated with respect; and~~]

[~~(7) A determination that remains are disposed of in accordance with state law, including these rules.~~]

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

Filed with the Office of the Secretary of State on June 20, 2011.

TRD-201102264
Len Cleary, Ph.D.
Secretary/Treasurer
Anatomical Board of the State of Texas
Earliest possible date of adoption: July 31, 2011
For further information, please call: (713) 500-5631

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TITLE 28. INSURANCE

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

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER F. PHARMACEUTICAL BENEFITS

28 TAC §134.503, §134.504

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §134.503 (relating to the Pharmacy Fee Guideline), with corresponding amendments to §134.504 (relating to the Pharmaceutical Expenses Incurred by the Injured Employee). These amendments are necessary to implement portions of House Bill (HB) 528, enacted during the 82nd Legislature, Regular Session.

Adopted emergency rule amendments to §134.503 were published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11775), with a renewal extension published in the April 22, 2011, issue of the *Texas Register* (36 TexReg 2549). The renewed emergency adoption expires June 29, 2011 and the original rule becomes re-effective while this proposal undergoes the formal rulemaking process required under the Administrative Procedure Act. The 82nd Legislature, Regular Session, clarified the reimbursement of pharmacy and pharmaceutical services through HB 528 (relating to the Provision of Pharmaceutical Services through Informal and Voluntary Networks in the Workers' Compensation Systems; Providing an Administrative Violation).

The Division proposes implementation of a pharmacy fee guideline that conforms to all applicable law by amending §134.503. This proposal amends the title of §134.503 from "Reimbursement Methodology" to "Pharmacy Fee Guideline" to conform to statutory nomenclature. As a result of these proposed amendments to §134.503, conforming amendments to §134.504 are proposed to reflect new references in §134.503, as well as to correct the reference from "Commission" to "division."

Statutory Background

HB 7, enacted during the 79th Legislature, effective September 1, 2005 included revisions to the Labor Code §408.028 as they apply to reimbursement of pharmaceutical services and added subsection (f) requiring the Commissioner of Workers' Compensation (Commissioner) by rule to adopt a fee schedule for pharmacy and pharmaceutical services that will: "(1) provide reimbursement rates that are fair and reasonable; (2) assure adequate access to medications and services for injured workers; and (3) minimize costs to employees and insurance carriers." HB 7 also added the Labor Code §408.028(g) which provided, "Insurance carriers must reimburse for pharmacy benefits and services using the fee schedule as developed by this section, or at the rates negotiated by contract."

Section 2 of HB 528 amended Labor Code §408.028(f) by adding an additional requirement that the Division pharmacy fee guideline take into consideration the increased security of payment afforded by the Texas Workers' Compensation Act (Act). HB 528 also amended Labor Code §408.028(g) by providing that the Labor Code §413.011(d), and the rules adopted to implement that subsection, do not apply to the fee schedule adopted by the Commissioner under §408.028(f). In response to the amendments to the Labor Code §408.028(g), the Division proposes in §134.503 to remove previous references to "the provider's usual and customary charge." Further, the Division anticipates that removing references to "the provider's usual and customary charge" will reduce the number of medical fee disputes involving the reimbursement of prescription drugs.

Section 3 of HB 528 amended the Labor Code Chapter 408, Subchapter B, by adding §408.0281 (relating to Reimbursement for Pharmaceutical Services; Administrative Violation) and §408.0282 (relating to Requirements for Certain Informal or Voluntary Networks). Section 408.0281(b) sets forth that notwithstanding any provision of the Insurance Code Chapter 1305 (relating to Workers' Compensation Health Care Networks) or the Labor Code §504.053 (relating to Election), prescription medication or services, as defined by §401.011(19)(E), may be reimbursed in accordance with the fee guidelines adopted by the Commissioner or at a contract rate in accordance with this section. Section 408.0281(b)(2) also provides that prescription medication or services may not be delivered through a workers' compensation health care network under Insurance Code

Chapter 1305, or a contract concerning workers' compensation insurance coverage for employees of political subdivisions as described by the Labor Code §504.053(b)(2).

Under Labor Code §408.0281(c), HB 528 authorizes an insurance carrier to pay a health care provider fees for pharmaceutical services that are inconsistent with fee guidelines adopted by the Commissioner only if the insurance carrier has a contract with the health care provider and that contract includes a specific fee schedule. An insurance carrier or the carrier's authorized agent may use an informal or voluntary network to obtain a contractual agreement that provides for fees different from the fees authorized under the fee guidelines adopted by the Commissioner for pharmaceutical services.

HB 528 also specifies the legislative intent regarding the delivery of pharmacy services. Section 3 of HB 528 provided clarity concerning the prohibition of the delivery of pharmacy services through certified workers' compensation health care networks under the Insurance Code Chapter 1305 and through contracts described by Labor Code §504.053(b)(2). With HB 528 language as noted in §408.0281(b)(2), the legislative intent is now unmistakable. Section 4 of HB 528 also amended the Insurance Code §1305.101(c), which now provides that notwithstanding any other provisions of this chapter, prescription medication or services, as defined by Labor Code §401.011(19)(E), may not directly or through a contract be delivered through a workers' compensation health care network. Prescription medication and services shall be reimbursed pursuant to the Labor Code §408.0281, other provisions of the Act, and applicable rules of the Commissioner.

In summary and as illustrated by the applicable provisions of HB 528, these proposed amendments establish the Division's pharmacy fee guideline for prescription drugs and nonprescription drugs or over-the-counter medications. These proposed amendments also allow for insurance carriers and health care providers to contract for rates that are inconsistent with the pharmacy fee guideline.

Description of the Proposed Amendments to §134.503

This proposal amends the title of §134.503 from "Reimbursement Methodology" to "Pharmacy Fee Guideline" to conform to statutory nomenclature.

Proposed subsection (a). Proposed subsection (a), previously subsection (e), addresses the section's applicability. The section applies to the reimbursement of prescription drugs and nonprescription drugs or over-the-counter medications as those terms are defined in §134.500 of this title (relating to Definitions) for outpatient use in the Texas workers' compensation system. The section applies to claims that are subject to a certified workers' compensation health care network and claims not subject to a certified network. The section applies to claims subject to Labor Code §504.053(b)(2) concerning Workers' Compensation Insurance Coverage for Employees of Political Subdivisions. The section does not apply to parenteral drugs.

Proposed new subsection (b). Proposed new subsection (b) states that for coding, billing, reporting, and reimbursement of prescription and nonprescription drugs or over-the-counter medications, Texas workers' compensation system participants shall apply the provisions of Chapters 133 and 134 of this title (relating to General Medical Provisions and Benefits--Guidelines for Medical Services, Charges, and Payments, respectively).

Proposed subsection (c). Proposed subsection (c), previously subsection (a), governs reimbursement for prescription drugs. This subsection establishes a "lesser of" provision for the reimbursement of prescription drugs. The reference to the "maximum allowable reimbursement (MAR)" under previous subsection (a) is deleted because it is unnecessary under the pharmacy fee guideline.

Paragraph (1), previously paragraph (2), is the pharmacy fee guideline for prescription drugs. This is the first "lesser of" provision, and states the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription is dispensed: (A) Generic drugs: ((AWP per unit) x (number of units) x 1.25) + $4.00 dispensing fee = reimbursement amount; (B) Brand name drugs: ((AWP per unit) x (number of units) x 1.09) + $4.00 dispensing fee = reimbursement amount; and (C) When compounding, a single compounding fee of $15 per prescription shall be added to the calculated total for either generic or brand name drugs. Proposed amendments include use of the terms, "as reported" in place of "determined by utilizing," and "price guide or other publication of pharmaceutical pricing data" in place of "reimbursement system (e.g. Redbook, First Data Bank Services)" in order to better describe the use of the pricing data and to more closely mirror the use of similar pricing data in Medicare payment policies.

Paragraph (2) is the second "lesser of" provision, which is the comparison between the formulas in paragraph (1) and the amount billed by the health care provider or pharmacy processing agent, notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider). This amendment replaces "usual and customary charge for the same or similar service," which was included under previous subsection (a)(1). Determining the health care provider's billed amount pursuant to this provision is an objective inquiry, and is determined solely by the billed amount the health care provider, or pharmacy processing agent, submits on the medical bill. For example, when an insurance carrier receives a bill for pharmaceutical services from a pharmacy or pharmacy processing agent, the "billed amount" that will be compared to the formula amount in paragraph (1) will be the amount billed as reflected on the bill. Accordingly, insurance carriers may not substitute any other billed amount.

Proposed subsection (d). Proposed subsection (d) establishes the pharmacy fee guideline for nonprescription drugs or over-the-counter medications and provides that reimbursement shall be the retail price of the lowest package quantity reasonably available that will fill the prescription. The inclusion of nonprescription drugs is consistent with the applicable definition in §134.500 of this title.

Proposed new subsection (e). Proposed new subsection (e) is the pharmacy fee guideline in cases where an amount cannot be determined under subsection (c)(1) or (d) of this section, as applicable, unless a contract amount applies. It provides that, except as provided by subsection (f) of this section, reimbursement shall be an amount that is consistent with the criteria listed in Labor Code §408.028(f), including providing for reimbursement rates that are fair and reasonable. The insurance carrier shall develop a reimbursement methodology or methodologies for determining reimbursement under this subsection; maintain in reproducible format documentation of the insurance carrier's methodology(ies) for establishing an amount; apply the reimbursement

methodology(ies) consistently among health care providers in determining reimbursements under this subsection; and upon request by the Division, an insurance carrier shall provide copies of such documentation to the Division.

This proposed subsection addresses those extremely rare cases where an amount cannot be determined under subsection (c)(1) or (d) and no contract amount exists. Reimbursement under this subsection is determined on a case-by-case basis and depends on the facts and circumstances surrounding the particular pharmaceutical service.

Proposed new subsection (f). Proposed new subsection (f) states that notwithstanding the provisions of this section, prescription medication or services, as defined by Labor Code §401.011(19)(E), may be reimbursed at a contract rate that is inconsistent with the fee guidelines as long as the contract complies with the provisions of Labor Code §408.0281. This new subsection is proposed to conform to new statutory provisions of HB 528 that allow insurance carriers and pharmacies to contract for fees that are inconsistent with the Division's pharmacy fee guideline in an amount greater or less than the fee guideline. As such, contractual reimbursements under this section are not part of the Division's pharmacy fee guideline.

Proposed subsection (g). Proposed subsection (g), previously subsection (b), sets forth that when the prescribing doctor has written a prescription for a generic drug or a prescription that does not require the use of a brand name drug in accordance with §134.502(a)(3) of this title (relating to Pharmaceutical Services), reimbursement shall be in accordance with paragraph (1) or (2) of this subsection.

Paragraph (1) states the health care provider shall dispense the generic drug as prescribed and shall be reimbursed the fee established for the generic drug in accordance with subsection (c) or (f) of this section.

Paragraph (2) states that when an injured employee chooses to receive a brand name drug instead of the prescribed generic drug, the health care provider shall dispense the brand name drug as requested and shall be reimbursed by the insurance carrier, the fee established for the prescribed generic drug in accordance with subsections (c) or (f) of this section; and by the injured employee, the cost difference between the fee established for the generic drug and the fee established for the brand name drug, both in accordance with subsections (c) or (f) of this section. These are conforming amendments to reflect current nomenclature and references to pertinent rules.

Proposed subsection (h). Proposed subsection (h), previously subsection (c), states that when the prescribing doctor has written a prescription for a brand name drug in accordance with §134.502(a)(3) of this title, reimbursement shall be in accordance with subsections (c) or (f) of this section. These are conforming amendments to reflect current nomenclature and references to pertinent rules.

Proposed subsection (i). Proposed subsection (i), previously subsection (f), states that upon request by the health care provider or the Division, the insurance carrier shall disclose the source of the nationally recognized pricing reference used to calculate the reimbursement. This is a conforming amendment to reflect current nomenclature.

Proposed new subsection (j). Proposed new subsection (j) states where any provision of this section is determined by a court of competent jurisdiction to be inconsistent with any statutes of this state, or to be unconstitutional, the remaining provisions of this section shall remain in effect.

Description of the Proposed Amendments to §134.504

Proposed amended subsection (b). Proposed amended subsection (b) corrects the reference from "Commission" to "division" to reflect appropriate nomenclature. Additionally, an amendment to subsection (b)(2)(A) establishes that the pharmacist shall determine the costs of both the brand name and generic drugs under §134.503. This cost will be determined in accordance with the pharmacy fee guideline in proposed amended §134.503 or, if there is a contract amount, the contract. As a result of the proposed changes to §134.503, a corresponding proposed amendment to §134.504(b)(2)(A) deletes the specific citation to (a)(2) of §134.503.

Mr. Matthew Zurek, Executive Deputy Commissioner for Health Care Management, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposed amended sections.

Increased costs to state government may include expenses associated with the preparation of training materials and presentation of training programs for Division staff and system participants. However, Mr. Zurek has determined that all duties and responsibilities associated with implementing the proposed amendments can be accomplished by utilizing existing agency resources.

There will be no fiscal implications for local governments as a result of enforcing or administering the proposed amended sections because they do not enforce or administer the rules.

Local government and state government as a covered regulated entity will be impacted in the same manner as persons required to comply with the proposed amendments, as described in the Public Benefit/Cost Note of this proposal.

Mr. Zurek has determined that for each year of the first five years the sections are in effect, the proposed amended sections will not have a measurable effect on local employment or the local economy.

Mr. Zurek has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the proposed amendments will be to bring clarity and certainty regarding a pharmacy fee guideline that will provide positive benefits for participants and to the workers' compensation system. The system participants are: injured employees, employers, insurance carriers and health care providers, including pharmacists.

These proposed amendments clarify reimbursement for prescription drugs and nonprescription drugs or over-the-counter medications dispensed for certified network claims, non-network claims and political subdivision claims subject to Labor Code §504.053(b)(2). Under Labor Code §408.028(f)(2) the pharmacy fee guidelines must ensure the quality of, and adequate access to, prescription medication services. These amended rule proposals are intended to assure injured employees that they will have access to pharmaceutical benefits and give pharmacies certainty of reimbursement.

The assurance to employers is that their injured employees are receiving appropriate and medically necessary medications in a

timely manner in anticipation of an early return-to-work as appropriate.

Insurance carriers will benefit from the proposed amendments. Clarity in the pharmacy fee guideline concerning allowed contracted amounts, as well as clarification of a single compounding fee, should give the insurance carriers the ability to process reimbursement claims more quickly and pay those claims more accurately. Proposing the adoption of these rules provides clarity regarding the reimbursement structure that will further benefit insurance carriers, and prevents an increase in reimbursement disputes.

Aside from the transparency of the pharmacy fee guideline, pharmacists will also benefit from the certainty of the reimbursement amount of prescription drugs and non-prescription drugs or over-the-counter medications that they dispense to injured employees. This will enable them to better anticipate their revenues and expenses, and allow them flexibility in their business models.

There will be no economic costs to injured employees, employers, health care providers, and insurance carriers as a result of these amendments. These proposed amendments do not increase the costs of pharmacy and pharmaceutical services in the Texas workers' compensation system. With regard to reimbursement for prescription medications, these proposed amendments carry forward the formulas based on the average wholesale price (AWP) in the current reimbursement methodology. Although these proposed amendments remove the health care provider's usual and customary charge from consideration in determining reimbursement for prescription drugs, this will not have the effect of increasing prescription drug costs because these proposed amendments allow insurance carriers and pharmacies to contract for reimbursement rates that are inconsistent with the pharmacy fee guideline. Providing insurance carriers and pharmacies the flexibility to negotiate reimbursement rates that are inconsistent with the pharmacy fee guideline will allow the parties to negotiate reimbursement rates that are below the fee guideline. With regard to nonprescription drugs or over-the-counter medications, these proposed amendments carry forward the reimbursement rates currently in effect.

In accordance with the Government Code §2006.002(c), the Division has determined that these proposed rule amendments will not have an adverse economic effect on small or micro businesses. Because the proposal does not impose any new requirements or costs with which businesses, regardless of size, must comply, any costs to persons required to comply with these proposed amendments are the result of the enactment of HB 528 and not the result of the adoption, enforcement, or administration of the proposed amendments. Further, as already stated in the Public Benefit/Cost Note, these proposed amendments carry forward the formulas based on the average wholesale price (AWP) in the current reimbursement methodology and allow insurance carriers and health care providers to contract for fees for pharmaceutical services that are inconsistent with the pharmacy fee guideline. These proposed amendments also carry forward the reimbursement rates currently in effect for nonprescription drugs or over-the-counter medications. In accordance with the Government Code §2006.002(c), the Division has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

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

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on August 1, 2011. Comments may be submitted via the internet through the Division's internet website at www.tdi.state.tx.us/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

A public hearing on this proposal will be held on July 11, 2011 at 1:00 p.m. CST in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas 78701-3939. Those persons interested in attending the public hearing should contact the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, at (512) 804-4703 to confirm the date, time, and location of the public hearing for this proposal. The Division offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Amanda Brown at (512) 463-6328 at least two days prior to the hearing date. The public hearing schedule will also be available on the Division's website at www.tdi.state.tx.us/wc/rules/proposedrules/index.html.

These rule amendments are proposed under the Labor Code §§408.028, 408.0281, 408.027, 401.011, 402.021, 408.021, 413.011, 413.0111, 402.00111, 402.00116, 402.00128, 402.061, and 504.053; and Insurance Code Chapter 1305.

The Labor Code §408.028(e) requires the Commissioner by rule to allow an employee to purchase a brand name drug rather than a generic pharmaceutical medication or over-the-counter alternative to a prescription medication if a health care provider prescribes a generic pharmaceutical or an over-the-counter alternative to a prescription medication. The injured employee shall be responsible for paying the difference between the cost of the brand name drug and the cost of the generic or over-the-counter alternative to a prescription medication. The injured employee may not seek reimbursement for the difference in cost from an insurance carrier and is not entitled to use the medical dispute resolution provisions of Labor Code Chapter 413 with regard to the prescription. The Labor Code §408.028(f) requires the Commissioner by rule to adopt a fee schedule for pharmacy and pharmaceutical services that will provide reimbursement rates that are fair and reasonable; assure adequate access to medications and services for injured employees, minimize costs to employees and insurance carriers and take into consideration the increased security of payment afforded by this subtitle. The Labor Code §408.028(g) provides that the Labor Code §413.011(d) and the rules adopted to implement that subsection do not apply to the fee schedule adopted by the Commissioner under the Labor Code §408.028(f).

HB 528 amends the Labor Code by adding §408.0281 (relating to Reimbursement for Pharmaceutical Services; Administrative Violation). Section 408.0281(b) sets forth that notwithstanding any provision of the Insurance Code Chapter 1305 (relating to Workers' Compensation Health Care Networks) or the Labor Code §504.053 (relating to Election), prescription medication or services, as defined by §401.011(19)(E), may be reimbursed

in accordance with the fee guidelines adopted by the Commissioner or at a contract rate in accordance with this section. Section 408.0281(b)(2) also provides that prescription medication or services may not be delivered through a workers' compensation health care network under Insurance Code Chapter 1305, or a contract concerning workers' compensation insurance coverage for employees of political subdivisions as described by the Labor Code §504.053(b)(2). Under the Labor Code §408.0281(c), HB 528 authorizes the reimbursement of prescription medication or services that is inconsistent from the fee guidelines the Commissioner adopts only if the insurance carrier has a contract with the health care provider and that contract includes a specific fee schedule. An insurance carrier or the carrier's authorized agent may use an informal or voluntary network to obtain a contractual agreement that provides for fees different from the fees authorized under the fee guidelines adopted by the Commissioner for pharmaceutical services.

The Labor Code §408.027(f) provides that except for the Labor Code §408.0281, any payment made by an insurance carrier to a health care provider under §408.027 shall be in accordance with the fee guidelines authorized under the Texas Workers' Compensation Act (Act), if the health care service is not provided through a workers' compensation health care network under Insurance Code Chapter 1305 or at a contracted rate for that health care service if the health care service is provided through a workers' compensation health care network under Insurance Code Chapter 1305.

The Labor Code §401.011 contains definitions used in the Texas workers' compensation system (in particular, §401.011(19)(E), the definition of "health care," which includes a prescription drug, medicine or other remedy, §401.011(22), the definition of "health care provider," and §401.011(22-a), the definition of "health care reasonably required").

The Labor Code §402.021 states that the workers' compensation system of this state must provide timely, appropriate, and high-quality medical care supporting restoration of the injured employee's physical condition and earning capacity.

The Labor Code §408.021 states that an injured employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed.

The Labor Code §413.011(a) requires the Commissioner by rule to adopt reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements.

The Labor Code §413.0111 requires that a rule on reimbursement of prescription medication or services must authorize pharmacies to use agents or assignees to process claims and act on behalf of pharmacies.

The Labor Code §402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce Labor Code Title 5, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the Division or Commissioner. Section 402.00128 provides general operational powers to the Commissioner to conduct daily operations of the Division and implement Division policy including the duty to delegate, assess and enforce penalties and enter appropriate orders as authorized by Labor Code Title 5. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Act

The Labor Code §504.053(b)(2) provides that if a political subdivision or a pool determines that a workers' compensation health care network certified under Insurance Code Chapter 1305, is not available or practical for the political subdivision or a pool, it may provide medical benefits to its injured employees by directly contracting with health care providers or by contracting through a health benefits pool established under the Local Government Code Chapter 172.

Insurance Code Chapter 1305 is the Workers' Compensation Health Care Network Act that authorizes the establishment of certified networks for the provision of workers' compensation medical benefits. In particular, §1305.101(c) sets forth that prescription medication and services may not directly or through a contract be delivered through a workers' compensation health care network and that prescription medication and services shall be reimbursed as provided by the Labor Code §408.0281, other provisions of the Act and applicable rules of the Commissioner.

The following sections are affected by this proposal: §134.503--Labor Code §§408.028, 408.0281, 408.027, 401.011, 402.021, 408.021, 413.011, 413.0111, 402.00111, 402.00116, 402.00128 402.061 and 504.503; and Insurance Code Chapter 1305; and §134.504--Labor Code §§408.028, 402.0281, 408.027, 401.011, 402.021, 408.021, 413.011, 413.0111, 402.00111, 402.00116, 402.00128, 402.061 and 504.503; and Insurance Code Chapter 1305.

§134.503. Pharmacy Fee Guideline [Reimbursement Methodology].

(a) Applicability of this section is as follows:

(1) This section applies to the reimbursement of prescription drugs and nonprescription drugs or over-the-counter medications as those terms are defined in §134.500 of this title (relating to Definitions) for outpatient use in the Texas workers' compensation system, which includes claims:

(A) subject to a certified workers' compensation health care network as defined in §134.500 of this title:

(B) not subject to a certified workers' compensation health care network; and

(C) subject to Labor Code §504.053(b)(2).

(2) This section does not apply to parenteral drugs.

(b) For coding, billing, reporting, and reimbursement of prescription drugs and nonprescription drugs or over-the-counter medications, Texas workers' compensation system participants shall apply the provisions of Chapters 133 and 134 of this title (relating to General Medical Provisions and Benefits--Guidelines for Medical Services, Charges, and Payments, respectively).

(c) [~~(a)~~] The insurance carrier shall reimburse the health care provider or pharmacy processing agent [~~maximum allowable reimbursement (MAR)~~] for prescription drugs [~~shall be~~] the lesser of:

[~~(1) The provider's usual and customary charge for the same or similar service;~~]

(1) [~~(2)~~] the fee [~~The fees~~] established by the following formulas based on the average wholesale price (AWP) as reported [~~determined~~] by [~~utilizing~~] a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data [~~reimbursement system (e.g. Redbook, First Data Bank Services)~~] in effect on the day the prescription drug is dispensed:[~~.~~]

(A) Generic drugs: ((AWP per unit) x (number of units) x 1.25) + $4.00 dispensing fee = reimbursement amount [~~MAR~~];

(B) Brand name drugs: ((AWP per unit) x (number of units) x 1.09) + $4.00 dispensing fee = reimbursement amount[~~MAR~~];

(C) When compounding, a single compounding fee of $15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or

(2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed by the health care provider or pharmacy processing agent.

[~~(C) A compounding fee of $15 per compound shall be added for compound drugs; or~~]

[~~(3) A negotiated or contract amount.~~]

(d) Reimbursement for nonprescription drugs or over-the-counter medications shall be the retail price of the lowest package quantity reasonably available that will fill the prescription.

(e) Except as provided by subsection (f) of this section, if an amount cannot be determined in accordance with subsections (c)(1) or (d) of this section, reimbursement shall be an amount that is consistent with the criteria listed in Labor Code §408.028(f), including providing for reimbursement rates that are fair and reasonable. The insurance carrier shall:

(1) develop a reimbursement methodology(ies) for determining reimbursement under this subsection;

(2) maintain in reproducible format documentation of the insurance carrier's methodology(ies) for establishing an amount;

(3) apply the reimbursement methodology(ies) consistently among health care providers in determining reimbursements under this subsection; and

(4) upon request by the division, provide to the division copies of such documentation.

(f) Notwithstanding the provisions of this section, prescription medication or services, as defined by Labor Code §401.011(19)(E), may be reimbursed at a contract rate that is inconsistent with the fee guideline as long as the contract complies with the provisions of Labor Code §408.0281.

(g) [~~(b)~~] When the prescribing doctor has written a prescription for a generic drug or a prescription that does not require the use of a brand name drug in accordance with §134.502(a)(3) of this title (relating to Pharmaceutical Services), reimbursement shall be as follows:

(1) the health care provider [~~pharmacist~~] shall dispense the generic drug as prescribed and shall be reimbursed the fee established for the generic drug in accordance with subsection (c) or (f) [~~(a)~~] of this section; or

(2) when an injured employee chooses to receive a brand name drug instead of the prescribed generic drug, the health care provider [~~pharmacist~~] shall dispense the brand name drug as requested and shall be reimbursed:

(A) by the insurance carrier, the fee established for the prescribed generic drug in accordance with subsection (c) or (f) [~~(a)~~] of this section; and

(B) by the injured employee, the cost difference between the fee established for the generic drug in subsection (c) or (f) of this section and the fee established for the brand name drug in accordance with subsection (c) or (f) of this section [~~§134.503(a)(2) of this title~~].

(h) [~~(c)~~] When the prescribing doctor has written a prescription for a brand name drug in accordance with §134.502(a)(3) of this title, reimbursement shall be in accordance with subsections (c) or (f) [~~subsection (a)~~] of this section.

[~~(d) Reimbursement for over-the-counter medications shall be the retail price of the lowest package quantity reasonably available that will fill the prescription.~~]

[~~(e) This section applies to the dispensing of all drugs except inpatient drugs and parenteral drugs.~~]

(i) [~~(f)~~] Upon request by the health care provider or the division, the insurance carrier shall disclose the source of the nationally recognized pricing reference [~~AWP~~] used to calculate the reimbursement.

(j) Where any provision of this section is determined by a court of competent jurisdiction to be inconsistent with any statutes of this state, or to be unconstitutional, the remaining provisions of this section shall remain in effect.

§134.504. Pharmaceutical Expenses Incurred by the Injured Employee.

(a) (No change.)

(b) An injured employee may choose to receive a brand name drug rather than a generic drug or over-the-counter alternative to a prescription medication that is prescribed by a health care provider. In such instances, the injured employee shall pay the difference in cost between generic drugs and brand name drugs. The transaction between the employee and the pharmacist is considered final and is not subject to medical dispute resolution by the division [~~Commission~~]. In addition, the employee is not entitled to reimbursement from the insurance carrier for the difference in cost between generic and brand name drugs.

(1) The injured employee shall notify the pharmacist of their choice to pay the cost difference between generic and brand name drugs. An employee's payment of the cost difference constitutes an acceptance of the responsibility for the cost difference and an agreement not to seek reimbursement from the carrier for the cost difference.

(2) The pharmacist shall:

(A) determine the costs of both the brand name and generic drugs under [~~by using the reimbursement formulas stated in~~] §134.503 of this title [~~§134.503(a)(2)~~], and notify the injured employee of the cost difference amount;

(B) collect the cost difference amount from the injured employee in a form and manner that is acceptable to both parties;

(C) submit a bill to the insurance carrier for the generic drug that was prescribed by the doctor; and

(D) not bill the injured employee for the cost of the generic drug if the insurance carrier reduces or denies the bill.

(3) The insurance carrier shall review and process the bill from the pharmacist in accordance with Chapter 133 and 134 (pertaining to General Medical Provisions and Benefits-Guidelines for Medical Services, Charges, and Payment, respectively).

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 June 20, 2011.

TRD-201102279

Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 804-4703

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

SUBCHAPTER J. COMMUNITY BASED ALTERNATIVES (CBA) PROGRAM

40 TAC §§48.6002, 48.6026, 48.6040, 48.6050, 48.6078

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §48.6002, concerning community based alternatives (CBA) definitions, §48.6026, concerning home and community support services provider qualifications, §48.6040, concerning registered nurse (RN) delegation of nursing tasks, §48.6050, concerning service array for home and community support services (HCSS), and §48.6078, concerning billable units, in Chapter 48, Community Care for Aged and Disabled, Subchapter J, Community Based Alternatives (CBA) Program.

BACKGROUND AND PURPOSE

The purpose of the amendments is to implement the 2012-13 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 46, H.B. 1, 82nd Legislature, Regular Session, 2011, and Article II, Special Provisions, Section 17(a)(2), H.B. 1, 82nd Legislature, Regular Session, 2011). The amendments would create two categories of personal assistance services (PAS) in the CBA Program. Category I would include tasks delegated by an RN to an unlicensed attendant and health maintenance activities (HMAs) and would be reimbursed at the current PAS rate. Category II would include assistance with activities of daily living (ADLs) that a RN determines are not the practice of professional nursing, cleaning, laundry, shopping, escort, protective supervision, and extension of therapy, and would be reimbursed at a lower rate. The amendments also require a home and community support services agency that contracts with DADS to provide CBA services to maintain a license as a HCSSA and be licensed in the categories of licensed home health services and PAS. Currently, all CBA PAS services are delivered under the category of licensed home health services.

SECTION-BY-SECTION SUMMARY

The amendment to §48.6002 adds definitions of ADLs, CBA, DADS, delegation, extension of therapy, HCSSA, HMAs, PAS, protective supervision, and RN. These definitions will improve the clarity of the subchapter.

The amendment to §48.6026 adds a requirement that a HCSSA contracting with DADS to provide CBA PAS must maintain a HCSSA license in the categories of PAS. Allowing for services that do not require delegation to be delivered through the PAS category will eliminate the need for an RN supervisor for those tasks.

The amendment to §48.6040 describes requirements of registered nurse delegation for PAS.

The amendment to §48.6050 describes the CBA Program service array to update the list of services available through the program and includes the PAS categories I and II.

The amendment to §48.6078 describes details of billable activities for CBA services to update terminology and to clarify that direct contact with an individual to provide either PAS or Category I or II is billable.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments. Reimbursement methodology rules related to PAS skilled and non-skilled (Categories I and II), proposed elsewhere in this issue of the *Texas Register,* result in savings to state government. Those savings are explained in detail in HHSC's proposal.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses. Reimbursement methodology rules related to PAS skilled and non-skilled (Categories I and II), published elsewhere in this issue of the *Texas Register,* result in an adverse economic effect on small and micro-businesses. The impact of those rules and the alternatives considered are explained in detail in HHSC's proposal.

PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is savings for the state, while ensuring that CBA recipients continue receiving needed PAS.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments 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 Alesia Brown at (512) 438-2578 in DADS Policy, Development and Oversight Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R07, 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) post-

marked 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 11R07" in the subject line.

STATUTORY AUTHORITY

The amendments 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 amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§48.6002. Community Based Alternatives (CBA) Definitions.

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

(1) ADLs--Activities of daily living that are essential to daily self care and limited to:

(A) assisting with self-administered medications;

(B) bathing;

(C) dressing;

(D) exercising;

(E) feeding;

(F) grooming;

(G) meal preparation;

(H) routine hair and skin care;

(I) positioning;

(J) toileting; and

(K) transfer and ambulation.

(2) [~~(1)~~] Advance notice--A statement of the action the state intends to take provided in writing to the individual or the individual's authorized representative; and advises them of the right to a hearing, the method by which a hearing may be obtained, and that the individual may represent himself, or use legal counsel, a relative, a friend, or other spokesperson. DADS [~~The Texas Department of Human Services (DHS)~~] must provide a notice to the individual at least 10 days before the date of action.

(3) CBA--Community Based Alternatives.

(4) DADS--Department of Aging and Disabilities.

(5) Delegation--Authorization by an RN that permits an unlicensed person to provide PAS while the RN retains accountability for how the unlicensed person performs the task. It does not include situations in which an unlicensed person is directly assisting a RN by carrying out nursing task in the presence of the RN.

(6) Extension of therapy--Authorization by a licensed therapist or RN that permits an unlicensed person to assist an individual during follow-up therapy sessions. In addition, an RN may instruct an attendant to perform basic interventions with an individual that would increase and optimize the individual's functional abilities in performing ADLs.

(7) HCSSA--A home and community support services agency licensed by DADS in accordance with Health & Safety Code Chapter 142.

(8) HMAs--Health maintenance activities are those activities that:

(A) an RN has determined an unlicensed attendant may provide with or without delegation;

(B) enable an individual to remain in an independent living environment; and

(C) include the following:

(i) administering oral medications including administration through a permanently placed feeding tube with irrigation, for an individual who is not able to self-administer the medication;

(ii) the administering of a bowel and bladder program, including suppositories, enemas, manual evacuation, intermittent catheterization and digital stimulation associated with a bowel program;

(iii) tasks related to external stoma care including but not limited to pouch changes, measuring intake and output, and skin care surrounding the stoma area;

(iv) routine care of a Stage 1 decubitus;

(v) feeding and irrigation through a permanently placed feeding tube inserted in a surgically created orifice or stoma; and

(vi) such other tasks as the Texas Board of Nursing may designate.

(9) PAS--Personal assistance services are routine ongoing activities or services required by an individual to live in the community and prevent admission to an institution or to perform the physical functions required for independent living.

(A) Category I--Assistance with:

(i) an HMA; or

(ii) a task, including an ADL or extension of therapy, delegated by an RN in accordance with:

(I) 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

(II) 22 TAC 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).

(B) Category II--Includes the following activities:

(i) assistance with ADLs or an extension of therapy that an RN has determined does not constitute the practice of professional nursing;

(ii) cleaning;

(iii) laundry;

(iv) shopping;

(v) escort; and

(vi) protective supervision.

(10) Protective supervision--For an individual with a cognitive or memory impairment or physical weakness, supervision by an attendant who is present in the individual's home to monitor the individual's health and welfare when the primary caregiver is not in the home. The attendant does not provide any other PAS activities.

(11) RN--A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301.

(12) [~~(2)~~] Suspension of services--A temporary reduction of waiver services without loss of program or Medicaid eligibility.

(13) [~~(3)~~] Waiver program [~~Program~~]--A Medicaid program that provides home and community-based services to a limited number of eligible individuals [~~adults~~] who are aged or [~~aged and/or~~] disabled as an alternative to institutional care in a nursing facility in accordance with the waiver provisions of the Social Security Act, §1915(c).

(14) [~~(4)~~] Waiver Program Services--Medicaid home and community-based services provided under waiver provisions of the Social Security Act, §1915(c).

§48.6026. Home and Community Support Services Agency (HCSSA) [~~Provider~~] Qualifications.

A HCSSA that contracts to provide CBA services [~~To be qualified as a home and community support services (HCSS) provider to deliver Community Based Alternatives (CBA) services under contract with the Texas Department of Human Services (DHS), a HCSS agency~~] must:

(1) maintain a license under Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies) and be licensed in categories of:

(A) licensed home health services; and

(B) PAS;

(2) [~~(1)~~] have a separate contract to provide CBA services in each DADS [~~DHS~~] region in which services are to be delivered;

(3) be in compliance with Chapter 49, Contracting for Community Care Services;

[~~(2) deliver CBA services through the licensed home health category of licensure;~~]

(4) [~~(3)~~] have the counties in the DADS [~~DHS~~] contract for CBA services included in the identified licensed service area on file at DADS [~~DHS within the licensed home health category of licensure~~]; and

(5) [~~(4)~~] be authorized by the secretary of state to do business in the State of Texas (if an out-of-state corporation).

§48.6040. Registered Nurse (RN) Delegation of [~~Nursing~~] Tasks.

(a) The CBA HCSSA's RN may delegate tasks to a PAS attendant in accordance with §97.298 of this title (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation).

(b) The CBA HCSSA's RN must supervise a PAS attendant who performs delegated tasks in PAS Category I. [~~Delegation and supervision of selected nursing tasks is permitted in the Nursing Facility Waiver:~~]

[~~(1) by RNs employed by the home and community support services agencies to personal care attendants and adult foster care providers of Level I and II adult foster care homes. Delegation will occur in accordance with the Texas Department of Health Home and Community Support Services licensure rules for the provider agency's licensure category; or~~]

[~~(2) by independent RNs to adult foster care providers of Level I and II, adult foster care homes. Delegation will occur in accordance with the rules from Texas Board of Nurse Examiners, 22 TAC Chapter 218; or~~]

[~~(3) by RNs who are adult foster care providers of a Level I and II adult foster care home who delegate to substitute providers. Delegation will occur in accordance with the rules from Texas Board of Nurse Examiners, 22 TAC Chapter 218.~~]

§48.6050. CBA Service Array [~~for Home and Community Support Services (HCSS)~~].

The CBA waiver offers the following long-term services and supports [~~HCSS agencies must provide the array of home and community support services identified in paragraphs (1)-(9) of this section in accordance with the individual service plan through their own employees, subcontractors, or personal service agreements with qualified individuals. Services include~~]:

(1) adaptive aids;

(2) adult foster care;

(3) assisted living services;

(4) dental services;

(5) emergency response services;

(6) financial management services;

(7) home-delivered meals;

(8) medical supplies;

(9) minor home modifications;

(10) nursing services;

(11) occupational therapy services;

(12) personal assistance services (PAS);

(A) Category I; and

(B) Category II;

(13) physical therapy services;

(14) respite:

(A) in-home; and

(B) out-of-home;

(15) speech, hearing, and language therapy services;

(16) support consultation; and

(17) transition assistance services.

[~~(1) personal assistance services;~~]

[~~(2) nursing services;~~]

[~~(3) physical therapy;~~]

[~~(4) occupational therapy;~~]

[~~(5) speech pathology services;~~]

[~~(6) adaptive aids;~~]

[~~(7) medical supplies;~~]

[~~(8) minor home modifications; and~~]

[~~(9) respite care (in-home).~~]

§48.6078. Billable Units.

The following activities may be billed as CBA [~~Community Based Alternatives (CBA)~~] services by a HCSSA [~~home and community support services agency~~]:

(1) Nursing services:

(A) direct [~~participant~~] contact with an individual;

(B) participation on the interdisciplinary team (IDT);

(C) time spent in delegating, training, and supervising a PAS attendant, an adult foster care provider, or an adult foster care [~~personal care attendants, Adult Foster Care providers, and~~] provider substitute [~~substitutes~~] in the delivery of delegated [~~nursing~~] tasks [~~that have been delegated~~];

(D) to prevent a service break, time spent in providing nursing tasks that had been delegated to an attendant who is not available [~~in order to prevent a service break, if no attendant can be found~~];

(E) time spent in training family members, neighbors, and other informal support providers to provide needed PAS [~~nursing or personal care~~] tasks;

(F) time spent performing an [~~the~~] annual reassessment or level of care reassessment that includes direct [~~resets which include actual participant~~] contact with the individual and documentation of assessment forms and care plan;

(G) time spent performing assessments and developing written specifications for adaptive aids; and

(H) follow-up orientation visit following delivery of adaptive aids.

(2) Specialized therapy services (occupational therapy, physical therapy, and speech, hearing and language therapy [~~pathology~~]):

(A) direct [~~participant~~] contact with an individual;

(B) development of written bid specifications;

(C) follow-up/orientation visit following delivery of adaptive aid; and

(D) participation on the IDT.

(3) Personal assistance services:

(A) direct [~~participant~~] contact with an individual to provide PAS Category I or Category II [~~personal care and nursing tasks that have been delegated~~]; and

(B) participation on the IDT.

(4) Billable items for medical supplies include the invoice cost, including freight charges and sales tax, of the medical supply and the requisition fee.

(5) Billable items for minor home modifications include the invoice cost of labor, materials, sales tax, actual cost of specification development up to $200, actual cost of inspection up to $150, and the requisition fee.

(6) Billable items for adaptive aids include the invoice cost of the item, including freight charges and sales tax, actual cost of development of written bid specifications for computer assistive technology, environmental controls and augmentative communication devices, and the follow-up/orientation visit by the professional knowledgeable of these items, up to $500 of the cost of the item, and the requisition fee.

(7) In-Home Respite Care--relief of the unpaid primary caregiver.

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 June 20, 2011.

TRD-201102265
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 438-3734

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 705. ADULT PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §705.2940 and §705.7109, concerning adult protective emergency client services and are there others who may have access to APS records, in its Adult Protective Services (APS) chapter. The amendment to §705.2940 corrects citations regarding the Human Resources Code, updates the agency name, and modifies general grammar. The amendment to §705.7109 clarifies that local, state, or federal law enforcement officials receive case records when they are investigating crimes related to abuse, neglect, or exploitation.

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

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be greater clarity in rules governing abuse, neglect, or exploitation. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments do 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Dana Williamson at (512) 438-3182 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-439, Department of Family and Protective Services E-611,

P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER D. ELIGIBILITY

40 TAC §705.2940

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the Human Resources Code, §48.252, and the Family Code, §261.404, which provides APS authority to investigate allegations of abuse, neglect, or exploitation of persons receiving services from state operated facilities including state supported living centers.

§705.2940. Adult Protective Emergency Client Services.

(a) Emergency client services are services provided in accordance with Human Resources Code §48.002(a)(5) [~~§705.002(5)~~], including, but not limited to, emergency shelter, medical and psychiatric assessments, in-home care, residential care, heavy housecleaning, minor home repairs, money management, transportation, emergency food, medication, and other supplies. Specific emergency client services are only available in a community if those specific services are not available through other state and local resources.

(b) To be eligible for emergency client services, an elderly or disabled adult must be receiving adult protective services from the Texas Department of Family and Protective [~~and Regulatory~~] Services in accordance with Human Resources Code §48.002(a)(5) and §48.205. The elderly or disabled adult must [~~, §48.002(5) and §48.021(a), and~~] have a service plan [~~which has been~~] developed by the department under these sections indicating [~~and which indicates~~] that emergency client services are needed to remedy abuse, neglect, or exploitation. All other available resources must be used where feasible before emergency client services are initiated.

(c) Not all [~~All~~] services are [~~not~~] available in all geographic areas of the state. The department may limit the units of service or length of time that clients can receive emergency client services, based upon service plans, availability of funds, and availability of service providers.

(d) If the region does not have sufficient funds to serve all eligible clients, or if the provider agency in an eligible client's area is operating at capacity, the client will not be able to receive services at the time he or she is determined eligible. Clients who are still in need of services when services are [~~again~~] available again will be given priority based upon the date of the service plan indicating the need for emergency client 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 June 16, 2011.

TRD-201102191
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 438-3437

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SUBCHAPTER M. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §705.7109

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the Human Resources Code, §48.252, and the Family Code, §261.404, which provides APS authority to investigate allegations of abuse, neglect, or exploitation of persons receiving services from state operated facilities including state supported living centers.

§705.7109. Are there others who may have access to APS records?

DFPS must make case records available after required redactions to the following persons:

(1) Local, state, or federal law enforcement officials for the purpose of investigating crimes related to:

(A) - (C) (No change.)

(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 June 16, 2011.

TRD-201102192
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 438-3437

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CHAPTER 711. INVESTIGATIONS IN DADS MENTAL RETARDATION AND DSHS MENTAL HEALTH FACILITIES AND RELATED PROGRAMS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§711.201, 711.401, 711.403, 711.413, 711.417, 711.423, 711.605, and 711.1002, concerning what is your duty to report if you are an employee, agent, or contractor

of a facility, local authority, community center, or HCSW; who and when does the investigator notify of an allegation and when is the identity of the reporter revealed; who and when does the investigator notify upon receiving an allegation that relates to a general complaint; how are investigations prioritized; when must the investigator complete the investigation; is the investigator required to designate a perpetrator or alleged perpetrator; who receives the investigative report; and how is a request for review affected by a determination that the perpetrator's confirmed act of abuse, neglect, or exploitation may rise to the level of reportable conduct; in its Investigations in DADS Mental Retardation and DSHS Mental Health Facilities and Related Programs chapter. The changes (1) no longer allow investigations in state supported living centers (SSLCs) to be designated as Priority III, which requires completion of investigations in 21 days, because the state's settlement agreement with the Department of Justice (DOJ) requires completion of investigations in 10 days in SSLCs; (2) conform the process for review and appeal of findings against employees at SSLCs and state hospitals in relation to the new process of administrative hearings before the employees can be placed on the Employee Misconduct Registry as required by HB 806, 81st Legislature; (3) improve the nomenclature of who is identified as a perpetrator in an MHMR investigation to distinguish between a "perpetrator unknown" when a specific individual cannot be identified and a "systems issue" when a facility's or provider agency's lack of established policy or procedure contributed to the abuse, neglect, or exploitation (ANE) or failed to ensure the safety of the victim; and (4) remove the duplicative requirement that Adult Protective Services (APS) report licensed professionals to licensure boards for state-operated facilities. An interim study by the Legislative Budget Board noted deficiencies in the reporting of licensed nurses in state hospitals, prompting the Department of State Health Services (DSHS), the Department of Aging and Disability Services (DADS) and APS to review this currently shared responsibility. The agencies agree APS does not need to duplicate the state-operated facilities' responsibility to report to professional licensing boards.

The amendment to §711.201 corrects the citation to reflect the on-line link for Statewide Intake.

The amendment to §711.401 corrects the notification table because DADS does not receive notification of ANE allegations against a licensed ICF/MR at the beginning of the investigation.

The amendment to §711.403 conforms the rule with the current practice that APS does not send information about general complaints for ICF/MR and HSCW to DADS Consumer Rights and Services.

The amendments to §711.413 and §711.417 clarify that an SSLC investigation can only be a Priority I or II.

The amendment to §711.423 changes the use of "perpetrator unknown" to "systems issue" when a facility's or provider agency's lack of established policy or procedure contributed to the abuse, neglect, or exploitation or failed to ensure the safety of the victim.

The amendment to §711.605 clarifies that DADS receives a copy of the report for investigations in SSLCs, and that the responsibility for forwarding confirmed allegations of ANE to appropriate licensing boards for employees or contractors of state-operated facilities is the responsibility of the facility.

The amendment to §711.1002 clarifies that a request for review of finding is not affected by a request for an Employee Misconduct Registry hearing.

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

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be greater clarity in rules governing abuse, neglect, or exploitation. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments do 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Dana Williamson at (512) 438-3182 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-439, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER C. DUTY TO REPORT

40 TAC §711.201

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the Human Resources Code §48.252 and the Family Code §261.404, which provides APS authority to investigate allegations of ANE of persons receiving services from state operated facilities including state supported living centers.

§711.201. What is your duty to report if you are an employee, agent, or contractor of a facility, local authority, community center, or HCSW?

If you know or suspect that a person served is being or has been abused, neglected, or exploited or meets other criteria specified in §711.5 [~~§711.5(b)~~] of this title (relating to What does APS investigate under this chapter?), you must:

(1) report such knowledge or suspicion to DFPS immediately, if possible, but in no case more than one hour after knowledge or suspicion by calling the DFPS toll-free number at 1-800-647-7418 or by use of the Internet at http://www.txabusehotline.org [~~https://www.txabusehotline.org/notice-aps.asp~~];

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

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

Filed with the Office of the Secretary of State on June 16, 2011.

TRD-201102193
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 438-3437

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SUBCHAPTER E. CONDUCTING THE INVESTIGATION

40 TAC §§711.401, 711.403, 711.413, 711.417, 711.423

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the Human Resources Code §48.252 and the Family Code §261.404, which provides APS authority to investigate allegations of ANE of persons receiving services from state operated facilities including state supported living centers.

§711.401. Who and when does the investigator notify of an allegation and when is the identity of the reporter revealed?

(a) Except as provided in subsection (b) of this section, the investigator makes the following notifications, as appropriate:
Figure: 40 TAC §711.401(a)

(b) (No change.)

§711.403. Who and when does the investigator notify upon receiving an allegation that relates to a general complaint?

Within 24 hours or the next working day following receipt of an allegation that relates to a general complaint, as described in §711.7(2) of this title (relating to What does APS not investigate under this chapter?), the investigator notifies the administrator [~~following~~] of the general complaint. [~~:~~]

[~~(1) the administrator; and~~]

[~~(2) Consumer Rights and Services, if the complaint involves a licensed ICF-MR or HCSW.~~]

§711.413. How are investigations prioritized?

Each investigation is assigned a priority in accordance with the following:

(1) Priority I reports have a serious risk that a delay in investigation will impede the collection of evidence, or allege that the victim has been subjected to maltreatment by act or omission that caused or may have caused serious physical or emotional harm. Priority 1 reports include, but are not limited to, the following:

(A) - (C) (No change.)

(D) Verbal/emotional abuse, such as a death threat, or a threat of serious physical or emotional harm; or

(E) (No change.)

(2) (No change.)

(3) Priority III reports allege maltreatment that would otherwise be classified as Priority I or II but the alleged incident occurred more than 30 days prior to the date of the report. Allegations of maltreatment in state supported living centers (SSLC) cannot be classified as Priority III. Allegations occurring in an SSLC must be Priority I or II.

§711.417. When must the investigator complete the investigation?
Unless an extension is granted in accordance with §711.419 of this title (relating to What if the investigator cannot complete the investigation on time?), the investigator must complete the investigation within the following time frames:
Figure: 40 TAC §711.417 (No change.)

(1) If the investigation is in a state supported living center or the ICF-MR component of the Rio Grande State Center and the priority is I or II [~~I, II, or III,~~] the investigator must complete the investigation within 10 calendar days of receipt of the allegation by DFPS.

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

§711.423. Is the investigator required to designate a perpetrator or alleged perpetrator?

(a) (No change.)

(b) The investigator indicates "perpetrator unknown" when a positive identification of the responsible person(s) cannot be made.[~~:~~]

[~~(1) positive identification of the responsible person(s) cannot be made; or~~]

[~~(2) it is determined that the lack of established policy or procedure contributed to the abuse, neglect, or exploitation and/or failed to ensure the safety of the victim.~~]

(c) The investigator indicates "systems issue" when it is determined that the lack of established policy or procedure contributed to the abuse, neglect, or exploitation.

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 June 16, 2011.

TRD-201102194
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 438-3437

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SUBCHAPTER G. RELEASE OF REPORT AND FINDINGS

40 TAC §711.605

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the Human Resources Code §48.252 and the Family Code §261.404, which provides APS authority to investigate allegations of ANE of persons receiving services from state operated facilities including state supported living centers.

§711.605. Who receives the investigative report?

(a) The investigator sends a copy of the investigative report to:

(1) (No change.)

(2) DADS State Office, if the investigation involves a state supported living center, [~~an~~] HCSW, or licensed ICF-MR;

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

(5) the following, if the administrator or contractor CEO is the perpetrator or alleged perpetrator:

(A) - (E) (No change.)

(F) Licensed ICFs-MR--the licensed ICF-MR Administrator designee; and

(6) the state office of Adult Protective Services if a confirmed finding is made against a physician, dentist, pharmacist, registered nurse, licensed vocational nurse, or other licensed professional, except investigations involving licensed professionals employed at a state-operated facility. The state office forwards a copy of the report to the appropriate licensing authority; and

(7) (No change.)

(b) (No change.)

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

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TRD-201102195
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 438-3437

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SUBCHAPTER K. REQUESTING A REVIEW OF FINDING IF YOU ARE THE ADMINISTRATOR OR CONTRACTOR CEO

40 TAC §711.1002

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the Human Resources Code §48.252 and the Family Code §261.404, which provides APS authority to investigate allegations of ANE of persons receiving services from state operated facilities including state supported living centers.

§711.1002. How is a request for review affected by a determination that the perpetrator's confirmed act of abuse, neglect, or exploitation may rise to the level of reportable conduct [~~perpetrator's request for an EMR hearing~~]?

A request for review that is described in this subchapter is not affected by a determination that the confirmed act(s) of abuse, neglect, or exploitation may rise to the level of reportable conduct. The designated perpetrator will not receive notice about his or her right to request an EMR hearing until the 30 day deadline for requesting a review has expired, or the review of findings is completed and a confirmed finding that rises to the level of reportable conduct is upheld. [~~If the designated perpetrator requests a hearing in accordance with Subchapter O of this chapter (relating to Employee Misconduct Registry), a request for review will be suspended and the results of the EMR hearing will serve as a finding on the request for review.~~]

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 June 16, 2011.

TRD-201102196
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 31, 2011
For further information, please call: (512) 438-3437

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

SUBCHAPTER F. FIRE ALARM RULES

28 TAC §34.629

Proposed new §34.629, published in the December 12, 2010, issue of the *Texas Register* (35 TexReg 11168), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on June 20, 2011.

TRD-2011002285

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 31. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §31.14, concerning the requirements for private child support enforcement contracts. The department also adopts the repeal of §31.71, concerning how obligors and clients are notified of the department's licensing and enforcement authority. The amendments and repeal are adopted without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2650).

The amendments and repeal are adopted to update the rules, the need for which was discovered as a result of the recent review of these rules conducted in accordance with Government Code §2001.039.

The adopted amendment to §31.14(b) adds a requirement that all contracts contain a provision informing the client how long the agency will retain child support payments before it sends them to the client. It is important for parents to know when they will receive child support payments. Finance Code §396.203(b) requires that a child support collection contract specify its terms in clear language. The department has long viewed the time a private child support agency takes to forward payments to a client as an essential contract term, but it was not formally required by rule.

The adopted amendment to §31.14(c) updates the rule to reflect that the department currently has a sample contract on its website.

The adopted amendment to §31.14(d)(1) conforms the readability standards for private child support agency contracts to those the department uses for prepaid funeral benefits contracts, located at §25.4 of this title. The department believes that the readability standards it imposes on its regulated entities should be consistent.

The adopted amendment to §31.14(e) removes outdated transition language and improves the notice required in each contract regarding complaints by informing the consumer to first attempt to resolve the complaint with the private child support enforcement agency, before notifying the department. The adopted new language is intended to benefit registered agencies and customers by encouraging direct communication between the two and should also reduce unnecessary calls to the department. This change also conforms the wording of the notice provision to that required of money services businesses, which are also regulated by the department. See §33.51(d)(1) of this title.

Section 31.14(f) is deleted because it is a transitional provision that is no longer needed.

The department adopts the repeal of §31.71 because it is a transitional provision that is no longer necessary.

The Department received no comments regarding the proposed amendments or repeal.

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

7 TAC §31.14

The amendments are adopted under Finance Code, §396.051(b), which provides that the commission shall adopt rules as necessary for the administration of Chapter 396, and under Finance Code §396.203 which requires agencies to execute written contracts for private child support enforcement.

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 June 17, 2011.

TRD-201102227
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: July 7, 2011
Proposal publication date: April 29, 2011
For further information, please call: (512) 475-1300

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

7 TAC §31.71

The repeal is adopted under Finance Code §396.051(b), which provides that the commission shall adopt rules as necessary for the administration of Chapter 396.

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 June 17, 2011.

TRD-201102228
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: July 7, 2011
Proposal publication date: April 29, 2011
For further information, please call: (512) 475-1300

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER E. DIRECTION OF AFFAIRS

7 TAC §91.501

The Credit Union Commission (the Commission) adopts amendments to §91.501, concerning Director Eligibility and Disqualification, without changes to the proposed text as published in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1634).

The amendments set out procedures for recalling directors and filling any resulting board vacancies, clarify when a director is automatically removed from office as a result of absences, and require credit unions to adopt election procedures that are impartial. The amendments also edit the rule for consistency and clarity.

The amendments are adopted as a result of the Credit Union Department's general rule review.

The Commission received no comments on the amendments.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and under Texas Finance Code §§122.053, 122.054, and 122.055, which set out qualifications for directors and procedures for filling vacancies.

The specific sections affected by the amendments are Texas Finance Code, §§122.053, 122.054, and 122.055.

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 June 20, 2011.

TRD-201102270
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 10, 2011
Proposal publication date: March 11, 2011
For further information, please call: (512) 837-9236

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7 TAC §91.502

The Credit Union Commission (the Commission) adopts amendments to §91.502, concerning Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures, without changes to the proposed text as published in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1635).

The amendments provide for enhanced board oversight of travel expense reimbursements, clarify when a credit union cannot pay director fees, provide for additional credit union financial analysis when paying director fees, and require that the board's annual review of fees and expenses be documented in the minutes. The amendments also address conditions under which a credit union can reimburse a director for guest travel expenses.

The amendments are adopted as a result of the Credit Union Department's general rule review.

The Commission received no comments on the amendments.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and under Texas Finance Code §122.062 which sets out conditions for directors' fees and reimbursements.

The specific section affected by the amendments is Texas Finance Code, §122.062.

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 June 20, 2011.

TRD-201102271
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 10, 2011
Proposal publication date: March 11, 2011
For further information, please call: (512) 837-9236

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7 TAC §91.516

The Credit Union Commission (the Commission) adopts amendments to §91.516, concerning Audits and Verifications, without changes to the proposed text as published in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1637).

The amendments update regulatory references and edit the rule for clarity.

The amendments are adopted as a result of the Credit Union Department's general rule review.

The Commission received no comments on the amendments.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and under Texas Finance Code §122.102, which sets out requirements for audits and member account verification.

The specific section affected by the amendments is Texas Finance Code, §122.102.

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 June 20, 2011.

TRD-201102272
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 10, 2011
Proposal publication date: March 11, 2011
For further information, please call: (512) 837-9236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

The Commissioner of Insurance (Commissioner) adopts amendments to §§34.507, 34.510, 34.515, 34.601 - 3.607, 34.610 - 34.616, 34.625, 34.707, 34.711, 34.714, 34.808, 34.810, and 34.817 and new §§34.627, 34.628, and 34.630, concerning fire extinguisher, fire alarm, fire sprinkler, and fireworks regulations. Section 34.607 is adopted with a change to the proposed text published in the December 17, 2010, issue of the *Texas Register* (35 TexReg 11168). Sections 34.507, 34.510, 34.515, 34.601 - 3.606, 34.610 - 34.616, 34.625, 34.627, 34.628, 34.630, 34.707, 34.711, 34.714, 34.808, 34.810, and 34.817 are adopted without changes. Section 34.629 is not adopted.

REASONED JUSTIFICATION. These amendments and new sections are necessary to: (i) implement House Bill (HB) 2118, 80th Legislature, Regular Session, effective September 1, 2007, which established the licensee category of residential fire alarm technician and requires the Commissioner of Insurance to adopt new requirements relating to the license; (ii) make changes necessary to licensing structures and procedures for the State Fire Marshal Office's (SFMO) upcoming implementation of the State Insurance Regulators Connection (SIRCON) licensing computer software program; (iii) adopt fire alarm application and renewal forms by reference; (iv) delete unnecessary requirements; (v) correct substantive and nonsubstantive errors; (vi) update obsolete statutory references; (vii) update fee payment procedures to reflect current practice; (viii) update adopted minimum standards; and (ix) make other changes deemed necessary by the Department to improve and clarify the State Fire Marshal's Office rules and effectively enforce its statutory obligations.

HB 2118

The Insurance Code Chapter 6002 (formerly Article 5.43-2) outlines the Department's duties and authority relating to the regulation of the planning, certifying, leasing, selling, servicing, installing, monitoring, and maintaining of fire detection and fire alarm devices and systems. HB 2118 amended the Insurance Code Article §5.43-2 to add a new licensing category for residential fire alarm technicians. At the time of HB 2118's enactment, the Texas Legislature was in the process of recodifying the Insurance Code Article 5.43-2. Portions of Article 5.43-2 were repealed and recodified as the Insurance Code Chapter 6002 in the nonsubstantive Insurance Code revision contained in HB 2636, 80th Legislature, Regular Session, 2007. The remaining portions of Article 5.43-2, including changes made by HB 2118 relating to the new licensing category of residential fire alarm technicians, were repealed and recodified as the Insurance Code Chapter 6002 in the nonsubstantive Insurance Code revision contained in SB 1969, 81st Legislature, Regular Session, 2009.

Amendments to existing sections of Subchapter F, Fire Alarm Rules, as well as the addition of two new sections, are necessary to implement HB 2118. The affected sections are: §§34.606, 34.611, 34.613, 34.614, 34.627, and 34.628. HB 2118 specified that a residential fire alarm technician must obtain a license issued by the Department; that the amount of the initial fee for the license may not exceed $50, and that the amount of the annual license renewal fee may not exceed $50. The bill specified that an applicant for the residential fire alarm technician license must provide with the required license application evidence of the applicant's successful completion of the required instruction from a training school approved by the State Fire Marshal. The bill specified that the training curriculum for a residential fire alarm technician course shall consist of at least eight hours of instruction on installing, servicing, and maintaining single-family and two-family residential fire alarm systems as defined by the National Fire Protection Association Standard Number 72.

Fire Detection and Alarm Device Advisory Council

Due to legislative developments, proposed §34.629, concerning the Fire Detection and Alarm Devices Advisory Council, is not adopted.

SIRCON Implementation

The SFMO has begun using State Insurance Regulators Connection (SIRCON) licensing computer software program. Because SIRCON program features and capabilities vary from the current SFMO licensing software, procedural changes are necessary for full SIRCON implementation. Current SFMO software allows a registered firm to list numerous employees under its certificate on file with the SFMO. SIRCON offers many technological advantages and will increase uniformity in licensing processes. However, SIRCON does not have the capability to list numerous employees under a single firm certificate. The Insurance Code §6002.154 requires that each firm registered under Chapter 6002 (registered firm) employ at least one employee who is a fire alarm technician, residential fire alarm superintendent, or fire alarm planning superintendent. Therefore, to satisfy and verify compliance with this statutory requirement, firms will submit notice of their *designated employee.* A designated employee is a full-time employee holding a license under Chapter 6002, Subchapter F, specified as such by a registered firm on its Fire Alarm Certificate of Registration Application, Form No. SF031, and on its Renewal Application for Fire Alarm Certificate of Registration, Form No. SF084.

To implement SIRCON and to achieve a more orderly administration of the licensing process, amendments to §§34.606, 34.610, 34.510, 34.515, and 34.614 are necessary. In accordance with the Insurance Code §6002.201(c) for registered extinguisher firms and the Insurance Code §6001.201(b) for registered alarm firms, the rule specifies that fees for renewals of certificates of registration for registered firms will be prorated accordingly. However, the initial fees for the establishment of a branch office are not prorated. As a result of the alignment of the branch offices' certificates of registration expiration dates to the main office's date, it is also necessary to simultaneously make changes to the late fee structure for fire alarm and fire extinguisher firms. Because the certificates of registration for all

of a registered firms' locations will expire on the same day, it is necessary to specify how late fees will be calculated.

Adoption of Fire Alarm Forms by Reference

Adoption of new §34.630 is necessary to put into use the following eight fire alarm application and renewal forms: (i) the License Application for Individuals For All Types of Fire Alarm Licenses, Form Number SF032, which contains instructions for completion of the form and requires information to be provided regarding the applicant and the applicant's employer; (ii) the Renewal Application For Fire Alarm Individual License, Form Number SF094, which contains instructions for completion of the form; information regarding late fees; and requires information to be provided regarding the renewing applicant; (iii) the Instructor Approval Application, Form Number SF247, which contains instructions for completion of the form and requires information to be provided regarding the applicant; (iv) the Renewal Application For Instructor Approval, Form Number SF255, which contains instructions for completion of the form and requires information to be provided regarding the applicant; (v) the Training School Approval Application, Form Number SF246, which contains instructions for completion of the form, provides information regarding necessary filing documents pursuant to business entity type, and requires information to be provided regarding the applicant and course location and schedule; (vi) the Renewal Application for Training School Approval, Form Number SF254, which contains instructions for completion of the form, provides information regarding necessary filing documents pursuant to business entity type, and requires information to be provided regarding the applicant and course location and schedule; (vii) the Fire Alarm Certificate of Registration Application, Form Number SF031, which contains instructions for completion of the form; provides information regarding necessary filing documents pursuant to business entity type, and requires information to be provided regarding the applicant; and (viii) the Renewal Application For Fire Alarm Certificate of Registration, Form Number SF084, which contains instructions for completion of the form and requires information to be provided regarding the applicant.

Deletion of Unnecessary Requirements

Several requirements are deleted because the Department has found that the requirements are not useful or beneficial to the public. Section 34.510(g) requires that a fire extinguisher firm post each certificate conspicuously for public view at the business location. Section 34.610(b) requires that fire alarm companies post their certificate of registration conspicuously for public view at their business location. Section 34.611(b) requires that wall licenses must be posted conspicuously for public view at a fire alarm firm's business location. Section 34.711(b) in Subchapter G, Fire Sprinkler Rules, requires that responsible managing employee wall licenses be posted conspicuously for public view at a fire sprinkler firm's business location. These requirements were adopted so that the public would be able to verify a firm's current licensure. However, it is the Department's position that these license posting requirements do not achieve this effect because customers very infrequently visit a firm location in person. In practice, registered firms conduct their business at the customer's location. Additionally, pursuant to §34.611(c), alarm licensees are required to carry a pocket license for identification while engaged in the business activities regulated under the subchapter. Similarly, §34.711(c) requires sprinkler responsible managing employees to carry a pocket license while engaged in the activities of a responsible managing employee. Therefore, deletion of these license posting requirements is adopted. The requirement for a licensee to carry a pocket license is moved from existing §34.611(c) to amended §34.611(b) and the subsequent subsections are redesignated accordingly. Deletion of the requirement in §34.810 that upon change of certain information requiring a revised fireworks license, the old document be surrendered to the SFMO is also adopted. Similarly, §34.711 requires fire sprinkler licensees to surrender their licenses upon the change of certain information. The Department's position is that the requirement to surrender obsolete documents to the SFMO is unnecessary. The surrender requirement was initially adopted in April 1984 to prevent the unauthorized use of a licensee's license by an unauthorized user. However, since the adoption of the surrender requirement the SFMO has not encountered a single instance of the unauthorized use of another's licensing document by an unauthorized user. Further, the Department's position is that in cases in which a licensee changes their information and is subsequently unable to locate their existing license for surrender, it is an undue and unreasonable hardship to deny a new license. Therefore, the amendments delete the surrender requirement for fire sprinkler responsible managing employees in redesignated §34.711(d) and for fireworks licensees in §34.810(e).

Correction of Substantive and Nonsubstantive Errors

The nonsubstantive amendments to §§34.507, 34.601 - 34.605, 34.607, 34.613, 34.616, and 34.707 are necessary to enhance consistency and to conform to current Department rule style.

The substantive amendments to §34.808 and §34.817 of the Storage and Sale of Fireworks rule change the minimum age of a supervisor at a retail fireworks site from age 16 to 18, thereby making the rule consistent with the Occupations Code §2154.254, which specifies that a person 16 years of age or older but younger than 18 years of age may be employed to sell fireworks at a retail sales location only if the person is accompanied by another person 18 years of age or older.

Updating of Obsolete Statutory References

The rule updates numerous obsolete statutory references. These changes are nonsubstantive and are made to reflect the Texas Legislature's ongoing recodification of the Insurance Code. Portions of Article 5.43-2 were repealed and recodified as the Insurance Code Chapter 6002 in the nonsubstantive Insurance Code revision contained in HB 2636, 80th Legislature, 2007. The remaining portions of Article 5.43-2 were repealed and recodified as the Insurance Code Chapter 6002 in the nonsubstantive Insurance Code revision contained in SB 1969, 81st Legislature, 2009. Article 5.43-1 was repealed and recodified as the Insurance Code Chapter 6001 in the nonsubstantive Insurance Code revision contained in HB 2636, 80th Legislature, 2007. Article 5.43-3 was repealed and recodified as the Insurance Code Chapter 6003 in the nonsubstantive Insurance Code revision contained in HB 2636, 80th Legislature, 2007. The Business and Commerce Code Chapter 36, which codified the Assumed Business or Professional Name Act, was repealed in the nonsubstantive Business and Commerce Code revision, Acts 2007, 80th Legislature, Chapter 885, §2.47, effective April 1, 2009. The Business and Commerce Code Chapter 36 was re-adopted as the Business and Commerce Code Chapter 71 in the same nonsubstantive Business and Commerce Code revision. The affected sections are §§34.601; 34.604; 34.606(14); 34.607; 34.606(9); 34.611(f)(3); 34.612; 34.613(a)(1) and (2); 34.613(d) and (e); 34.615; 34.616(a)(1), (a)(2), (b)(1), (b)(3), (c)(2)(B); 34.625(a) and (c); and redesignated §34.614(e).

Updating of Fee Payment Procedures to Reflect Current Practice

The amendments to the sections specifying fee payment procedures in three subchapters are necessary to reflect current procedure and possible future changes in online payment options. The affected sections are §§34.515, 34.614, and 34.714. The amendment to each of these sections is substantively identical, and specify that except for fees that must be paid to testing authorities, all fees payable shall be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or if a license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority. The Texas OnLine Project is the common electronic infrastructure established by the Government Code §2054.252 for state agencies and local governments, including licensing entities. The new language specifies that should the Department authorize other online or electronic original applications or other transactions, persons shall submit fees with the transaction as directed by the Department or the Texas OnLine Authority. The amendments eliminate cash as an acceptable payment method to reflect current Department policy. Effective August 1, 2009, the Department no longer accepts cash payments for fees, assessments, fines, or debts. A statement of this policy is posted at the Department's cashier's office. The amendment to the fee payment procedure for fire alarm licensees specifies in §34.614 that the renewal fee is subject to the exceptions specified in amended §34.610(i) (relating to Certificate of Registration) for the initial alignment of the expiration and renewal dates of existing branches.

Updating Adopted Minimum Standards

Fire Extinguisher Standards

The amendments to §34.507 update numerous National Fire Protection Association (NFPA) minimum standards relating to fire extinguisher systems. Requiring recent safety standards relating to fire extinguisher devices is necessary to protect the health and safety of the public. The updated fire extinguisher standards make the following changes from the currently adopted standards:

NFPA 10-2010, Standard for Portable Fire Extinguishers, expands the list of obsolete fire extinguishers to be removed from service; and now includes pressurized water fire extinguishers manufactured prior to 1971, any extinguisher that needs to be inverted to operate, any stored pressure extinguisher manufactured prior to 1955, any extinguishers with 4B, 6B, 8B, 12B, and 16B fire ratings, and stored-pressure water extinguishers with fiberglass shells (pre-1976). The updated standard requires that dry chemical stored-pressure extinguishers manufactured prior to October 1984 shall be removed from service at the next six year maintenance interval or the next hydro test, whichever comes first, and establishes new intervals for the internal examination of certain extinguishers.

NFPA 11-2010, Standard for Low-, Medium-, and High-Expansion Foam and Combined Agent Systems incorporates requirements previously found in NFPA 11A, Standard for Medium- and High-Expansion Foam and adds a new chapter to address compressed air foam systems. The updated standard revises some chapters to accommodate the incorporation of medium- and high-expansion foam systems previously regulated by NFPA 11A.

Updated NFPA 12-2008, Standard on Carbon Dioxide Extinguishing Systems is revised to add an emphasis on safety and match current NFPA standard formatting. The updated standard includes requirements relating to updated warning signs, evacuation procedures, and provisions prohibiting the use of total flooding systems in most normally occupied areas.

NFPA 12A-2009, Standard on Halon 1301 Fire Extinguishing Systems, is revised to address testing and recharging of Halon 1301 cylinders and amends portions to conform to current standards of regulatory bodies such as the United States Department of Transportation.

NFPA 15-2007, Standard for Water Spray Fixed Systems for Fire Protection, incorporates welding requirements for pipe and fittings and coordinating requirements for fire department connections with NFPA 13, Standard for the Installation of Sprinkler Systems 2010 Edition.

NFPA 16-2007, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems, is revised to coordinate definitions and requirements for fire department connections and underground pipe with those of other NFPA standards. The updated standard also adds more specific proportioning system testing methods.

NFPA 17-2009, Standard for Dry Chemical Extinguishing Systems, updates requirements for installing and servicing technicians, and requires that technicians have a certification document.

NFPA 17A-2009, Standard for Wet Chemical Extinguishing Systems, provides clarification on inspection, service, and maintenance requirements and updated requirements for servicing personnel; makes changes regarding the necessary replacement and tagging procedure for parts discovered to be defective during system maintenance, and the subsequent notification process upon repair; and requires system flushing after any system actuation.

NFPA 18-2006, Standard on Wetting Agents, clarifies the definition of wetting agents and their use on specific types of fires. The updated standard specifies specific packaging requirements and inspection, testing, and maintenance requirements for systems using wetting agents.

NFPA 25-2008, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, refines testing frequencies for water flow alarm devices; clarifies the requirements regarding the servicing of water mist systems and the test methods for microbiologically influenced corrosion. The updated standard makes additional clarifications regarding the evaluation of annual pump test data.

NFPA 96-2008, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, adds requirements for downdraft appliance ventilation and clarifies requirements for cleaning and maintaining exhaust systems and diagrams detailing new arrangements for hoods with integrated supply air. The updated standard also provides clarification of the requirements for field-applied and factory-built grease duct enclosures and recognizes new technologies for venting, such as ultraviolet hoods and ventilating ceilings.

NFPA 2001-2008, Standard on Clean Agent Fire Extinguishing Systems, has been revised to specify requirements for local application systems and to specify protective standards relating to clean agent systems. The updated standard includes details on pressures and pressure reliefs and discharges.

Fire Alarm Standards

The amendments to §34.607 update numerous NFPA minimum standards relating to fire alarm, fire detection, or supervisory services or systems. Requiring recent safety standards relating to fire alarm and fire detection devices is necessary to protect the health and safety of the public.

The amendments to §34.607(b) delete the following Codes as acceptable alternative model code sets: (i) the Uniform Building Code-1991 and later editions, and the Uniform Fire Code-1991 and later editions; (ii) the SBCCI Building Code-1991 and later editions, and; (iii) the SBCCI Fire Code-1991 and later editions; and the BOCA Building Code-1991 and later editions, and the BOCA Fire Code-1991 and later editions. The deletion of these codes is necessary because they are superseded by the Local Government Code §214.212 and §214.216. The Local Government Code §214.212 specifies that the International Residential Code, as it existed on May 1, 2001, is adopted as the municipal residential building code in Texas. The Local Government Code §214.216 specifies that the International Building Code, as it existed on May 1, 2003, is adopted as the municipal commercial building code in Texas. Due to the deletion of existing paragraphs (1) - (3), paragraphs (4) - (6) are redesignated as paragraphs (1) - (3). The amendments to §34.607(b)(3) also update the NFPA Building Construction and Safety Code 2003 with the NFPA Building Construction and Safety Code 2009 and replaces the NFPA 1 Uniform Fire Code 2003 with the NFPA 1 Uniform Fire Code 2009.

Several of the specific changes are described in detail in the portion of this order specifying the updated fire extinguisher standards. Changes made by updated standards in the fire alarm subchapter that are not updated and described in the fire extinguisher subchapter are as follows:

NFPA 13-2007, Standard for the Installation of Sprinkler Systems, added definitions relating to private water supply terms; clarified the requirements of Ordinary Hazard Group 1 and Group 2 Occupancies where storage is present; revised requirements relating to trapeze hangers and bracing criteria; re-organized the requirements relating to storage according to storage size, type, material, and commodity; specifies new requirements for listed expansion chambers; clarifies ceiling pocket rules; and clarifies the formulas used in calculating large antifreeze systems.

NFPA 13D-2007, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, includes new spacing and obstruction rules addressing sloped ceilings, ceiling pockets, ceiling fans, and kitchen cabinets; specifies installation, design, and acceptance requirements for pumps; clarifies the acceptability of insulation as a method of freeze protection and the acceptability of wells as a water source; specifies new requirements for listed dry pipe or preaction residential sprinkler systems, as well as clarified requirements for multipurpose combined and networked sprinkler systems; and adopts specific obstruction rules for residential sprinklers.

NFPA 13R-2007, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height; includes spacing and obstruction rules addressing sloped ceilings, ceiling pockets, ceiling fans, and kitchen cabinets; clarifies the requirements for utilizing quick-response sprinklers within NFPA 13R regulations; adds new requirements addressing architectural features within dwelling units; and clarifies the requirements covering closets, including obstructions within closets and protection of mechanical closets.

NFPA 70-2008, National Electrical Code, NFPA 70-2008, National Electrical Code, requires that fire alarm system conductors use raceways or cable trays that contain electrical conductors with only electrical services; allows cable ties as a supporting means; adds requirements for certain power sources to be supplied by an individual branch circuit; and specifies requirements for certain conductors and cables.

NFPA 72-2007, National Fire Alarm Code, addresses mass notification systems; revises sections addressing protection of fire alarm control units, personnel qualification, heat detector response time, smoke detector spacing, smoke detection in ducts, detectors that use multiple sensing inputs, video image smoke and flame detection, synchronization of visible notification appliances, exit marking audible notification appliances, tactile notification appliances, different types of protected premises fire alarm system, and in-building enhancement systems for firefighter radio communications. The updated standard also includes changes to the requirements for smoke alarms in residential applications, revisions to require additional smoke alarms for larger dwelling units, and revisions to allow voice messages to be included as a part of the smoke alarm notification signal. The updated standard also revises the Record of Completion Form and provides examples of filled-out forms.

NFPA 90A-2009, Standard for the Installation of Air Conditioning and Ventilating Systems, recognizes new criteria in the types, quantities, and permitted use of various materials in plenum spaces. The updated standard specifies required material such as plenum cable, the type of cable, and the test protocols to determine the fire and smoke characteristics of the cable and wiring components.

NFPA 101-2009, the Life Safety Code, makes the following changes: (i) new provisions relating to air traffic control towers, electrically controlled egress doors, certain horizontal sliding doors, elevator lobby access door locking, door inspection and maintenance, emergency evacuations and escape devices and systems, the placement and usage of alcohol-based hand sanitizer in educational and day care settings, and door locking in settings where occupants need specialized protection; (ii) standardizes the usage of certain technical terms, including *stories in height, finished ground level, grade plane, basement, and level of exit discharge;* (iii) revises the situations in which public address systems are acceptable for occupant alarm notification; and (iv) amends provisions relating to fire curtains, patient sleeping room windows in health care settings, and sprinkler requirements in high-rise health care settings.

Obsolete building codes are also deleted to conform with the Local Government Code §214.212 and §214.216. The Local Government Code §214.212(a) specifies that to protect the public health, safety, and welfare, the International Residential Code, as it existed on May 1, 2001, is adopted as a municipal residential building code in this state. The Local Government Code §214.212(b) specifies that the International Residential Code applies to all construction, alteration, remodeling, enlargement, and repair of residential structures in a municipality. The Local Government Code §214.216 specifies that to protect the public health, safety, and welfare, the International Building Code, as it existed on May 1, 2003, is adopted as a municipal commercial building code in this state. The updated standards remove as acceptable building codes (1) the Uniform Building Code-1991 and later editions, and the Uniform Fire Code-1991 and later editions; (2) the Southern Building Code Congress International (SBCCI) Building Code-1991 and later editions;

and (3) the Building Officials Code Administrators Building Code-1991 and later editions, and the BOCA Fire Code-1991 and later editions.

Fire Sprinkler Standards

Amended §34.707 updates numerous NFPA minimum standards relating to fire sprinklers and related fire safety issues. Requiring updated safety standards relating to fire sprinklers and related fire safety issues is necessary to protect the health and safety of the public.

Several of the specific changes made are described in the portion of this order specifying the updated fire extinguisher standards. The changes made by the standards updated in the fire sprinkler subchapter not updated and described in either the fire extinguisher subchapter are as follows:

NFPA 14-2010, Standard for the Installation of Standpipe, Private Hydrant and Hose Systems, includes guidance on the use of pressure-regulating devices and roof outlets for standpipe systems; permits express mains supplying higher zone standpipes to be designed with pressures in excess of 350 psi; revises the requirements for standpipe system zones; deletes the requirements for pipe schedule design requires all standpipe systems to be hydraulically calculated; deletes the requirement to balance hydraulic junction points; and adds new requirements to address standpipe systems risers that terminate at different floor levels.

NFPA 20-2008, Standard for the Installation of Stationary Pumps for Fire Protection, updates the standard to conform with the latest edition of the *Manual of Style for NFPA Technical Committee Documents;* adds provisions addressing the use of fire pump drivers using variable speed pressure limiting control; adds acceptance test criteria for replacement of critical path components of a fire pump installation; refines requirements for variable speed drives were refined; adds requirements for break tanks and component replacement testing tables; and adds requirements on fire pumps for high-rise buildings and for pumps arranged in series.

NFPA 22-2008, Standard for Water Tanks for Private Fire Protection; addresses the use of fiberglass-reinforced plastic tanks and consolidates the requirements relating to acceptance test requirements into a single new chapter.

NFPA 24-2010, Standard for the Installation of Private Fire Service Mains and Their Appurtenances, establishes leakage test criteria; updates requirements for thrust blocks and restrained joints; and adds additional specifications for recommended practice for fire flow testing and for hydrant marking; revises provisions for location and identification of fire department connections, valves controlling water supply, and protection of fire.

NFPA 30-2008, Flammable and Combustible Liquids Code makes changes in separation distance requirements for protected aboveground tanks and tanks in vaults; adds requirements for shop-fabricated aboveground tanks with abnormally long vertical piping for fill or vent lines; adds maximum allowable storage container sizes; adds fire protection design criteria for unsaturated polyester resins; adds fire protection design criteria using high-expansion foam systems for protection of liquids in 1-gallon plastic containers; revises spacing requirements and construction requirements for process buildings; adds requirements for insulated piping for recirculating heat transfer systems; prohibits permanent interconnections between fire water systems and process water systems; adds new corrosion protection requirements for nonmetallic tanks; clarifies the requirements for construction of vaults; adds requirements for fire-resistant tanks; revises the maximum capacity for secondary containment-type tanks storing certain liquids; adds requirements for periodic testing, maintenance, inspection, and repair of aboveground storage tanks have been added; revises overfill prevention requirements so that they apply to all tanks larger than 1320 gallons of capacity; adds requirements for marine piping systems; and expands the fire protection design criteria for inside storage areas to include additional varieties of containers and cartons.

NFPA 30B-2011, Code for the Manufacture and Storage of Aerosol Products, clarifies the requirements for aisle widths in storage facilities and revises the definition of aerosol container to allow the use of certain plastic aerosol containers.

NFPA 307-2011, Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves, has been revised in accordance with the *Manual of Style for NFPA Technical Committee Documents;* amends fire protection requirements for certain marine terminal buildings; revises the definition for hazardous materials; adds requirements for wood and unprotected substructures, and piles and stiffening members of piers and wharves; and permits the use of corrosion-resistant types of pipes, fitting, hangers, or listed protective corrosion-resistant coatings on fixed extinguishing system components that are subject to corrosion in a marine environment.

NFPA 214-2005, Standard on Water-Cooling Towers, adds requirements for pilot line detectors.

NFPA 409-2004, adds requirements for paint hangars.

Other Necessary Changes

This order makes other necessary changes to improve the clarity and consistency of the sections. Nonsubstantive changes are made to the following sections: §§34.601, 34.602, 34.603, 34.604, 34.605, 34.606, 34.607, 34.611, 34.612, 34.613, 34.616, 34.625, and 34.810.

Amendments to §34.507 update minimum safety standards adopted pursuant to the Texas Insurance Code §6001.052. New language added to §34.510(g) specifies the initial fees and expiration date for an extinguisher branch office certificate of registration, and that branch office certificates of registration expire and renew on the same date as the certificate of registration for the registered firm's main office. The amendment also deletes the requirement that each certificate be posted conspicuously for public view at the business location. New §34.510(m) specifies the procedure for the initial alignment of the expiration and renewal dates of existing extinguisher branch offices. The subsection specifies that for branch offices in existence as of the effective date of this rule, branch office certificates of registration shall expire and renew on the same date as the certificate of registration issued to the main office for that firm. The subsection specifies that all fees associated with the initial alignment of expiration and renewal dates for branch office certificates of registration shall be prorated accordingly.

An amendment to §34.515(a) sets out the fee payment procedure for fire extinguisher licensees and specifies that except for fees that must be paid to testing authorities, all fees payable shall be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by

the Texas OnLine Authority. The new language in the subsection specifies that should the Department authorize other online or electronic original applications or other transactions, persons shall submit fees with the transaction as directed by the Department or the Texas OnLine Authority. Another amendment to §34.515(a) eliminates cash as an acceptable payment method. An amendment deletes the language in §34.515(b) relating to fee payment procedure and redesignates the remaining subsections. Amendments to redesignated §34.515(b)(1)(C) and (D) specify the new late fee structure for branch offices and provides that the renewal late fee for certificates of registration expired 1 day to 90 days is $225 plus $50 for each branch office operated by the registered firm and that the renewal late fee for certificates of registration expired from 91 days to two years is $450 plus $100 for each branch officer operated by the registered firm. Existing subparagraphs (G) and (H) are deleted because these provisions are incorporated in amendments to subparagraphs (C) and (D).

New §34.606(1) adds a definition for *approval,* which is defined as the document issued by the State Fire Marshal's Office to an individual or entity acknowledging that the individual or entity meets the requirements to perform the functions of an approved instructor or approved training school under the Insurance Code Chapter 6002 and Subchapter F. The remaining paragraphs in the section are redesignated. New §34.606(7) defines *designated employee* as an individual specified by a registered firm as a full-time employee and a licensee under Subchapter F. Amendments to §34.606(9) replace the phrase "a person" with the phrase "an individual" and replace a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code §6002.002. New §34.606(12) defines *instructor* as an individual approved under the Insurance Code Chapter 6002 and Subchapter F to provide training in installing, servicing, inspecting, and certifying fire alarm or detection systems in single-family or two-family residences. An amendment to §34.606(13) amends the definition of *local authority having jurisdiction* to delete the phrase "As used in the Texas Insurance Code, Article 5.43-2, §9(c), means a." An amendment to §34.606(14) replaces a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002. New §34.606(22) defines *training school* as an entity that is approved under the Insurance Code Chapter 6002 and Subchapter F to provide approved training in installing, certifying, inspecting, and servicing fire alarm or detection systems in single-family or two-family residences by approved instructors for the purpose of meeting the training requirements of an applicant for a residential fire alarm technician license issued under the applicable statutes and the subchapter.

The adopted standards specified in §34.607(a)(1) - (17) are updated to reflect current standards.

An amendment to §34.610(b) deletes the requirement that each certificate of registration must be posted conspicuously for public view at a registered firm's business location and adds new language specifying that in an application or renewal for a certificate of registration, each registered firm must specify one full-time employee holding a license under the subchapter as the firm's designated employee. The new subsection also specifies that any change in the designated employee under this section must be submitted in writing to the State Fire Marshal's Office within 14 days of its occurrence, and that an individual may not serve as a designated employee for more than one registered firm.

New §34.610(f) specifies that the initial fee for a branch office certificate of registration is $150 and is not prorated. The subsection also specifies that branch office certificates of registration expire and renew on the same date as the certificate of registration for the registered firm's main office. Subsections (f) and (g) are redesignated as (g) and (h). New §34.610(i) specifies that for branch offices in existence as of the effective date of the rule, branch officer certificates of registration shall expire and renew on the same date as the certificate of registration issued to the main office for that firm. The new subsection also specifies that all fees associated with the initial alignment of expiration and renewal dates for the branch office certificate of registration shall be prorated accordingly.

An amendment to §34.611(a) adds new language which states that the licenses specified in §34.611(a)(1) - (8) are issued by the State Fire Marshal's Office in accordance with the Insurance Code Chapter 6002 and Subchapter F, and specifies that, as required by the Insurance Code Chapter 6002, only licensed or approved entities may engage in specific functions. New §34.611(a)(3) adds an approval category for instructors, and specifies that the approval is for providing training at an approved training school in installing, certifying, inspecting, and servicing fire alarm or detection systems in single-family or two-family residences. Paragraphs (3) - (5) are redesignated as paragraphs (4) - (6).

New §34.611(a)(7) adds a license for residential fire alarm technicians and specifies that the license is for installing, certifying, inspecting, and servicing, but not planning, fire alarm or fire detection devices and systems in single-family or two-family residences.

New §34.611(a)(8) adds an approval for training schools, and specifies that the approval is for conducting required training necessary for obtaining a residential fire alarm technician license.

An amendment to §34.611(b) deletes the requirement that wall licenses must be posted conspicuously for public view at a registered firm's business location. The remaining subsections are redesignated.

New §34.611(b)(2) specifies that an instructor must carry a copy of the approval while providing training in an approved training school on the installing, certifying, inspecting and servicing of fire alarm or detection systems in single-family or two-family residences.

Amendments to redesignated §34.611(d) set out licensee responsibilities relating to revised licenses, specifying that a change in the licensee's name, licensee's mailing address, or a new or additional registered firm employee the licensee requires a revised license.

New §34.611(e) specifies registered firms' responsibilities relating to licensees and specifies that a registered firm must submit notification of any licensee employment, termination, or resignation within 14 days of its occurrence.

An amendment to §34.611(f) changes the name of the subsection from "Restrictions" to "Restrictions on Licensees and Registered Firms." New §34.611(g) specifies that approvals are not transferable. New §34.611(h) requires that a change in the instructor's name or mailing address requires a revised approval.

An amendment to §34.612 specifies that the alteration of an approval renders it invalid and may be the basis for disciplinary action. Another amendment replaces a reference to the Insurance Code Article 5.43-2, §10(b) with a reference to the Insurance Code §6002.302.

Section 34.613(a)(1) is amended to add *approvals* to the list that must be submitted on the forms adopted by reference in §34.630 of the subchapter and be accompanied by all necessary fees, documents, and information. Other amendments replace obsolete references and terms for clarity and consistency.

New §34.613(b)(7) specifies that an applicant for a residential fire alarm technician license must provide evidence of the applicant's successful completion of the required residential fire alarm technician training course from a training school approved by the State Fire Marshal's Office.

New §34.613(c) specifies the requirements for instructor and training school approvals.

New §34.613(c)(1) specifies that an applicant for approval as an instructor must hold a current fire alarm planning superintendent's license issued by the State Fire Marshal's Office; submit a completed Instructor Approval Application, Form No. SF247, signed by the applicant, that is accompanied by all fees; and furnish written documentation of a minimum of three years of experience in fire alarm installation, service, or monitoring of fire alarm systems, unless the applicant has held a fire alarm planning superintendent's license for three or more years.

New §34.613(c)(2) specifies the requirements for training school approvals. New §34.613(c)(2) specifies that an applicant for approval of a training school must submit a completed Training School Approval Application, Form No. SF 246, signed by the applicant, the sole proprietor, each partner of a partnership, or by an officer of a corporation or organization as applicable; accompanied by a detailed outline of the subjects to be taught at the training school and the number and location of all training courses to be held within one year following approval of the application; and accompanied by all required fees. New §34.613(c)(2) also specifies that after review of the application for approval for a training school, the State Fire Marshal shall approve or deny the application within 60 days following receipt of the materials, and requires that a letter of denial shall state the specific reasons for the denial and that an applicant that is denied approval may reapply at any time within 180 days, in accordance with §34.613(e), by submitting a completed application that includes the changes necessary to address the specific reason for denial. Existing subsections (c) and (d) are redesignated as subsections (d) and (e).

Redesignated §34.613(d) is amended to specify that in order to be complete, renewal applications for instructor approvals and training school approvals must be submitted on forms adopted by reference in §34.630 of the subchapter and be accompanied by all necessary fees. The amendment replaces a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002.

An amendment to redesignated §34.613(e) specifies that the application form for an instructor approval and training school approval must be accompanied by the required fee and must, within 180 days of receipt by the State Fire Marshal's Office of the initial application, be complete and accompanied by all other required information, or a new application must be submitted including all applicable fees. Other amendments to §34.613(e) replace a reference to "the department" with a reference to "the State Fire Marshal's Office" and replace a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002.

The amendments to §34.614 outline the fee payment procedure. Section 34.614(a) specifies that except for fees that must be paid to testing authorities, all fees payable shall be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority. The new language in the section specifies that should the Department authorize other online or electronic original applications or other transactions, persons shall submit fees with the transaction as directed by the Department or the Texas OnLine Authority.

Another amendment to §34.614(a) eliminates cash as an acceptable payment method. Existing text in §34.614(b) is deleted, and the text of existing subsection (c) is moved to (b). The remaining subsections are redesignated.

Redesignated §34.614(c) specifies that the renewal fee for a certificate of registration remains valid for two years and is subject to the exceptions specified in §34.610(i) (relating to Certificate of Registration) for the initial alignment of the expiration and renewal dates of existing branches. Redesignated §34.614(c) also amends the late fee structure to reflect the alignment of main office and branch certificate of registration expirations.

Section 34.614(c)(1)(C) specifies that the renewal late fee for expirations of one to 90 days is $125 plus $37.50 for each branch office operated by the registered firm and §34.614(c)(1)(D) that the renewal late fee for expirations of 91 days to two years is $500 plus $150 for each branch office operated by the registered firm. Existing subparagraphs (G) and (H) are deleted because these provisions are incorporated in amendments to subparagraphs (C) and (D).

New §34.614(c)(4) specifies the fee structure for the new residential fire alarm technician license. The new fees are as follows: initial fee (for one year)--$50; renewal fee (for two years)--$100; renewal late fee (expired one day to 90 days)--$12.50; and renewal late fee (expired 91 days to two years)--$50.

New §34.614(c)(5) specifies the fee structure for the new training school approval. The new fees are: initial fee (for one year)--$500; and renewal fee (for one year)--$500.

New §34.614(c)(6) specifies the fee structure for the new instructor approval. The new fees are: initial fee (for one year)--$50; and renewal fee (for one year)--$50. Redesignated §34.614(e) replaces a reference to the Insurance Code Article 5.43-2 §5C(c) with a reference to the Insurance Code §6002.203(g).

An amendment to §34.615 replaces a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002.

Amendments to §34.616(a)(1) and (2) replace references to the Insurance Code Article 5.43-2, §3(b)(10) with references to the Insurance Code §6002.155(10). Amendments to §34.616(a)(2) replace a reference to Article 5.43-2 with a reference to the Insurance Code Chapter 6002 and replace the word "chapter" with the word "subchapter." Amendments to §34.616(b)(1) replace a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002, and add the phrase "on-site" to the requirement that certain work be performed under the direct supervision of a licensee. Amendments to §34.616(b)(1) and (2) add residential fire alarm technicians among the listed licensees and specify that the licensee supervising the work must oversee work permitted by the licensee. An amendment to §34.616(b)(2) also specifies that the licensee

attaching a label must be licensed under the ACR number of the primary registered firm. An amendment to §34.616(b)(3) replaces the phrase "the licensing requirements of the appropriate Insurance Code, Article 5.43-1 or 5.43-3, must be satisfied" with the phrase "the licensing requirements of Insurance Code Chapters 6001 and 6003 must be satisfied, as appropriate." An amendment to §34.616(b)(4) specifies that the planning and installation of fire detection or fire alarm devices or systems, including monitoring equipment, must be in accordance with standards adopted in §34.607 (relating to Adopted Standards) except when the planning and installation complies with a more recent edition of an adopted standard or a Tentative Interim Amendment published as effective by the NFPA. Amendments to amended §34.616(c) add a reference to the Insurance Code Chapter 6002 and replace the phrase "licensing requirements of Insurance Code Article 5.43-2, so long as" with the phrase "licensing requirements of that chapter; and" and also replace a reference to the Insurance Code Article 5.43-2 §9 with a reference to the Insurance Code §6002.251.

Amendments to §34.625(a) and (c) replace references to the Insurance Code Article 5.43-2 with references to the Insurance Code Chapter 6002.

New §34.627 specifies the requirements for instructors and training schools. New §34.627(a) specifies that all training provided by an instructor must be conducted through an approved training school and that the instructor must teach the subjects in the outline of the training course submitted by the training school and approved by the State Fire Marshal's Office. New §34.627(b) specifies training schools must only use instructors who hold an approval issued by the State Fire Marshal's Office to provide training in installing, certifying, inspecting, and servicing fire alarm or detection systems in single-family or two-family residences. The subsection also specifies that the entity responsible for the training school must obtain approval of the outline of each residential fire alarm technician training course from the State Fire Marshal's Office before conducting a class. New §34.627(b) specifies that the entity responsible for the training school may not be a firm registered through the State Fire Marshal's Office or an affiliate of a registered firm. The subsection specifies that a training school may not provide training for a residential fire alarm technician license without being approved by the State Fire Marshal, and that training school approvals are not transferable and apply only to the entity specified as the responsible entity on the application for approval. The subsection specifies that the training school may not change the entity responsible for the training school without first applying for and receiving a new approval. Section 34.627(b) further specifies that the training school must conduct two or more classes, open to the public, within 125 miles of each county in the state that has a population in excess of 500,000 people according to the last decennial census, within each calendar year from the date the approval is issued. New §34.627(c) specifies that any individual or entity that provides general training or instruction relating to fire alarm or detection systems, but whose training is not specific to fulfill a requirement to obtain a license, is not required to have an approval.

New §34.628 specifies the requirements for the residential fire alarm technician training course. The section specifies that the training curriculum for a residential fire alarm technician training course shall consist of at least eight hours of instruction on installing, servicing, and maintaining single-family and two-family residential fire alarm systems as defined by National Fire Protection Association Standard No. 72. The section specifies that the training curriculum for a residential fire alarm technician training course must include the following minimum instruction time for the following subjects: (i) one hour of instruction on the Insurance Code Chapter 6002 and the Fire Alarm Rules; (ii) one hour of instruction pertaining to the equipment, system, and other hardware relating to household fire alarms; (iii) one hour of instruction on the National Electric Code, NFPA 70; (iv) four and one-half hours of total combined instruction on NFPA 72; NFPA 101, the Life Safety Code; and the International Residential Code for One- and Two-Family Dwellings; and (v) one-half hour of instruction on the monitoring of household fire alarm systems.

New §34.630 adopts by reference application and renewal forms necessary under the subchapter. New §34.630(a) adopts by reference the License Application for Individuals For All Types of Fire Alarm Licenses, Form Number SF032, which contains instructions for completion of the form and requires information to be provided regarding the applicant and the applicant's employer. New §34.630(b) adopts by reference the Renewal Application For Fire Alarm Individual License, Form Number SF094, which contains instructions for completion of the form; information regarding late fees; and requires information to be provided regarding the renewing applicant. New §34.630(c) adopts by reference the Instructor Approval Application, Form Number SF247, which contains instructions for completion of the form and requires information to be provided regarding the applicant. New §34.630(d) adopts by reference the Renewal Application For Instructor Approval, Form Number SF255, which contains instructions for completion of the form and requires information to be provided regarding the applicant. New §34.630(e) adopts by reference the Training School Approval Application, Form Number SF246, which contains instructions for completion of the form, provides information regarding necessary filing documents pursuant to business entity type, and requires information to be provided regarding the applicant and course location and schedule. New §34.630(f) adopts by reference the Renewal Application for Training School Approval, Form Number SF254, which contains instructions for completion of the form, provides information regarding necessary filing documents pursuant to business entity type, and requires information to be provided regarding the applicant and course location and schedule. New §34.630(g) adopts by reference the Fire Alarm Certificate of Registration Application, Form Number SF031, which contains instructions for completion of the form; provides information regarding necessary filing documents pursuant to business entity type, and requires information to be provided regarding the applicant. New §34.630(h) adopts by reference the Renewal Application For Fire Alarm Certificate of Registration, Form Number SF084, which contains instructions for completion of the form and requires information to be provided regarding the applicant. New §34.630(i) specifies that the forms adopted by reference in the new section are available at the Department's website.

Subchapter G, Fire Sprinkler Rules

The amendments to §34.707 are necessary to update minimum safety standards adopted pursuant to the Texas Insurance Code §6003.052. The amendments update numerous National Fire Protection Association (NFPA) minimum standards relating to fire sprinklers and related fire safety issues.

The amendment to redesignated §34.711(d) deletes the requirement that licenses requiring changes must be surrendered to the State Fire Marshal within 14 days of the change requiring the revision. The amendment specifies that the licensee must submit

written notification of the necessary change within 14 days of the change accompanied by the required fee.

An amendment to §34.714(a) specifies the fee payment procedure for fire sprinkler licensees. Section 34.714(a) specifies that except for fees that must be paid to testing authorities, all fees payable shall be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority. The new language in the subsection specifies that should the Department authorize other online or electronic original applications or other transactions, persons shall submit fees with the transaction as directed by the Department or the Texas OnLine Authority. Another amendment to §34.714(a) eliminates cash as an acceptable payment method. The amendment to §34.714(b) deletes language relating to fee payment procedure. The remaining subsections in the section are redesignated.

Subchapter H, Storage and Sale of Fireworks

An amendment to §34.808(41) changes the definition of *supervisor* to mean a person 18 years or older who is responsible for the retail fireworks site during operating hours.

An amendment to §34.810(e) deletes the requirement that documents requiring changes must be surrendered to the State Fire Marshal within 30 days of the change, with written notification of the necessary change and adds language specifying that licensees must submit written notification within 14 days of a change of a licensee's name, business location, residence, or mailing address.

An amendment to §34.817(a) changes the age of the supervisor that must be on duty during all phases of retail operation from 16 years of age or older to 18 years of age or older.

In response to comments, the Department has deleted the reference to NFPA 5000 in proposed §34.607(b)(3).

HOW THE SECTIONS WILL FUNCTION.

HB 2118

The amendments to §34.606 add definitions for the terms *approval, instructor,* and *training school.* The amendments to §34.611 add licensing categories for: (i) instructor approvals to provide training at residential fire alarm technician training schools; (ii) residential fire alarm technicians; and (iii) training school approvals for course training necessary to obtain a residential fire alarm technician license. New §34.611(b)(2) also requires that an instructor carry the instructor's approval while providing training in an approved training school on the installing, certifying, inspecting, and servicing of fire alarm or detection systems in single-family or two-family residences. The amendment to redesignated §34.611(d) requires that a change in the licensee's name, mailing address, or a new or additional registered firm employing the licensee requires a revised license. The amendment deletes existing language specifying licensee notification requirements. New §34.611(e) specifies that a registered firm must submit notification of any licensee employment, termination, or resignation within 14 days of its occurrence. The title to §34.611(f) is changed from "Restrictions" to "Restrictions on Licensees and Registered Firms." New §34.611(g) specifies that approvals are not transferable. New §34.611(h) requires that a change in the instructor's name or mailing address requires a revised approval. The amendments to §34.613 specify requirements for the residential fire alarm technician licenses, instructor and training school approvals. New §34.613(c)(2)(B) specifies that the State Fire Marshal shall approve or deny the application for approval for a training school within 60 days following receipt of the necessary application materials and outlines the procedure for resubmitting a denied application. Amendments to §34.614 specify fees relating to the residential fire alarm technician license and training school and instructor approvals. New §34.627 specifies the requirements for residential fire alarm technician course instructors and training schools. New §34.628 specifies the requirements relating to the residential fire alarm technician course.

SIRCON Implementation

New §34.606(7) defines *designated employee.* The amendment to §34.610(b) adds new language which requires that a registered firm must specify its designated employee in its initial or renewal application for a certificate of registration. The amendment also requires that any change in the designated employee must be submitted in writing to the SFMO within 14 days of its occurrence and that an individual may not serve as a designated employee for more than one registered firm. To implement SIRCON and to achieve a more orderly administration of the licensing process, it is also necessary to align the certificate of registration expiration dates of registered firms' branch offices with its main office as required in new §34.610(i). This requires two steps: (i) an initial alignment of expiration dates for branch offices in existence as of the effective date of the rule; and (ii) a prospective requirement that the certificate of registration for branch offices opened after the effective date of the rule will expire on the same date as the main office. Changes implementing the initial alignment of expiration dates for branch offices in existence as of the effective date of the rule are made in new §34.510(m) for fire extinguisher firms and in new §34.610(i) for alarm firms. Changes implementing the prospective requirement that a certificate of registration for a branch office expires on the same date as the main office are made in §34.510(g) for fire extinguisher firms and in new §34.610(f) for fire alarm firms. The amendments to §34.515(b)(1)(C) and (D) specify that for extinguisher firms, renewal late fees (expired 1 day to 90 days) are $225 plus $50 for each branch office held by the firm, and that the renewal late fee (expired 91 days to two years) is $450 plus $100 for each branch office operated by the firm. Existing subparagraphs (G) and (H) are deleted because these provisions are incorporated into amendments to subparagraphs (C) and (D). Amended §34.614 specifies that for fire alarm firms, late fees for renewals between one and 90 days late are $125 plus $37.50 for each branch office held by the firm. In addition, amended §34.614 specifies that late fees for renewals between 91 days and two years late are $500 plus $150 for each branch office held by the firm.

Adoption of Fire Alarm Forms by Reference

New §34.630 adopts by reference the following eight fire alarm application and renewal forms: (i) the License Application for Individuals For All Types of Fire Alarm Licenses, Form Number SF032; (ii) the Renewal Application For Fire Alarm Individual License, Form Number SF094; (iii) the Instructor Approval Application, Form Number SF247; (iv) the Renewal Application For Instructor Approval, Form Number SF255; (v) the Training School Approval Application, Form Number SF246; (vi) the Renewal Application for Training School Approval, Form Number SF254; (vii) the Fire Alarm Certificate of Registration Application, Form Number SF031; and (viii) the Renewal Application

For Fire Alarm Certificate of Registration, Form Number SF084. The adopted forms are available at the Department's website at www.tdi.state.tx.us.

Deletion of Unnecessary Requirements

The requirements in the following sections are no longer useful, and, as such, are deleted: §34.510(g) (requiring that a fire extinguisher firm post each certificate conspicuously for public view at the business location); §34.610(b) (requiring that fire alarm companies post certificates of registration conspicuously for public view at each business location); §34.611(b) (requiring that wall licenses be posted conspicuously for public view at a fire alarm firm's business location); §34.711(b) (requiring that responsible managing employee wall licenses be posted conspicuously for public view at a fire sprinkler firm's business location); redesignated §34.711(d) (requiring fire sprinkler licensees to surrender their licenses upon the change of certain information for responsible managing employees); and §34.810(e) (requiring that upon change of certain information requiring a revised fireworks license, the old document be surrendered to the SFMO).

The requirement for a licensee to carry a pocket license is moved from existing §34.611(c) to amended §34.611(b) and the subsequent subsections are redesignated accordingly.

Correction of Substantive and Nonsubstantive Errors

The amendments replace use of the word "chapter" with "subchapter" for consistency and to conform to current Department rule style. Replacements of the word "chapter" with "subchapter" have been made in §§34.601 - 34.605, 34.607, 34.613, and 34.616. The amendment to §34.601 adds the word "the" before the phrase "Insurance Code" for consistency and to conform to current Department style. The amendments change the phrase "Office of the State Fire Marshal" to "State Fire Marshal's Office" for consistency and to conform to current Department style in §34.605 and §34.707. The phrase "state fire marshal's office" is changed to "State Fire Marshal's Office" for consistency and to conform to current Department style in §34.507 and §34.607(a). The amendment to §34.613 replaces the phrase "State Fire Marshal's office" with "State Fire Marshal's Office" for consistency and to conform to current Department style. Sections 34.808 and 34.817 of the Storage and Sale of Fireworks rule incorrectly require that a supervisor responsible for a retail fireworks site be 16 years or older. These requirements are inconsistent with the Occupations Code §2154.254, which specifies that a person 16 years of age or older but younger than 18 years of age may be employed to sell fireworks at a retail sales location only if the person is accompanied by another person 18 years of age or older. The amendments to §34.808 and §34.817 change the minimum age of a supervisor at a retail fireworks site from age 16 to 18, in accordance with the Occupations Code §2154.254.

Updating of Obsolete Statutory References

References to the Insurance Code Article 5.43-2 are replaced with references to the Insurance Code Chapter 6002 in the following sections: §§34.601, 34.606(14), 34.607, 34.613(a)(1) and (2), 34.613(d) and (e), 34.615, 34.616(b)(1), and 34.625(a) and (c). A reference in §34.604 to the Insurance Code Article 5.43-2 §3 is replaced with a reference to the Insurance Code §6002.155. A reference in §34.606(9) to the Insurance Code Article 5.43-2 is replaced with a reference to the Insurance Code §6002.002. A reference in §34.611(f)(3) to the Insurance Code Article 5.43-2 §3b is replaced with a reference to the Insurance Code §6002.155. A reference in §34.612 to the Insurance Code Article 5.43-2 §10b is replaced with a reference to the Insurance Code 6002.302. A reference in redesignated §34.614(e) to the Insurance Code Article 5.43-2 §5C(c) is replaced with a reference to the Insurance Code §6002.203(g). References in §34.616(a)(1) and (2) to the Insurance Code Article 5.43-2, §3(b)(10) are replaced with references to the Insurance Code §6002.155(10). A reference in §34.616(b)(3) to the Insurance Code Article 5.43-1 is replaced with a reference to the Insurance Code Chapter 6001. A reference in §34.616(b)(3) to the Insurance Code Article 5.43-3 is replaced with a reference to the Insurance Code Chapter 6003. A reference in §34.616(c)(2)(B) to the Insurance Code Article 5.43-2 §9 is replaced with a reference to the Insurance Code §6002.251, and the phrase "Insurance Code Article 5.43-2, so long as" is deleted. The amendment to §34.613(a)(2) updates an obsolete statutory citation to the Assumed Business or Professional Name Act, formerly codified in the Business and Commerce Code Chapter 36, by changing the citation to the Business and Commerce Code Chapter 71.

Updating of Fee Payment Procedures to Reflect Current Practice

The rule amends the section specifying fee payment procedures in three subchapters to reflect current procedure and possible future changes in online payment options: Subchapter E, Fire Extinguisher and Installation (§34.515); Subchapter F, Fire Alarm Rules (§34.614), and; Subchapter G, Fire Sprinkler Rules (§34.714). The amendment to each of these sections is substantively identical. The amendments to fee payment procedure sections specify that except for fees that must be paid to testing authorities, all fees payable shall be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or if a license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority. The Texas OnLine Project is the common electronic infrastructure established by the Government Code §2054.252 for state agencies and local governments, including licensing entities. The new language specifies that should the Department authorize other online or electronic original applications or other transactions, persons shall submit fees with the transaction as directed by the Department or the Texas OnLine Authority. The amendments eliminate cash as an acceptable payment method to reflect current Department policy. Effective August 1, 2009, the Department no longer accepts cash payments for fees, assessments, fines, or debts. A statement of this policy is posted at the Department's cashier's office. The amendment to the fee payment procedure for fire alarm licensees specifies in §34.614 that the renewal fee is subject to the exceptions specified in amended §34.610(i) (relating to Certificate of Registration) for the initial alignment of the expiration and renewal dates of existing branches.

Updating Adopted Minimum Standards

Fire Extinguisher Standards

The amendments to §34.507 update numerous National Fire Protection Association (NFPA) minimum standards relating to fire extinguisher systems. Requiring recent safety standards relating to fire extinguisher devices is necessary to protect the health and safety of the public. The amendments to §34.507 make the following replacements: (i) NFPA 10-2002, Standard for Portable Fire Extinguishers, with NFPA 10-2010, Standard for Portable Fire Extinguishers; (ii) NFPA 11-2002, Standard for Low-Expansion Foam and Combined Agent Systems, and NFPA 11A-1999, Standard for Medium- and High-Expansion Foam

Systems, with NFPA 11-2010, Standard for Low-, Medium-, and High-Expansion Foam and Combined Agent Systems; (iii) NFPA 12-2000, Standard on Carbon Dioxide Extinguishing Systems with NFPA 12-2008, Standard on Carbon Dioxide Extinguishing Systems; (iv) NFPA 12A-2004, Standard on Halon 1301 Fire Extinguishing Systems with NFPA 12A-2009, Standard on Halon 1301 Fire Extinguishing Systems; (v) NFPA 15-2001, Standard for Water Spray Fixed Systems for Fire Protection with NFPA 15-2007, Standard for Water Spray Fixed Systems for Fire Protection; (vi) NFPA 16-2003, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems with NFPA 16-2007, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; (vii) NFPA 17-2002, Standard for Dry Chemical Extinguishing Systems with NFPA 17-2009, Standard for Dry Chemical Extinguishing Systems; (viii) NFPA 17A-2002, Standard for Wet Chemical Extinguishing Systems with NFPA 17A-2009, Standard for Wet Chemical Extinguishing Systems; (ix) NFPA 18-1995, Standard on Wetting Agents with NFPA 18-2006, Standard on Wetting Agents; (x) NFPA 25-2002, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems with NFPA 25-2008, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems; (xi) NFPA 96-2001, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations with NFPA 96-2008, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations; and (xii) NFPA 2001-2004, Standard on Clean Agent Fire Extinguishing Systems with NFPA 2001-2008, Standard on Clean Agent Fire Extinguishing Systems.

The updated fire extinguisher standards make the following changes from the currently adopted standards. NFPA 10-2010, Standard for Portable Fire Extinguishers, expands the list of obsolete fire extinguishers to be removed from service; and now includes pressurized water fire extinguishers manufactured prior to 1971, any extinguisher that needs to be inverted to operate, any stored pressure extinguisher manufactured prior to 1955, any extinguishers with 4B, 6B, 8B, 12B, and 16B fire ratings, and stored-pressure water extinguishers with fiberglass shells (pre-1976). The updated standard requires that dry chemical stored-pressure extinguishers manufactured prior to October 1984 shall be removed from service at the next six year maintenance interval or the next hydro test, whichever comes first, and establishes new intervals for the internal examination of certain extinguishers. NFPA 11-2010, Standard for Low-, Medium-, and High-Expansion Foam and Combined Agent Systems incorporates requirements previously found in NFPA 11A, Standard for Medium- and High-Expansion Foam and adds a new chapter to address compressed air foam systems. The updated standard revises some chapters to accommodate the incorporation of medium- and high-expansion foam systems previously regulated by NFPA 11A. Updated NFPA 12-2008, Standard on Carbon Dioxide Extinguishing Systems is revised to add an emphasis on safety and match current NFPA standard formatting. The updated standard includes requirements relating to updated warning signs, evacuation procedures, and provisions prohibiting the use of total flooding systems in most normally occupied areas. NFPA 12A-2009, Standard on Halon 1301 Fire Extinguishing Systems, is revised to address testing and recharging of Halon 1301 cylinders and amends portions to conform to current standards of regulatory bodies such as the United States Department of Transportation. NFPA 15-2007, Standard for Water Spray Fixed Systems for Fire Protection, incorporates welding requirements for pipe and fittings and coordinating requirements for fire department connections with NFPA 13, Standard for the Installation of Sprinkler Systems 2010 Edition. NFPA 16-2007, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems, is revised to coordinate definitions and requirements for fire department connections and underground pipe with those of other NFPA standards. The updated standard also adds more specific proportioning system testing methods. NFPA 17-2009, Standard for Dry Chemical Extinguishing Systems, updates requirements for installing and servicing technicians, and requires that technicians have a certification document. NFPA 17A-2009, Standard for Wet Chemical Extinguishing Systems, provides clarification on inspection, service, and maintenance requirements and updated requirements for servicing personnel; makes changes regarding the necessary replacement and tagging procedure for parts discovered to be defective during system maintenance, and the subsequent notification process upon repair; and requires system flushing after any system actuation. NFPA 18-2006, Standard on Wetting Agents, clarifies the definition of wetting agents and their use on specific types of fires. The updated standard specifies specific packaging requirements and inspection, testing, and maintenance requirements for systems using wetting agents. NFPA 25-2008, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, refines testing frequencies for water flow alarm devices; clarifies the requirements regarding the servicing of water mist systems and the test methods for microbiologically influenced corrosion. The updated standard makes additional clarifications regarding the evaluation of annual pump test data. NFPA 96-2008, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, adds requirements for downdraft appliance ventilation and clarifies requirements for cleaning and maintaining exhaust systems and diagrams detailing new arrangements for hoods with integrated supply air. The updated standard also provides clarification of the requirements for field-applied and factory-built grease duct enclosures and recognizes new technologies for venting, such as ultraviolet hoods and ventilating ceilings. NFPA 2001-2008, Standard on Clean Agent Fire Extinguishing Systems, has been revised to specify requirements for local application systems and to specify protective standards relating to clean agent systems. The updated standard includes details on pressures and pressure reliefs and discharges.

Fire Alarm Standards

The amendments to §34.607 update numerous NFPA minimum standards relating to fire alarm, fire detection, or supervisory services or systems. Requiring recent safety standards relating to fire alarm and fire detection devices is necessary to protect the health and safety of the public. The amendments make the following replacements: (i) NFPA 11-2002, Standard for Low-Expansion Foam and NFPA 11A-1999, Standard for Medium- and High-Expansion Foam Systems with NFPA 11-2005, Standard for Low-, Medium-, and High-Expansion Foam; (ii) NFPA 12-2000, Standard on Carbon Dioxide Extinguishing Systems with NFPA 12-2008, Standard on Carbon Dioxide Extinguishing Systems; (iii) NFPA 12A-2004, Standard on Halon 1301 Fire Extinguishing Systems with NFPA 12A-2009, Standard on Halon 1301 Fire Extinguishing Systems; (iv) NFPA 13-2002, Standard for the Installation of Sprinkler Systems with NFPA 13-2007, Standard for the Installation of Sprinkler Systems; (v) NFPA 13D-2002, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes with NFPA 13D-2007, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and

Manufactured Homes; (vi) NFPA 13R-2002, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height with NFPA 13R-2007, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height; (vii) NFPA 15-2001, Standard for Water Spray Fixed Systems for Fire Protection with NFPA 15-2007, Standard for Water Spray Fixed Systems for Fire Protection; (viii) NFPA 16-2003, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems with NFPA 16-2007, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; (ix) NFPA 17-2002, Standard for Dry Chemical Extinguishing Systems with NFPA 17-2009, Standard for Dry Chemical Extinguishing Systems; (x) NFPA 17A-2002, Standard for Wet Chemical Extinguishing Systems with NFPA 17A-2009, Standard for Wet Chemical Extinguishing Systems; (xi) NFPA 25-2002, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems with NFPA 25-2008, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems; (xii) NFPA 70-2005, National Electrical Code with NFPA 70-2008, National Electrical Code; (xiii) NFPA 72-2002, National Fire Alarm Code with NFPA 72-2007, National Fire Alarm Code; (xiv) NFPA 90A-2002, Standard for the Installation of Air Conditioning and Ventilating Systems with NFPA 90A-2009, Standard for the Installation of Air Conditioning and Ventilating Systems; (xv) NFPA 101-2003, Code for Safety to Life from Fire in Buildings and Structures (Life Safety Code) with NFPA 101-2009, Life Safety Code; and (xvi) NFPA 2001-2004, Standard on Clean Agent Fire Extinguisher Systems, with NFPA 2001-2008, Standard on Clean Agent Fire Extinguisher Systems. The amendments to §34.607(b) delete the following Codes as acceptable alternative model code sets: (i) the Uniform Building Code-1991 and later editions, and the Uniform Fire Code-1991 and later editions; (ii) the SBCCI Building Code-1991 and later editions, and; (iii) the SBCCI Fire Code-1991 and later editions; and the BOCA Building Code-1991 and later editions, and the BOCA Fire Code-1991 and later editions. The deletion of these codes is necessary because they are superseded by the Local Government Code §214.212 and §214.216. The Local Government Code §214.212 specifies that the International Residential Code, as it existed on May 1, 2001, is adopted as the municipal residential building code in Texas. The Local Government Code §214.216 specifies that the International Building Code, as it existed on May 1, 2003, is adopted as the municipal commercial building code in Texas. Due to the deletion of existing paragraphs (1) - (3), paragraphs (4) - (6) are redesignated as paragraphs (1) - (3). The amendments to §34.607(b)(3) also update the NFPA Building Construction and Safety Code 2003 with the NFPA Building Construction and Safety Code 2009 and replaces the NFPA 1 Uniform Fire Code 2003 with the NFPA 1 Uniform Fire Code 2009.

The specific changes made by the following standards updated in the fire alarm subchapter are described in detail in the portion of this order specifying the updated fire extinguisher standards: NFPA 11-2010, Standard for Low-, Medium-, and High-Expansion Foam and Combined Agent Systems; NFPA 12-2008, Standard on Carbon Dioxide Extinguishing Systems; NFPA 12A-2009, Standard on Halon 1301 Fire Extinguishing Systems; NFPA 15-2007, Standard for Water Spray Fixed Systems for Fire Protection; NFPA 16-2007, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; NFPA 17-2009, Standard for Dry Chemical Extinguishing Systems; NFPA 17A-2009, Standard for Wet Chemical Extinguishing Systems; NFPA 25-2008, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems; and NFPA 2001-2008, Standard on Clean Agent Fire Extinguisher Systems. Changes made by updated standards in the fire alarm subchapter that are not updated and described in the fire extinguisher subchapter are as follows. NFPA 13-2007, Standard for the Installation of Sprinkler Systems, added definitions relating to private water supply terms; clarified the requirements of Ordinary Hazard Group 1 and Group 2 Occupancies where storage is present; revised requirements relating to trapeze hangers and bracing criteria; re-organized the requirements relating to storage according to storage size, type, material, and commodity; specifies new requirements for listed expansion chambers; clarifies ceiling pocket rules; and clarifies the formulas used in calculating large antifreeze systems. NFPA 13D-2007, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, includes new spacing and obstruction rules addressing sloped ceilings, ceiling pockets, ceiling fans, and kitchen cabinets; specifies installation, design, and acceptance requirements for pumps; clarifies the acceptability of insulation as a method of freeze protection and the acceptability of wells as a water source; specifies new requirements for listed dry pipe or preaction residential sprinkler systems, as well as clarified requirements for multipurpose combined and networked sprinkler systems; and adopts specific obstruction rules for residential sprinklers. NFPA 13R-2007, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height; includes spacing and obstruction rules addressing sloped ceilings, ceiling pockets, ceiling fans, and kitchen cabinets; clarifies the requirements for utilizing quick-response sprinklers within NFPA 13R regulations; adds new requirements addressing architectural features within dwelling units; and clarifies the requirements covering closets, including obstructions within closets and protection of mechanical closets. NFPA 70-2008, National Electrical Code, NFPA 70-2008, National Electrical Code, requires that fire alarm system conductors use raceways or cable trays that contain electrical conductors with only electrical services; allows cable ties as a supporting means; adds requirements for certain power sources to be supplied by an individual branch circuit; and specifies requirements for certain conductors and cables. NFPA 72-2007, National Fire Alarm Code, addresses mass notification systems; revises sections addressing protection of fire alarm control units, personnel qualification, heat detector response time, smoke detector spacing, smoke detection in ducts, detectors that use multiple sensing inputs, video image smoke and flame detection, synchronization of visible notification appliances, exit marking audible notification appliances, tactile notification appliances, different types of protected premises fire alarm system, and in-building enhancement systems for firefighter radio communications. The updated standard also includes changes to the requirements for smoke alarms in residential applications, revisions to require additional smoke alarms for larger dwelling units, and revisions to allow voice messages to be included as a part of the smoke alarm notification signal. The updated standard also revises the Record of Completion Form and provides examples of filled-out forms. NFPA 90A-2009, Standard for the Installation of Air Conditioning and Ventilating Systems, recognizes new criteria in the types, quantities, and permitted use of various materials in plenum spaces. The updated standard specifies required material such as plenum cable, the type of cable, and the test protocols to determine the fire and smoke characteristics of the cable and wiring components. NFPA 101-2009, the Life Safety

Code, makes the following changes: (i) (add one space) new provisions relating to air traffic control towers, electrically controlled egress doors, certain horizontal sliding doors, elevator lobby access door locking, door inspection and maintenance, emergency evacuations and escape devices and systems, the placement and usage of alcohol-based hand sanitizer in educational and day care settings, and door locking in settings where occupants need specialized protection; (ii) standardizes the usage of certain technical terms, including *stories in height, finished ground level, grade plane, basement, and level of exit discharge;* (iii) revises the situations in which public address systems are acceptable for occupant alarm notification; and (iv) amends provisions relating to fire curtains, patient sleeping room windows in health care settings, and sprinkler requirements in high-rise health care settings. Obsolete building codes are also deleted to conform with the Local Government Code §214.212 and §214.216. The Local Government Code §214.212(a) specifies that to protect the public health, safety, and welfare, the International Residential Code, as it existed on May 1, 2001, is adopted as a municipal residential building code in this state. The Local Government Code §214.212(b) specifies that the International Residential Code applies to all construction, alteration, remodeling, enlargement, and repair of residential structures in a municipality. The Local Government Code §214.216 specifies that to protect the public health, safety, and welfare, the International Building Code, as it existed on May 1, 2003, is adopted as a municipal commercial building code in this state. The updated standards remove as acceptable building codes (1) the Uniform Building Code-1991 and later editions, and the Uniform Fire Code-1991 and later editions; (2) the Southern Building Code Congress International (SBCCI) Building Code-1991 and later editions; and (3) the Building Officials Code Administrators Building Code-1991 and later editions, and the BOCA Fire Code-1991 and later editions.

Fire Sprinkler Standards

Amended §34.707 updates numerous NFPA minimum standards relating to fire sprinklers and related fire safety issues. Requiring updated safety standards relating to fire sprinklers and related fire safety issues is necessary to protect the health and safety of the public. Amended §34.707 makes the following replacements: (i) NFPA 13-2002, Standard for the Installation of Sprinkler Systems with NFPA 13-2010, Standard for the Installation of Sprinkler Systems; (ii) NFPA 25-1998, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems with NFPA 25-2008, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems; (iii) NFPA 13D-2002, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes with NFPA 13D-2010, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes; (iv) NFPA 13R-2002, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height with NFPA 13R-2010, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height; (v) NFPA 14-2000, Standard for the Installation of Standpipe, Private Hydrant and Hose Systems with NFPA 14-2010, Standard for the Installation of Standpipe, Private Hydrant and Hose Systems; (vi) NFPA 15-2001, Standard for Water Spray Fixed Systems for Fire Protection with NFPA 15-2007, Standard for Water Spray Fixed Systems for Fire Protection; (vii) NFPA 16-1999, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems with NFPA 16-2007, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; (viii) NFPA 20-1999, Standard for the Installation of Stationary Pumps for Fire Protection with NFPA 20-2008, Standard for the Installation of Stationary Pumps for Fire Protection; (ix) NFPA 22-1998, Standard for Water Tanks for Private Fire Protection with NFPA 22-2008, Standard for Water Tanks for Private Fire Protection; (x) NFPA 24-2002, Standard for the installation of Private Fire Service Mains and Their Appurtenances with NFPA 24-2010, Standard for the Installation of Private Fire Service Mains and Their Appurtenances; (xi) NFPA 30-2000, Flammable and Combustible Liquids Code with NFPA 30-2008, Flammable and Combustible Liquids Code; (xii) NFPA 30B-2002, Code for the Manufacture and Storage of Aerosol Products with NFPA 30B-2011, Code for the Manufacture and Storage of Aerosol Products; (xiii) NFPA 307-2000, Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves with NFPA 307-2011, Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves; (xiv) NFPA 214-2000, Standard on Water-Cooling Towers with NFPA 214-2005, Standard on Water-Cooling Towers; and (xv) NFPA 409-2001, Standard on Aircraft Hangars with NFPA 409-2004, Standard on Aircraft Hangars.

The specific changes made by the following standards updated in the fire sprinkler subchapter are described in the portion of this order specifying the updated fire extinguisher standards: NFPA 15-2007, Standard for Water Spray Fixed Systems for Fire Protection; NFPA 16-2007, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; and NFPA 25-2008, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems. The specific changes made by the following standards updated in the fire sprinkler subchapter are described in the portion of this order specifying the updated fire alarm standards: NFPA 13-2007, Standard for the Installation of Sprinkler Systems; NFPA 13D-2007, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes; and NFPA 13R-2007, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height. The changes made by the standards updated in the fire sprinkler subchapter not updated and described in either the fire extinguisher subchapter are as follows. NFPA 14-2010, Standard for the Installation of Standpipe, Private Hydrant and Hose Systems, includes guidance on the use of pressure-regulating devices and roof outlets for standpipe systems; permits express mains supplying higher zone standpipes to be designed with pressures in excess of 350 psi; revises the requirements for standpipe system zones; deletes the requirements for pipe schedule design requires all standpipe systems to be hydraulically calculated; deletes the requirement to balance hydraulic junction points; and adds new requirements to address standpipe systems risers that terminate at different floor levels. NFPA 20-2008, Standard for the Installation of Stationary Pumps for Fire Protection, updates the standard to conform with the latest edition of the *Manual of Style for NFPA Technical Committee Documents;* adds provisions addressing the use of fire pump drivers using variable speed pressure limiting control; adds acceptance test criteria for replacement of critical path components of a fire pump installation; refines requirements for variable speed drives were refined; adds requirements for break tanks and component replacement testing tables; and adds requirements on fire pumps for high-rise buildings and for pumps arranged in series. NFPA 22-2008, Standard for Water Tanks for Private Fire Protection; addresses the use of fiberglass-reinforced plastic tanks and con-

solidates the requirements relating to acceptance test requirements into a single new chapter. NFPA 24-2010, Standard for the Installation of Private Fire Service Mains and Their Appurtenances, establishes leakage test criteria; updates requirements for thrust blocks and restrained joints; and adds additional specifications for recommended practice for fire flow testing and for hydrant marking; revises provisions for location and identification of fire department connections, valves controlling water supply, and protection of fire. NFPA 30-2008, Flammable and Combustible Liquids Code makes changes in separation distance requirements for protected aboveground tanks and tanks in vaults; adds requirements for shop-fabricated aboveground tanks with abnormally long vertical piping for fill or vent lines; adds maximum allowable storage container sizes; adds fire protection design criteria for unsaturated polyester resins; adds fire protection design criteria using high-expansion foam systems for protection of liquids in 1-gallon plastic containers; revises spacing requirements and construction requirements for process buildings; adds requirements for insulated piping for recirculating heat transfer systems; prohibits permanent interconnections between fire water systems and process water systems; adds new corrosion protection requirements for nonmetallic tanks; clarifies the requirements for construction of vaults; adds requirements for fire-resistant tanks; revises the maximum capacity for secondary containment-type tanks storing certain liquids; adds requirements for periodic testing, maintenance, inspection, and repair of aboveground storage tanks have been added; revises overfill prevention requirements so that they apply to all tanks larger than 1320 gallons of capacity; adds requirements for marine piping systems; and expands the fire protection design criteria for inside storage areas to include additional varieties of containers and cartons. NFPA 30B-2011, Code for the Manufacture and Storage of Aerosol Products, clarifies the requirements for aisle widths in storage facilities and revises the definition of aerosol container to allow the use of certain plastic aerosol containers. NFPA 307-2011, Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves, has been revised in accordance with the *Manual of Style for NFPA Technical Committee Documents;* amends fire protection requirements for certain marine terminal buildings; revises the definition for hazardous materials; adds requirements for wood and unprotected substructures, and piles and stiffening members of piers and wharves; and permits the use of corrosion-resistant types of pipes, fitting, hangers, or listed protective corrosion-resistant coatings on fixed extinguishing system components that are subject to corrosion in a marine environment. NFPA 214-2005, Standard on Water-Cooling Towers, adds requirements for pilot line detectors. NFPA 409-2004, adds requirements for paint hangars.

Other Necessary Changes.

This order makes other necessary changes to improve the clarity and consistency of the sections. An amendment to §34.605 replaces a reference to "provisions of the statutes" with a reference to "the Insurance Code Chapter 6002." An amendment to §34.606(9) replaces the phrase "A person" with the phrase "An individual." An amendment to §34.606(13) deletes the phrase "As used in the Texas Insurance Code, Article 5.43-2 §9(c), means a" before the definition of *local authority having jurisdiction.* The word "Texas" preceding the phrase "Insurance Code" is deleted from amended §34.607(a). The title to §34.611 is changed from "Licenses" to "Licenses and Approvals" to reflect the revised content of that section. The title to amended §34.611(b) is changed from "Pocket license" to "Pocket License and Approval" for the same reason. The title to amended §34.611(c) is changed from "Duplicate license" to "Duplicate License" and the title to redesignated §34.611(d) is changed from "Revised licenses" to "Licensee Responsibilities Relating to Revised Licenses" to reflect the content of that section. The title to §34.612 is changed from "Alteration of Certificates or Licenses" to "Alteration of Certificates, Licenses, or Approvals" to reflect the addition of approvals. The text of §34.612 is also amended to include the category of approvals. The title to §34.613(a) is changed from "Certificates of registration" to "Approvals and Certificates of Registration." Section 34.613(a)(5) is amended to change "Insurance required." to "Insurance is required as follows:". The phrase "these sections" is replaced with the phrase "this subchapter" in §34.613(a)(5)(A). Section §34.613(a)(7) is amended to add a sentence specifying that a fire alarm licensee serving in a monitoring capacity for a firm applying for a certificate of registration may not serve in that capacity for a registered firm other than the firm applying for the certificate of registration. Section 34.613(a)(7) is also amended to add the phrase "as adopted in §34.607 of this subchapter (relating to Adopted Standards)" after a reference to the NFPA 72. The title to §34.613(b) is changed from "Fire alarm licenses" to "Fire Alarm Licenses" and the title to redesignated §34.613(d) is changed from "Renewal applications." to "Renewal Applications." for consistency. An amendment to redesignated §34.613(d)(1) adds instructor and training school approvals to the list of potential renewal application categories. An amendment to redesignated §34.613(e) replaces the title "Complete applications." with "Complete Applications.", adds instructor and training school approvals to the list of complete applications required, and replaces a reference to the "department" with a reference to the "State Fire Marshal's Office." An amendment to the title of §34.616(a) changes "Residential alarms (single station)." to "Residential Alarms (Single Station)." An amendment to the title of §34.616(b) changes "Fire detection and fire alarm devices or systems other than residential single station" to "Fire Detection and Fire Alarm Devices or Systems Other than Residential Single Station." Amendments to §§34.616(b)(1) and (2) add the category of residential fire alarm technicians to the listing of licensees subject to those sections and specify that all supervised work must be overseen by a licensee with the appropriate licensure for the work overseen. An amendment to §34.616(b)(1) specifies that the installation of all fire detection and alarm devices must be performed by or under the direct on-site supervision of an appropriate licensee for the work performed. The requirement that the supervision be "on-site" was added for consistency with the Insurance Code §6002.154(d-1) which requires that supervision be "on-site." Amendments to §34.616(b)(4) add the phrase "planning and" before the word "installation" to clarify that the planning of fire alarm devices must be completed in accordance with the minimum standards adopted in §34.607, and change the reference "§34.607 of this title" to "§34.607 of this chapter." The title to §34.616(c) is changed from "Monitoring requirements." to "Monitoring Requirements." for consistency. The requirements relating to monitoring services and registered firms in amended §34.616(c)(2)(A) are changed to reflect that the registration must occur under the Insurance Code Chapter 6002. Amended §34.625(a) adds the word "the" before the phrase "Insurance Code" and amended §34.625(c) adds the word "the" before the phrase "Government Code." An amendment to §34.810(e) requires that licensees submit written notification within 14 days of a change in the licensee's name, business location, residence, or mailing address. This change is necessary so that the SFMO may be informed in a timely manner of changes

relating to licensees and is consistent with the other licensee notice requirements under Chapter 34.

Subchapter E, Fire Extinguisher and Installation

Amendments to §34.507 update minimum safety standards adopted pursuant to the Texas Insurance Code §6001.052. The amendments update numerous National Fire Protection Association (NFPA) minimum standards relating to fire extinguisher systems. The following replacements are made: (i) NFPA 10-2002, Standard for Portable Fire Extinguishers and its specified exceptions, with NFPA 10-2010, Standard for Portable Fire Extinguishers; (ii) NFPA 11-2002, Standard for Low-Expansion Foam and Combined Agent Systems, and NFPA 11A-1999, Standard for Medium- and High-Expansion Foam Systems, with NFPA 11-2010, Standard for Low-, Medium-, and High-Expansion Foam and Combined Agent Systems; (iii) NFPA 12-2000, Standard on Carbon Dioxide Extinguishing Systems with NFPA 12-2008, Standard on Carbon Dioxide Extinguishing Systems; (iv) NFPA 12A-2004, Standard on Halon 1301 Fire Extinguishing Systems with NFPA 12A-2009, Standard on Halon 1301 Fire Extinguishing Systems; (v) NFPA 15-2001, Standard for Water Spray Fixed Systems for Fire Protection with NFPA 15-2007, Standard for Water Spray Fixed Systems for Fire Protection; (vi) NFPA 16-2003, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems with NFPA 16-2007, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; (vii) NFPA 17-2002, Standard for Dry Chemical Extinguishing Systems and its specified exceptions with NFPA 27-2009, Standard for Dry Chemical Extinguishing Systems; (viii) NFPA 17A-2002, Standard for Wet Chemical Extinguishing Systems and its specified exceptions with NFPA 17A-2009, Standard for Wet Chemical Extinguishing Systems; (ix) NFPA 18-1995, Standard on Wetting Agents with NFPA 18-2006, Standard on Wetting Agents; (x) NFPA 25-2002, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems with NFPA 25-2008, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems; (xi) NFPA 96-2001, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations with NFPA 96-2008 and its specified exceptions, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations; and (xii) NFPA 2001-2004, Standard on Clean Agent Fire Extinguishing Systems with NFPA 2001-2008, Standard on Clean Agent Fire Extinguishing Systems.

New language added to §34.510(g) specifies the initial fees and expiration date for an extinguisher branch office certificate of registration. The subsection specifies that the initial fee for a branch office certificate of registration is $100 and is not prorated. The amended subsection also specifies that branch office certificates of registration expire and renew on the same date as the certificate of registration for the registered firm's main office. The amendment also deletes the requirement that each certificate shall be posted conspicuously for public view at the business location.

New §34.510(m) specifies the procedure for the initial alignment of the expiration and renewal dates of existing extinguisher branch offices. The subsection specifies that for branch offices in existence as of the effective date of this rule, branch office certificates of registration shall expire and renew on the same date as the certificate of registration issued to the main office for that firm. The subsection specifies that all fees associated with the initial alignment of expiration and renewal dates for branch office certificates of registration shall be prorated accordingly.

An amendment to §34.515(a) sets out the fee payment procedure for fire extinguisher licensees and specifies that except for fees that must be paid to testing authorities, all fees payable shall be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority. The new language in the subsection specifies that should the Department authorize other online or electronic original applications or other transactions, persons shall submit fees with the transaction as directed by the Department or the Texas OnLine Authority. Another amendment to §34.515(a) eliminates cash as an acceptable payment method. An amendment deletes the language in §34.515(b) relating to fee payment procedure and redesignates the remaining subsections. Amendments to redesignated §34.515(b)(1)(C) and (D) specify the new late fee structure for branch offices and provides that the renewal late fee for certificates of registration expired 1 day to 90 days is $225 plus $50 for each branch office operated by the registered firm and that the renewal late fee for certificates of registration expired from 91 days to two years is $450 plus $100 for each branch officer operated by the registered firm. Existing subparagraphs (G) and (H) are deleted because these provisions are incorporated in amendments to subparagraphs (C) and (D).

Subchapter F. Fire Alarm Rules

Amendments to §34.601 replace the word "chapter" with "subchapter;" add the word "the" before the phrase "Insurance Code;" and replace a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002.

An amendment to §34.602 replaces the word "chapter" with the word "subchapter."

An amendment to §34.603 replaces the word "chapter" with the word "subchapter."

Amendments to §34.604 replace a reference to the Insurance Code Article 5.43-2 §3 with a reference to the Insurance Code §6002.155 and replace the word "chapter" with the word "subchapter."

An amendment to §34.605 replaces the phrase "provisions of the statutes" with the phrase "the Insurance Code Chapter 6002." The amendments replace the word "chapter" with the word "subchapter" and the phrase "Office of the State Fire Marshal" with the phrase "State Fire Marshal's Office."

New §34.606(1) adds a definition for *approval,* which is defined as the document issued by the State Fire Marshal's Office to an individual or entity acknowledging that the individual or entity meets the requirements to perform the functions of an approved instructor or approved training school under the Insurance Code Chapter 6002 and Subchapter F. The remaining paragraphs in the section are redesignated. New §34.606(7) defines *designated employee* as an individual specified by a registered firm as a full-time employee and a licensee under Subchapter F. Amendments to §34.606(9) replace the phrase "a person" with the phrase "an individual" and replace a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code §6002.002. New §34.606(12) defines *instructor* as an individual approved under the Insurance Code Chapter 6002 and Sub-

chapter F to provide training in installing, servicing, inspecting, and certifying fire alarm or detection systems in single-family or two-family residences. An amendment to §34.606(13) amends the definition of *local authority having jurisdiction* to delete the phrase "As used in the Texas Insurance Code, Article 5.43-2, §9(c), means a." An amendment to §34.606(14) replaces a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002. New §34.606(22) defines training school as an entity that is approved under the Insurance Code Chapter 6002 and Subchapter F to provide approved training in installing, certifying, inspecting, and servicing fire alarm or detection systems in single-family or two-family residences by approved instructors for the purpose of meeting the training requirements of an applicant for a residential fire alarm technician license issued under the applicable statutes and the subchapter.

An amendment to §34.607(a) replaces the word "chapter" with the word "subchapter" and replaces a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002. Another amendment to §34.607(a) deletes the word "Texas" before the phrase "Insurance Code" and replaces the phrase "state fire marshal's office" with the phrase "State Fire Marshal's Office." The adopted standards specified in §34.607(a)(1) - (17) are updated to reflect current standards. Amendments to §34.607(a) replace (i) NFPA 11-2002, Standards for Low-Expansion Foam and NFPA 11A-1999, Standard for Medium- and High-Expansion Foam Systems with NFPA 11-2005, Standard for Low-, Medium-, and High-Expansion Foam; (ii) replace NFPA 12-2000, Standard on Carbon Dioxide Extinguishing Systems, with NFPA 12-2008, Standard on Carbon Dioxide Extinguishing Systems; (iii) NFPA 12A-2004, Standard on Halon 1301 Fire Extinguishing Systems, with NFPA 12A-2009, Standard on Halon 1301 Fire Extinguishing Systems; (iv) NFPA 13-2002, Standard for the Installation of Sprinkler Systems, with NFPA 13-2007, Standard for the Installation of Sprinkler Systems; (v) NFPA 13D-2002, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwelling and Manufactured Homes, with NFPA 13D-2007, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwelling and Manufactured Homes; (vi) NFPA 13R-2002, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height with NFPA 13R-2007, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height; (vii) NFPA 15-2001, Standard for Water Spray Fixed Systems for Fire Protection with NFPA 15-2007, Standard for Water Spray Fixed Systems for Fire Protection; (viii) NFPA 16-2003, Standard for the Installation of Foam-Water Sprinkler and Foam Water Spray Systems with NFPA 16-2007, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; (ix) NFPA 17A-2002, Standard for Dry Chemical Extinguishing Systems with NFPA 17-2009, Standard for Dry Chemical Extinguishing Systems; (x) NFPA 17A-2002, Standard for Wet Chemical Extinguishing Systems with NFPA 17A-2009, Standard for Wet Chemical Extinguishing Systems; (xi) NFPA 25-2002, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems with NFPA 25-2008, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems; (xii) NFPA 70-2005, National Electrical Code with NFPA 70-2008, National Electrical Code; (xiii) replace NFPA 72-2002, National Fire Alarm Code with NFPA 72-2007, National Fire Alarm Code; (xiv) NFPA 90A-2002, Standard for the Installation of Air Conditioning and Ventilating Systems with NFPA 90A-2009, Standard for the Installation of Air Conditioning and Ventilating Systems; (xv) NFPA 101-2003, Life Safety Code with NFPA 101-2009, Life Safety Code; (xvi) NFPA 2001-2004, Standard on Clean Agent Fire Extinguisher Systems with NFPA 2001-2008, Standard on Clean Agent Fire Extinguisher Systems. Section 34.607(b) is amended to delete the following alternative acceptable model code sets: the Uniform Building Code 1991 and later editions, and the Uniform Fire Code 1991 and later editions; the SBCCI Building Code 1991 and later editions, and the SBCCI Fire Code 1991 and later editions; or the BOCA Building Code 1991 and later editions, and the BOCA Fire Code 1991 and later editions. Section 34.607(b) replaces the NFPA 1 Uniform Fire Code 2003 with the NFPA 1 Uniform Fire Code 2009.

An amendment to §34.610(b) deletes the requirement that each certificate of registration must be posted conspicuously for public view at a registered firm's business location and adds new language specifying that in an application or renewal for a certificate of registration, each registered firm must specify one full-time employee holding a license under the subchapter as the firm's designated employee. The new subsection also specifies that any change in the designated employee under this section must be submitted in writing to the State Fire Marshal's Office within 14 days of its occurrence, and that an individual may not serve as a designated employee for more than one registered firm. New §34.610(f) specifies that the initial fee for a branch office certificate of registration is $150 and is not prorated. The subsection also specifies that branch office certificates of registration expire and renew on the same date as the certificate of registration for the registered firm's main office. Subsections (f) and (g) are redesignated as (g) and (h). New §34.610(i) specifies that for branch offices in existence as of the effective date of the rule, branch officer certificates of registration shall expire and renew on the same date as the certificate of registration issued to the main office for that firm. The new subsection also specifies that all fees associated with the initial alignment of expiration and renewal dates for the branch office certificate of registration shall be prorated accordingly.

An amendment to §34.611(a) adds new language which states that the licenses specified in §34.611(a)(1) - (8) are issued by the State Fire Marshal's Office in accordance with the Insurance Code Chapter 6002 and Subchapter F, and specifies that, as required by the Insurance Code Chapter 6002, only licensed or approved entities may engage in specific functions. New §34.611(a)(3) adds an approval category for instructors, and specifies that the approval is for providing training at an approved training school in installing, certifying, inspecting, and servicing fire alarm or detection systems in single-family or two-family residences. Paragraphs (3) - (5) are redesignated as paragraphs (4) - (6). New §34.611(a)(7) adds a license for residential fire alarm technicians and specifies that the license is for installing, certifying, inspecting, and servicing, but not planning, fire alarm or fire detection devices and systems in single-family or two-family residences. New §34.611(a)(8) adds an approval for training schools, and specifies that the approval is for conducting required training necessary for obtaining a residential fire alarm technician license. An amendment to §34.611(b) deletes the requirement that wall licenses must be posted conspicuously for public view at a registered firm's business location. The remaining subsections are redesignated. New §34.611(b)(2) specifies that an instructor must carry their approval while providing training in an approved training school on the installing, certifying, inspecting and servicing of fire alarm or detection systems in single-family or two-family residences. Amendments to redesignated §34.611(d) set out licensee

responsibilities relating to revised licenses, specifying that a change in the licensee's name, licensee's mailing address, or a new or additional registered firm employee the licensee requires a revised license. New §34.611(e) specifies registered firms' responsibilities relating to licensees and specifies that a registered firm must submit notification of any licensee employment, termination, or resignation within 14 days of its occurrence. An amendment to §34.611(f) changes the name of the subsection from "Restrictions" to "Restrictions on Licensees and Registered Firms." New §34.611(g) specifies that approvals are not transferable. New §34.611(h) requires that a change in the instructor's name or mailing address requires a revised approval.

An amendment to §34.612 specifies that the alteration of an approval renders it invalid and may be the basis for disciplinary action. Another amendment replaces a reference to the Insurance Code Article 5.43-2, §10(b) with a reference to the Insurance Code §6002.302.

Section 34.613(a)(1) is amended to add *approvals* to the list that must be submitted on the forms adopted by reference in §34.630 of the subchapter and be accompanied by all necessary fees, documents, and information. Other amendments replace (i) a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002; (ii) the phrase "the sections of this chapter" with the phrase "this subchapter"; and (iii) the phrase "State Fire Marshal's office" with the phrase "State Fire Marshal's Office." An amendment to §34.613(a)(2) replaces a reference to the Business and Commerce Code Chapter 36 with a reference to the Business and Commerce Code Chapter 71. Another amendment replaces a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002. Another amendment replaces the phrase "the sections of this chapter" with the phrase "this subchapter." Section 34.613(a)(5) replaces the phrase "Insurance required." with the phrase "Insurance is required as follows:". The phrase "State Fire Marshal's office" is replaced with the phrase "State Fire Marshal's Office" in Section 34.613(a)(5)(A) and (B). An amendment to §34.613(a)(7) adds a sentence specifying that a fire alarm licensee designated by a monitoring company as its employee may not serve in a similar capacity for another company. Section 34.613(a)(7) is also amended to replace the phrase "adopted NFPA 72" with the phrase "NFPA 72 as adopted in §34.607 of this subchapter (relating to Adopted Standards." New §34.613(b)(7) specifies that an applicant for a residential fire alarm technician license must provide evidence of the applicant's successful completion of the required residential fire alarm technician training course from a training school approved by the State Fire Marshal's Office. New §34.613(c) specifies the requirements for instructor and training school approvals. New §34.613(c)(1) specifies that an applicant for approval as an instructor must hold a current fire alarm planning superintendent's license issued by the State Fire Marshal's Office; submit a completed Instructor Approval Application, Form No. SF247, signed by the applicant, that is accompanied by all fees; and furnish written documentation of a minimum of three years of experience in fire alarm installation, service, or monitoring of fire alarm systems, unless the applicant has held a fire alarm planning superintendent's license for three or more years. New §34.613(c)(2) specifies the requirements for training school approvals. New §34.613(c)(2) specifies that an applicant for approval of a training school must submit a completed Training School Approval Application, Form No. SF 246, signed by the applicant, the sole proprietor, each partner of a partnership, or by an officer of a corporation or organization as applicable; accompanied by a detailed outline of the subjects to be taught at the training school and the number and location of all training courses to be held within one year following approval of the application; and accompanied by all required fees. New §34.613(c)(2) also specifies that after review of the application for approval for a training school, the State Fire Marshal shall approve or deny the application within 60 days following receipt of the materials, and requires that a letter of denial shall state the specific reasons for the denial and that an applicant that is denied approval may reapply at any time within 180 days, in accordance with §34.613(e), by submitting a completed application that includes the changes necessary to address the specific reason for denial. Existing subsections (c) and (d) are redesignated as subsections (d) and (e). Redesignated §34.613(d) is amended to specify that in order to be complete, renewal applications for instructor approvals and training school approvals must be submitted on forms adopted by reference in §34.630 of the subchapter and be accompanied by all necessary fees. The amendment replaces a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002. An amendment to redesignated §34.613(e) specifies that the application form for an instructor approval and training school approval must be accompanied by the required fee and must, within 180 days of receipt by the State Fire Marshal's Office of the initial application, be complete and accompanied by all other required information, or a new application must be submitted including all applicable fees. Other amendments to §34.613(e) replace a reference to "the department" with a reference to "the State Fire Marshal's Office" and replace a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002.

The amendments to §34.614 outline the fee payment procedure. Section 34.614(a) specifies that except for fees that must be paid to testing authorities, all fees payable shall be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority. The new language in the section specifies that should the Department authorize other online or electronic original applications or other transactions, persons shall submit fees with the transaction as directed by the Department or the Texas OnLine Authority. Another amendment to §34.614(a) eliminates cash as an acceptable payment method. Existing text in §34.614(b) is deleted, and the text of existing subsection (c) is moved to (b). The remaining subsections are redesignated. Redesignated §34.614(c) specifies that the renewal fee for a certificate of registration remains valid for two years and is subject to the exceptions specified in §34.610(i) (relating to Certificate of Registration) for the initial alignment of the expiration and renewal dates of existing branches. Redesignated §34.614(c) also amends the late fee structure to reflect the alignment of main office and branch certificate of registration expirations. Section 34.614(c)(1)(C) specifies that the renewal late fee for expirations of one to 90 days is $125 plus $37.50 for each branch office operated by the registered firm and §34.614(c)(1)(D) that the renewal late fee for expirations of 91 days to two years is $500 plus $150 for each branch office operated by the registered firm. Existing subparagraphs (G) and (H) are deleted because these provisions are incorporated in amendments to subparagraphs (C) and (D). New §34.614(c)(4) specifies the fee structure for the new residential fire alarm technician license. The new fees are as follows: initial fee (for one year)--$50; renewal fee (for two years)--$100; renewal late fee (expired one day to 90 days)--$12.50; and renewal

late fee (expired 91 days to two years)--$50. New §34.614(c)(5) specifies the fee structure for the new training school approval. The new fees are: initial fee (for one year)--$500; and renewal fee (for one year)--$500. New §34.614(c)(6) specifies the fee structure for the new instructor approval. The new fees are: initial fee (for one year)--$50; and renewal fee (for one year)--$50. Redesignated §34.614(e) replaces a reference to the Insurance Code Article 5.43-2 §5C(c) with a reference to the Insurance Code §6002.203(g).

An amendment to §34.615 replaces a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002.

Amendments to §34.616(a)(1) and (2) replace references to the Insurance Code Article 5.43-2, §3(b)(10) with references to the Insurance Code §6002.155(10). Amendments to §34.616(a)(2) replace a reference to Article 5.43-2 with a reference to the Insurance Code Chapter 6002 and replace the word "chapter" with the word "subchapter." Amendments to §34.616(b)(1) replace a reference to the Insurance Code Article 5.43-2 with a reference to the Insurance Code Chapter 6002, and add the phrase "on-site" to the requirement that certain work be performed under the direct supervision of a licensee. Amendments to §34.616(b)(1) and (2) add residential fire alarm technicians among the listed licensees and specify that the licensee supervising the work must oversee work permitted by the licensee. An amendment to §34.616(b)(2) also specifies that the licensee attaching a label must be licensed under the ACR number of the primary registered firm. An amendment to §34.616(b)(3) replaces the phrase "the licensing requirements of the appropriate Insurance Code, Article 5.43-1 or 5.43-3, must be satisfied" with the phrase "the licensing requirements of Insurance Code Chapters 6001 and 6003 must be satisfied, as appropriate." An amendment to §34.616(b)(4) specifies that the planning and installation of fire detection or fire alarm devices or systems, including monitoring equipment, must be in accordance with standards adopted in §34.607 (relating to Adopted Standards) except when the planning and installation complies with a more recent edition of an adopted standard or a Tentative Interim Amendment published as effective by the NFPA. Amendments to amended §34.616(c) add a reference to the Insurance Code Chapter 6002 and replace the phrase "licensing requirements of Insurance Code Article 5.43-2, so long as" with the phrase "licensing requirements of that chapter; and" and also replace a reference to the Insurance Code Article 5.43-2 §9 with a reference to the Insurance Code §6002.251.

Amendments to §34.625(a) and (c) replace references to the Insurance Code Article 5.43-2 with references to the Insurance Code Chapter 6002.

New §34.627 specifies the requirements for instructors and training schools. New §34.627(a) specifies that all training provided by an instructor must be conducted through an approved training school and that the instructor must teach the subjects in the outline of the training course submitted by the training school and approved by the State Fire Marshal's Office. New §34.627(b) specifies training schools must only use instructors who hold an approval issued by the State Fire Marshal's Office to provide training in installing, certifying, inspecting, and servicing fire alarm or detection systems in single-family or two-family residences. The subsection also specifies that the entity responsible for the training school must obtain approval of the outline of each residential fire alarm technician training course from the State Fire Marshal's Office before conducting a class. New §34.627(b) specifies that the entity responsible for the training school may not be a firm registered through the State Fire Marshal's Office or an affiliate of a registered firm. The subsection specifies that a training school may not provide training for a residential fire alarm technician license without being approved by the State Fire Marshal, and that training school approvals are not transferable and apply only to the entity specified as the responsible entity on the application for approval. The subsection specifies that the training school may not change the entity responsible for the training school without first applying for and receiving a new approval. Section 34.627(b) further specifies that the training school must conduct two or more classes, open to the public, within 125 miles of each county in the state that has a population in excess of 500,000 people according to the last decennial census, within each calendar year from the date the approval is issued. New §34.627(c) specifies that any individual or entity that provides general training or instruction relating to fire alarm or detection systems, but whose training is not specific to fulfill a requirement to obtain a license, is not required to have an approval.

New §34.628 specifies the requirements for the residential fire alarm technician training course. The section specifies that the training curriculum for a residential fire alarm technician training course shall consist of at least eight hours of instruction on installing, servicing, and maintaining single-family and two-family residential fire alarm systems as defined by National Fire Protection Association Standard No. 72. The section specifies that the training curriculum for a residential fire alarm technician training course must include the following minimum instruction time for the following subjects: (i) one hour of instruction on the Insurance Code Chapter 6002 and the Fire Alarm Rules; (ii) one hour of instruction pertaining to the equipment, system, and other hardware relating to household fire alarms; (iii) one hour of instruction on the National Electric Code, NFPA 70; (iv) four and one-half hours of total combined instruction on NFPA 72; NFPA 101, the Life Safety Code; and the International Residential Code for One- and Two-Family Dwellings; and (v) one-half hour of instruction on the monitoring of household fire alarm systems.

New §34.630 adopts by reference application and renewal forms necessary under the subchapter. New §34.630(a) adopts by reference the License Application for Individuals For All Types of Fire Alarm Licenses, Form Number SF032, which contains instructions for completion of the form and requires information to be provided regarding the applicant and the applicant's employer. New §34.630(b) adopts by reference the Renewal Application For Fire Alarm Individual License, Form Number SF094, which contains instructions for completion of the form; information regarding late fees; and requires information to be provided regarding the renewing applicant. New §34.630(c) adopts by reference the Instructor Approval Application, Form Number SF247, which contains instructions for completion of the form and requires information to be provided regarding the applicant. New §34.630(d) adopts by reference the Renewal Application For Instructor Approval, Form Number SF255, which contains instructions for completion of the form and requires information to be provided regarding the applicant. New §34.630(e) adopts by reference the Training School Approval Application, Form Number SF246, which contains instructions for completion of the form, provides information regarding necessary filing documents pursuant to business entity type, and requires information to be provided regarding the applicant and course location and schedule. New §34.630(f) adopts by reference the Renewal Application for Training School Approval,

Form Number SF254, which contains instructions for completion of the form, provides information regarding necessary filing documents pursuant to business entity type, and requires information to be provided regarding the applicant and course location and schedule. New §34.630(g) adopts by reference the Fire Alarm Certificate of Registration Application, Form Number SF031, which contains instructions for completion of the form; provides information regarding necessary filing documents pursuant to business entity type, and requires information to be provided regarding the applicant. New §34.630(h) adopts by reference the Renewal Application For Fire Alarm Certificate of Registration, Form Number SF084, which contains instructions for completion of the form and requires information to be provided regarding the applicant. New §34.630(i) specifies that the forms adopted by reference in the new section are available at the Department's website.

Subchapter G, Fire Sprinkler Rules

The amendments to §34.707 update minimum safety standards adopted pursuant to the Texas Insurance Code §6003.052. The amendments update numerous National Fire Protection Association (NFPA) minimum standards relating to fire sprinklers and related fire safety issues and make the following replacements: (i) NFPA 13-2002, Standard for the Installation of Sprinkler Systems with NFPA 13-2010, Standard for the Installation of Sprinkler Systems; (ii) NFPA 25-1998, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems with NFPA 25-2008, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems; (iii) NFPA 13D-2002, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes with NFPA 13D-2010, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes; (iv) NFPA 13R-2002, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height with NFPA 13R-2010, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height; (v) NFPA 14-2000, Standard for the Installation of Standpipe, Private Hydrant and Hose Systems with NFPA 14-2010, Standard for the Installation of Standpipe, Private Hydrant and Hose Systems; (vi) NFPA 15-2001, Standard for Water Spray Fixed Systems for Fire Protection with NFPA 15-2007, Standard for Water Spray Fixed Systems for Fire Protection; (vii) NFPA 16-1999, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems with NFPA 16-2007, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems; (viii) NFPA 20-1999, Standard for the Installation of Stationary Pumps for Fire Protection with NFPA 20-2008, Standard for the Installation of Stationary Pumps for Fire Protection; (ix) NFPA 22-1998, Standard for Water Tanks for Private Fire Protection with NFPA 22-2008, Standard for Water Tanks for Private Fire Protection; (x) NFPA 24-2002, Standard for the installation of Private Fire Service Mains and Their Appurtenances with NFPA 24-2010, Standard for the Installation of Private Fire Service Mains and Their Appurtenances; (xi) NFPA 30-2000, Flammable and Combustible Liquids Code with NFPA 30-2008, Flammable and Combustible Liquids Code; (xii) NFPA 30B-2002, Code for the Manufacture and Storage of Aerosol Products with NFPA 30B-2011, Code for the Manufacture and Storage of Aerosol Products; (xiii) NFPA 307-2000, Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves with NFPA 307-2011, Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves; (xiv) NFPA 214-2000, Standard on Water-Cooling Towers with NFPA 214-2005, Standard on Water-Cooling Towers; and (xv) NFPA 409-2001, Standard on Aircraft Hangars with NFPA 409-2004, Standard on Aircraft Hangars.

The amendment to redesignated §34.711(d) deletes the requirement that licenses requiring changes must be surrendered to the State Fire Marshal within 14 days of the change requiring the revision. The amendment specifies that the licensee must submit written notification of the necessary change within 14 days of the change accompanied by the required fee.

An amendment to §34.714(a) specifies the fee payment procedure for fire sprinkler licensees. Section 34.714(a) specifies that except for fees that must be paid to testing authorities, all fees payable shall be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority. The new language in the subsection specifies that should the Department authorize other online or electronic original applications or other transactions, persons shall submit fees with the transaction as directed by the Department or the Texas OnLine Authority. Another amendment to §34.714(a) eliminates cash as an acceptable payment method. The amendment to §34.714(b) deletes language relating to fee payment procedure. The remaining subsections in the section are redesignated.

Subchapter H, Storage and Sale of Fireworks

An amendment to §34.808(41) changes the definition of *supervisor* to mean a person 18 years or older who is responsible for the retail fireworks site during operating hours.

An amendment to §34.810(e) deletes the requirement that documents requiring changes must be surrendered to the State Fire Marshal within 30 days of the change, with written notification of the necessary change and adds language specifying that licensees must submit written notification within 14 days of a change of a licensee's name, business location, residence, or mailing address.

An amendment to §34.817(a) changes the age of the supervisor that must be on duty during all phases of retail operation from 16 years of age or older to 18 years of age or older.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department received one comment:

Comment: A commenter stated that providing for the 2009 editions of NFPA 5000 as "acceptable alternative model code sets" in proposed Subchapter F, §34.607(b)(3) would only create confusion in the regulatory industry, since NFPA 5000 is not recognized by Texas as an acceptable construction code. The commenter stated that Chapter 214 of the Local Government Code recognizes the International Residential Code (§214.212) and the International Building Code (§214.216) as municipal construction codes in the incorporated areas and the extraterritorial jurisdiction areas of municipalities; and that Chapter 233 of the Local Government Code recognizes the International Residential Code (§233.153) as the construction code for residential construction in unincorporated areas of a county. The commenter requested that the reference to NFPA 5000 be removed.

Agency Response: The Department concurs with the commenter's request and has deleted the reference to NFPA 5000.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION.

For: None.

For with changes: Building Officials Association of Texas.

Against: None.

SUBCHAPTER E. FIRE EXTINGUISHER AND INSTALLATION

28 TAC §§34.507, 34.510, 34.515

STATUTORY AUTHORITY. The sections are adopted pursuant to the Government Code §417.004 and §417.005; the Occupations Code §2154.052; and the Insurance Code §§6001.051, 6001.052, 6001.201, 6002.051, 6002.052, 6002.201, 6003.051, 6003.052, 6003.054, 6003.201, and 36.001.

The Government Code §417.004 specifies that the Commissioner of Insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection.

The Government Code §417.005 specifies that the Commissioner of Insurance may, after consulting with the State Fire Marshal, adopt necessary rules to guide the State Fire Marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the Commissioner of Insurance.

The Occupations Code §2154.052(b) specifies that the Commissioner shall adopt and the State Fire Marshal shall administer rules the Commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating: (i) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state; (ii) the conduct of public fireworks displays; and (iii) the safe storage of Fireworks 1.3G and Fireworks 1.4G.

The Occupations Code §2154.052(c) specifies that the Commissioner shall adopt rules for applications for licenses and permits.

The Insurance Code §6001.051(a) specifies that the Department shall administer the Insurance Code Chapter 6001. The Insurance Code §6001.051(b) specifies that the Commissioner may issue rules the Commissioner considers necessary to administer Chapter 6001 through the State Fire Marshal.

The Insurance Code §6001.052(a) specifies that in adopting necessary rules, the Commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. The Insurance Code §6001.052(b) specifies that the Commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. The Insurance Code §6001.052(c) specifies that the Commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

The Insurance Code §6001.201(c) specifies (i) that the Commissioner by rule may adopt a system under which registration certificates, licenses, and permits expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate, license, or permit is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate, license, or permit pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate, license, or permit is valid; and (iii) that on each subsequent renewal, the total renewal fee is payable.

The Insurance Code §6002.051(a) specifies that the Department shall administer Chapter 6002. The Insurance Code §6002.051(b) specifies that the Commissioner may adopt rules as necessary to administer Chapter 6002, including rules the Commissioner considers necessary to administer Chapter 6002 through the State Fire Marshal.

The Insurance Code §6002.052(a) specifies that in adopting necessary rules, the Commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. The Insurance Code §6002.052(b) specifies that under rules adopted under Section 6002.051, the Department may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. The Insurance Code §6002.052(c) specifies that the Commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter, and that in adopting standards, the Commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

The Insurance Code §6002.201(b) specifies that: (i) the Commissioner by rule may adopt a system under which registration certificates and licenses expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate or license is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate or license pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate or license is valid; and (iii) that the total renewal fee is payable on renewal on the new expiration date.

The Insurance Code §6003.051(a) specifies that the Department shall administer Chapter 6003. The Insurance Code §6003.051(b) specifies that the Commissioner may issues rules necessary to administer Chapter 6003 through the State Fire Marshal.

The Insurance Code §6003.052(a) specifies that in adopting necessary rules, the Commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers.

The Insurance Code §6003.054(a) specifies that the Commissioner may delegate authority to exercise all or part of the Commissioner's functions, powers, and duties under Chapter 6003, including the issuance of licenses and registration certificates, to the State Fire Marshal. Section 6003.054(a) further specifies that the State Fire Marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

The Insurance Code §6003.201(c) specifies that (i) the Commissioner by rule may adopt a system under which registration certificates and licenses expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate or license is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate or license pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate or license is valid; and that (iii) on renewal on the new expiration date, the total renewal fee is payable.

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 June 15, 2011.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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SUBCHAPTER F. FIRE ALARM RULES

28 TAC §§34.601 - 34.607, 34.610 - 34.616, 34.625, 34.627, 34.628, 34.630

STATUTORY AUTHORITY. The sections are adopted pursuant to the Government Code §417.004 and §417.005; the Occupations Code §2154.052; and the Insurance Code §§6001.051, 6001.052, 6001.201, 6002.051, 6002.052, 6002.201, 6003.051, 6003.052, 6003.054, 6003.201, and 36.001.

The Government Code §417.004 specifies that the Commissioner of Insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection.

The Government Code §417.005 specifies that the Commissioner of Insurance may, after consulting with the State Fire Marshal, adopt necessary rules to guide the State Fire Marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the Commissioner of Insurance.

The Occupations Code §2154.052(b) specifies that the Commissioner shall adopt and the State Fire Marshal shall administer rules the Commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating: (i) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state; (ii) the conduct of public fireworks displays; and (iii) the safe storage of Fireworks 1.3G and Fireworks 1.4G.

The Occupations Code §2154.052(c) specifies that the Commissioner shall adopt rules for applications for licenses and permits.

The Insurance Code §6001.051(a) specifies that the Department shall administer the Insurance Code Chapter 6001. The Insurance Code §6001.051(b) specifies that the Commissioner may issue rules the Commissioner considers necessary to administer Chapter 6001 through the State Fire Marshal.

The Insurance Code §6001.052(a) specifies that in adopting necessary rules, the Commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. The Insurance Code §6001.052(b) specifies that the Commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. The Insurance Code §6001.052(c) specifies that the Commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

The Insurance Code §6001.201(c) specifies (i) that the Commissioner by rule may adopt a system under which registration certificates, licenses, and permits expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate, license, or permit is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate, license, or permit pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate, license, or permit is valid; and (iii) that on each subsequent renewal, the total renewal fee is payable.

The Insurance Code §6002.051(a) specifies that the Department shall administer Chapter 6002. The Insurance Code §6002.051(b) specifies that the Commissioner may adopt rules as necessary to administer Chapter 6002, including rules the Commissioner considers necessary to administer Chapter 6002 through the State Fire Marshal.

The Insurance Code §6002.052(a) specifies that in adopting necessary rules, the Commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. The Insurance Code §6002.052(b) specifies that under rules adopted under Section 6002.051, the Department may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. The Insurance Code §6002.052(c) specifies that the Commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter, and that in adopting standards, the Commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

The Insurance Code §6002.201(b) specifies that: (i) the Commissioner by rule may adopt a system under which registration certificates and licenses expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate or license is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate or license pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate or license is valid; and (iii) that the total renewal fee is payable on renewal on the new expiration date.

The Insurance Code §6003.051(a) specifies that the Department shall administer Chapter 6003. The Insurance Code §6003.051(b) specifies that the Commissioner may issues rules necessary to administer Chapter 6003 through the State Fire Marshal.

The Insurance Code §6003.052(a) specifies that in adopting necessary rules, the Commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers.

The Insurance Code §6003.054(a) specifies that the Commissioner may delegate authority to exercise all or part of the Commissioner's functions, powers, and duties under Chapter 6003, including the issuance of licenses and registration certificates, to the State Fire Marshal Section 6003.054(a) further specifies that the State Fire Marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

The Insurance Code §6003.201(c) specifies that (i) the Commissioner by rule may adopt a system under which registration certificates and licenses expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate or license is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate or license pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate or license is valid; and that (iii) on renewal on the new expiration date, the total renewal fee is payable.

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.

§34.607. Adopted Standards.

(a) The commissioner adopts by reference those sections of the following copyrighted minimum standards, recommendations, and appendices concerning fire alarm, fire detection, or supervisory services or systems, except to the extent they are at variance to sections of this subchapter, the Insurance Code Chapter 6002, or other state statutes. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts. A copy of the standards shall be kept available for public inspection at the State Fire Marshal's Office.

(1) NFPA 11-2005, Standard for Low-, Medium-, and High-Expansion Foam.

(2) NFPA 12-2008, Standard on Carbon Dioxide Extinguishing Systems.

(3) NFPA 12A-2009, Standard on Halon 1301 Fire Extinguishing Systems.

(4) NFPA 13-2007, Standard for the Installation of Sprinkler Systems.

(5) NFPA 13D-2007, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.

(6) NFPA 13R-2007, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.

(7) NFPA 15-2007, Standard for Water Spray Fixed Systems for Fire Protection.

(8) NFPA 16-2007, Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems.

(9) NFPA 17-2009, Standard for Dry Chemical Extinguishing Systems.

(10) NFPA 17A-2009, Standard for Wet Chemical Extinguishing Systems.

(11) NFPA 25-2008, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems.

(12) NFPA 70-2008, National Electrical Code.

(13) NFPA 72-2007, National Fire Alarm Code.

(14) NFPA 90A-2009, Standard for the Installation of Air Conditioning and Ventilating Systems.

(15) NFPA 101®-2009, or later editions, Code for Safety to Life from Fire in Buildings and Structures (Life Safety Code)®, or a local jurisdiction may adopt one set of the model codes listed in subsection (b) of this section in lieu of NFPA 101.

(16) UL 827 October 1, 1996, Standard for Central Station Alarm Services.

(17) NFPA 2001-2008, Standard on Clean Agent Fire Extinguisher Systems.

(b) The acceptable alternative model code sets are:

(1) the International Building Code®-2003 or later editions, and the International Fire Code-2003 or later editions; or

(2) the International Residential Code® for One- and Two-Family Dwellings-2003 or later editions.

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 June 15, 2011.

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Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327

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SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §§34.707, 34.711, 34.714

STATUTORY AUTHORITY. The sections are adopted pursuant to the Government Code §417.004 and §417.005; the Occupations Code §2154.052; and the Insurance Code §§6001.051, 6001.052, 6001.201, 6002.051, 6002.052, 6002.201, 6003.051, 6003.052, 6003.054, 6003.201, and 36.001.

The Government Code §417.004 specifies that the Commissioner of Insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection.

The Government Code §417.005 specifies that the Commissioner of Insurance may, after consulting with the State Fire Marshal, adopt necessary rules to guide the State Fire Marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the Commissioner of Insurance.

The Occupations Code §2154.052(b) specifies that the Commissioner shall adopt and the State Fire Marshal shall administer rules the Commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating: (i) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state; (ii) the conduct of public fireworks displays; and (iii) the safe storage of Fireworks 1.3G and Fireworks 1.4G.

The Occupations Code §2154.052(c) specifies that the Commissioner shall adopt rules for applications for licenses and permits.

The Insurance Code §6001.051(a) specifies that the Department shall administer the Insurance Code Chapter 6001. The Insurance Code §6001.051(b) specifies that the Commissioner may issue rules the Commissioner considers necessary to administer Chapter 6001 through the State Fire Marshal.

The Insurance Code §6001.052(a) specifies that in adopting necessary rules, the Commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. The Insurance Code §6001.052(b) specifies that the Commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. The Insurance Code §6001.052(c) specifies that the Commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

The Insurance Code §6001.201(c) specifies (i) that the Commissioner by rule may adopt a system under which registration certificates, licenses, and permits expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate, license, or permit is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate, license, or permit pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate, license, or permit is valid; and (iii) that on each subsequent renewal, the total renewal fee is payable.

The Insurance Code §6002.051(a) specifies that the Department shall administer Chapter 6002. The Insurance Code §6002.051(b) specifies that the Commissioner may adopt rules as necessary to administer Chapter 6002, including rules the Commissioner considers necessary to administer Chapter 6002 through the State Fire Marshal.

The Insurance Code §6002.052(a) specifies that in adopting necessary rules, the Commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. The Insurance Code §6002.052(b) specifies that under rules adopted under Section 6002.051, the Department may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining

fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. The Insurance Code §6002.052(c) specifies that the Commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter, and that in adopting standards, the Commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

The Insurance Code §6002.201(b) specifies that: (i) the Commissioner by rule may adopt a system under which registration certificates and licenses expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate or license is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate or license pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate or license is valid; and (iii) that the total renewal fee is payable on renewal on the new expiration date.

The Insurance Code §6003.051(a) specifies that the Department shall administer Chapter 6003. The Insurance Code §6003.051(b) specifies that the Commissioner may issues rules necessary to administer Chapter 6003 through the State Fire Marshal.

The Insurance Code §6003.052(a) specifies that in adopting necessary rules, the Commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers.

The Insurance Code §6003.054(a) specifies that the Commissioner may delegate authority to exercise all or part of the Commissioner's functions, powers, and duties under Chapter 6003, including the issuance of licenses and registration certificates, to the State Fire Marshal Section 6003.054(a) further specifies that the State Fire Marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

The Insurance Code §6003.201(c) specifies that (i) the Commissioner by rule may adopt a system under which registration certificates and licenses expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate or license is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate or license pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate or license is valid; and that (iii) on renewal on the new expiration date, the total renewal fee is payable.

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 June 15, 2011.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §§34.808, 34.810, 34.817

STATUTORY AUTHORITY. The sections are adopted pursuant to the Government Code §417.004 and §417.005; the Occupations Code §2154.052; and the Insurance Code §§6001.051, 6001.052, 6001.201, 6002.051, 6002.052, 6002.201, 6003.051, 6003.052, 6003.054, 6003.201, and 36.001.

The Government Code §417.004 specifies that the Commissioner of Insurance shall perform the rulemaking functions previously performed by the Texas Commission on Fire Protection.

The Government Code §417.005 specifies that the Commissioner of Insurance may, after consulting with the State Fire Marshal, adopt necessary rules to guide the State Fire Marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the Commissioner of Insurance.

The Occupations Code §2154.052(b) specifies that the Commissioner shall adopt and the State Fire Marshal shall administer rules the Commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating: (i) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state; (ii) the conduct of public fireworks displays; and (iii) the safe storage of Fireworks 1.3G and Fireworks 1.4G.

The Occupations Code §2154.052(c) specifies that the Commissioner shall adopt rules for applications for licenses and permits.

The Insurance Code §6001.051(a) specifies that the Department shall administer the Insurance Code Chapter 6001. The Insurance Code §6001.051(b) specifies that the Commissioner may issue rules the Commissioner considers necessary to administer Chapter 6001 through the State Fire Marshal.

The Insurance Code §6001.052(a) specifies that in adopting necessary rules, the Commissioner may use recognized

standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. The Insurance Code §6001.052(b) specifies that the Commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. The Insurance Code §6001.052(c) specifies that the Commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

The Insurance Code §6001.201(c) specifies (i) that the Commissioner by rule may adopt a system under which registration certificates, licenses, and permits expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate, license, or permit is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate, license, or permit pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate, license, or permit is valid; and (iii) that on each subsequent renewal, the total renewal fee is payable.

The Insurance Code §6002.051(a) specifies that the Department shall administer Chapter 6002. The Insurance Code §6002.051(b) specifies that the Commissioner may adopt rules as necessary to administer Chapter 6002, including rules the Commissioner considers necessary to administer Chapter 6002 through the State Fire Marshal.

The Insurance Code §6002.052(a) specifies that in adopting necessary rules, the Commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. The Insurance Code §6002.052(b) specifies that under rules adopted under Section 6002.051, the Department may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. The Insurance Code §6002.052(c) specifies that the Commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter, and that in adopting standards, the Commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

The Insurance Code §6002.201(b) specifies that: (i) the Commissioner by rule may adopt a system under which registration certificates and licenses expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate or license is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate or license pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate or license is valid; and (iii) that the total renewal fee is payable on renewal on the new expiration date.

The Insurance Code §6003.051(a) specifies that the Department shall administer Chapter 6003. The Insurance Code §6003.051(b) specifies that the Commissioner may issues rules necessary to administer Chapter 6003 through the State Fire Marshal.

The Insurance Code §6003.052(a) specifies that in adopting necessary rules, the Commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers.

The Insurance Code §6003.054(a) specifies that the Commissioner may delegate authority to exercise all or part of the Commissioner's functions, powers, and duties under Chapter 6003, including the issuance of licenses and registration certificates, to the State Fire Marshal Section 6003.054(a) further specifies that the State Fire Marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

The Insurance Code §6003.201(c) specifies that (i) the Commissioner by rule may adopt a system under which registration certificates and licenses expire on various dates during the year; (ii) that for the year in which an expiration date of a registration certificate or license is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate or license pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate or license is valid; and that (iii) on renewal on the new expiration date, the total renewal fee is payable.

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.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER I. MEDICAL BILL REPORTING

28 TAC §§134.800 - 134.808

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §134.802 of this title (relating to Definitions) and new §§134.800, 134.801, and 134.803 - 134.808 of this title (relating to Applicability, Purpose, Reporting Standards, Reporting Requirements, Records Required to be Reported, Records Excluded from Reporting, State Specific Requirements, and Insurance Carrier EDI Compliance Coordinator and Trading Partners, respectively). These amendments and new sections are adopted with changes to the proposed text published in the January 28, 2011, issue of the *Texas Register* (36 TexReg 394).

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for these sections is set out in this order, which includes the preamble, which in turn includes the sections. The preamble contains a summary of the factual basis of the sections, description of how the sections will function, summary of comments received from interested parties, names of those groups and associations who commented and whether they support or are in opposition to the adoption of these sections, and the reasons why the Division agrees or disagrees with the comments and recommendations.

The Division has changed some of the proposed language in the adopted rules in response to public comments received. The Division has also made some changes to the text of the adopted rules for clarification and editorial reasons. These changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

A public hearing was held and the public comment period closed on February 28, 2011. The Division received 22 public comments and has incorporated several recommendations by system participants.

Vernon's Annotated Civil Statutes Art. 8308-8.01(b), (c), and (h) and Art. 8308-8.04 were codified by H.B. 752, enacted by the 73rd Legislature, Regular Session, and effective September 1, 1993 as Labor Code §413.007 and §413.008. These adopted amendments and new sections are intended to implement legislative requirements in Labor Code §413.007 and §413.008.

Labor Code §413.007 requires the Division to maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by the Commissioner in adopting medical policies and fee guidelines and the Division in administering the medical policies, fee guidelines, or sections. In accordance with Labor Code §413.007, the Division shall also ensure that the data base contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols and can be used in a meaningful way to allow the Division to control medical costs as provided by Labor Code, Title 5, Subtitle A, the Texas Workers' Compensation Act (Act). Labor Code §413.007 further requires the Division to ensure that this data base of medical charges, actual payments, and treatment protocols is available for public access at a reasonable fee. This statute specifically provides that the identities of injured employees and beneficiaries may not be disclosed. Finally, this statute requires the Division to take appropriate action to be aware of and to maintain the most current information on developments in the treatment and cure of injuries and diseases common in workers' compensation cases.

Labor Code §413.008 provides that on request from the Division for specific information, an insurance carrier shall provide to the Division any information in the insurance carrier's possession, custody, or control that reasonably relates to the Division's duties under the Act and to health care treatment, services, fees, and charges. An insurance carrier commits an administrative violation if the insurance carrier fails or refuses to comply with a request or violates a rule adopted to implement this statute.

The Legislature in Labor Code §§402.00111, 402.00128(b)(12), and 402.061 has given the Commissioner rulemaking authority to promulgate rules to regulate the workers' compensation system and enforce the Act. The Division interprets this grant of rulemaking authority to include the authority to adopt rules to implement the legislative directives in Labor Code §413.007 and §413.008. Due to the breadth of the coverage in the Act and the myriad of complex regulatory issues facing the Division, such rulemaking authority is inherently broad. This delegation of authority to the Commissioner allows for the regulatory flexibility necessary to fulfill the Commissioner's statutorily imposed duties of adopting rules as necessary to fully implement the Act while meeting the changing demands facing the workers' compensation system in Texas.

These adopted rules are intended to fulfill the legislative objectives in Labor Code §413.007 and §413.008. The adopted rules are necessary in order to allow the Division to more effectively gather information required by Labor Code §413.007 to be in the data base and to use that information for the purposes set out in that statute. These rules set out the reporting requirements in a clear manner and will improve insurance carrier understanding of the requirements associated with reporting medical charge and payment data in accordance with the statutory requirements of Labor Code §413.007 and §413.008. The adopted rules align with existing data reporting requirements with minimal changes to the current technical infrastructure associated with medical electronic data interchange (EDI) reporting.

These adopted rules fulfill the legislative directives in Labor Code §413.007 because these adopted rules require insurance carriers to submit to the Division information in the insurance carrier's possession that relates to medical charges, actual payments, and treatment protocols that occur in the Texas workers' compensation system. Specifically, these adopted rules adopt for

use in insurance carrier reporting of medical EDI records to the Division the *IAIABC EDI Implementation Guide for Medical Bill Payment Records,* Release 1.0, dated July 4, 2002 (IAIABC EDI Implementation Guide). This implementation guide was developed by the IAIABC as an EDI standard available for use by the states in their collection of medical charge and payment data in their workers' compensation systems, and this guide establishes data elements that relate to medical charges, payment data, and treatment. This guide is currently used by the Division and insurance carriers in the Texas workers' compensation system for medical charge and payment information reporting.

The tables published by the Division and adopted by these rules set out the data elements in the IAIABC EDI Implementation Guide that are required to be submitted in a record and what edits the Division will apply to a submitted record. As stated, Labor Code §413.007 requires the data base to contain information regarding medical charges, actual payments and treatment protocols that may be used by the Commissioner in adopting the medical policies and fee guidelines, and the Division in administering the medical policies, fee guidelines, or rules. The Division is also required by this statute to ensure that the data base contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols and can be used in a meaningful way to allow the Division to control medical costs as provided by the Act. In accordance with Labor Code §413.007, these adopted rules therefore require insurance carriers to report to the Division the information that is directly related to the information Labor Code §413.007 requires to be in the data base. For example, these adopted rules require insurance carriers to report to the Division information relating to the employee receiving the health care services, information relating to the health care provider and the amount charged by the health care provider for providing the services, and information relating to the insurance carrier's action on the medical bill, including the amount paid on the bill, if any. This is information Labor Code §413.007 requires to be in the data base and is information that is directly relevant to the Commissioner in adopting medical policies and fee guidelines, and to the Division in administering the medical policies, fee guidelines, or rules.

Further, these adopted rules fulfill the legislative directive in Labor Code §413.007 because these rules require an insurance carrier to submit a medical EDI record to the Division each time the insurance carrier pays a medical bill, reduces or denies payment for a medical bill, receives a refund for a medical bill, or discovers that a submitted record should not have been submitted to the Division and the record had previously been accepted by the Division. These adopted rules also establish the time period in which the insurance carrier is required to submit each record. Requirements establishing the events that trigger the reporting requirement and the deadline for submitting the records helps ensure that the data base required by Labor Code §413.007 contains continuous and up-to-date information regarding medical charges, actual payments, and treatment protocols. A data base with the continuous and up-to-date data required by these rules will assist the Division in ensuring, as required by Labor Code §413.007(b), that the data base will contain the information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols and can be used in a meaningful way to allow the Division to control medical costs.

These adopted rules also fulfill the purposes of Labor Code §413.007 because these rules require insurance carriers to submit to the Division accurate data in a medical EDI record. The accuracy of the data impacts whether or not individual records can be used for the purposes in Labor Code §413.007. These rules also define when a medical EDI record will be considered accurately submitted. Further, these adopted rules require insurance carriers to correct data that was inaccurately submitted and establishes the time period in which inaccurate medical EDI records must be corrected. Imposing requirements relating to data accuracy helps ensure the quality and integrity of the data in the data base. The availability of quality data will better able the Commissioner in adopting medical policies and fee guidelines and the Division in administering the medical policies, fee guidelines, or rules. The availability of quality data will also better assist the Division in detecting practices and patterns in medical charges, actual payments, and treatment protocols and using the data base in a meaningful way to allow the Division to control medical costs. In addition, quality data will help ensure that analyses performed by external entities, including the Workers' Compensation Research Institute, will be useful in making recommendations for policy or system enhancements and changes.

In response to public comments on the published proposal and to clarify the sections, the Division has adopted the following changes to the text: (1) Sections 134.800 - 134.808 by providing an effective date of September 1, 2011 for each rule; (2) Section 134.803 by correcting edits for DN524, DN559, DN576, DN726, and DN728 in the *Texas EDI Medical Data Element Edit Table;* modifying the mandatory trigger for DN553, DN554, and DN577 in the *Texas EDI Medical Data Element Requirement Table;* providing for the use of the 'W3' service adjustment reason code in the *Texas EDI Medical Difference Table* and making corresponding modifications to the mandatory trigger for DN731, DN732, and DN733 in the *Texas EDI Medical Data Element Requirement Table;* and modifying the publication date of all the tables adopted by reference in this section; (3) Section 134.804 by adding text to this section regarding the use of the 'W3' service adjustment reason code for payment actions in response to requests for reconsideration or appeal; and (4) Section 134.807 by striking subsection (f)(3)(D) from this section and relettering the subsequent subparagraphs in this section.

Adopted §134.800 provides that this subchapter applies to all insurance carriers as defined in Labor Code §401.011(27), including insurance carriers that have contracted with or established a workers' compensation health care network as defined in Labor Code §401.011(31-a) and insurance carriers that provide medical benefits in a manner authorized by Labor Code §504.053(b)(2) which relates to political subdivisions or a pool. This section requires all insurance carriers to report information prescribed by the Commissioner to the Division for each medical bill on a workers' compensation claim. Labor Code §504.053(d)(7) provides that if the political subdivision or pool provides medical benefits in the manner authorized under subsection (b)(2) of that section, then the political subdivision or pool shall continue to report data to the appropriate agency as required by Labor Code, Title 5 and Insurance Code, Chapter 1305. Insurance Code, §1305.154(c)(8) pertains to workers' compensation health care networks. This section is effective September 1, 2011.

Adopted §134.801 sets forth the purpose of this subchapter which is to prescribe the reporting requirements for medical state reporting and to adopt by reference the implementation guide and specifications necessary for successful EDI transmission of this data. This section is effective September 1, 2011.

Adopted §134.802 provides definitions for specific terms used in this subchapter related to medical EDI reporting. This section is effective September 1, 2011.

Adopted §134.803 adopts by reference the *IAIABC EDI Implementation Guide for Medical Bill Payment Records,* Release 1.0, dated July 4, 2002 (IAIABC EDI Implementation Guide) and clarifies that exceptions are included in this subchapter. Adopted §134.803 also adopts by reference three different tables published by the Division that must be used in conjunction with the IAIABC EDI Implementation Guide in order to successfully transmit medical EDI records to the Division. The *Texas EDI Medical Data Element Requirement Table* sets out whether a data element is mandatory, conditional, optional, or not applicable. This table also defines the mandatory trigger for conditional data elements. The *Texas EDI Medical Data Element Edit Table* sets out the edits the Division will set for each data element. The *Texas EDI Medical Difference Table* sets out the technical differences from the IAIABC EDI Implementation Guide. This section is effective September 1, 2011.

Adopted §134.804 sets forth the Division's reporting requirements for original, cancellation, and replacement medical EDI records. Subsection (d) of this section requires insurance carriers to submit medical EDI records that accurately reflect the information contained on the medical bill and the action the insurance carrier took on the medical bill. Specifically, this subsection sets out three requirements that must be met in order for a record to be considered accurately submitted. A record is accurately submitted when the record (1) received an Application Acknowledgement Code of accepted; (2) where applicable, contained the same data as the source medical bill and explanation of benefits (EOB); and (3) to the extent supported by the format, contained all appropriate modifiers, code qualifiers, and data elements necessary to identify healthcare services, charges and payments. Subsection (e) of this section requires insurance carriers to correct and resubmit rejected medical EDI records within 30 days of the action that triggered the reporting requirement. This section is effective September 1, 2011.

Adopted §134.805 sets forth the triggering events that require an insurance carrier to submit a medical EDI record. This section also establishes two situations where a medical EDI record will not be considered received by the Division regardless of an Application Acknowledgment Code returned in an acknowledgement. Subsection (b)(1) of this section states that a record will not be considered received if it contains data which does not accurately reflect the code values used or actions taken when the insurance carrier processed the medical bill. For example, a submitted record that contains a service adjustment reason code that does not accurately reflect the action taken by the insurance carrier will not be considered received by the Division. Subsection (b)(2) of this section states that a record will not be considered received if it fails to contain a conditional data element and the mandatory trigger condition existed at the time the insurance carrier processed the medical bill. This section also requires insurance carriers to correct and resubmit rejected records except in situations where the health care provider included an invalid service or procedure code on the medical bill. This section is effective September 1, 2011.

Adopted §134.806 identifies the types of records that are not to be reported under this subchapter. This adopted section also states that insurance carriers shall not report interest and penalty payments paid on health care services, medical cost containment expenses, medical bill review expenses, or data transmission expenses. This section is effective September 1, 2011.

Adopted §134.807 identifies Texas specific technical and formatting requirements related to the submission of medical EDI transmissions, including pharmacy medical EDI records, reported to the Division. This section is effective September 1, 2011.

Adopted §134.808 allows insurance carriers to submit medical EDI records directly to the Division or through the use of identified trading partners. The section also sets forth the requirements for insurance carriers to designate an EDI compliance coordinator to serve as the central compliance control contact for data reporting, establishes notification requirements for insurance carriers and trading partners, and outlines the requirements related to testing before an insurance carrier or trading partner will be approved for production submissions. In addition, this section explicitly states that insurance carriers are responsible for the acts or omissions of their trading partners. An insurance carrier commits an administrative violation if its trading partner fails to timely or accurately submit medical EDI records for the insurance carrier. This section is effective September 1, 2011.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE TO COMMENTS.

General: A commenter requests that the Division have an EDI work group, appoint a Workers' Compensation Data Collection Advisory Committee, or hold a stakeholder meeting in the near future or after the current legislative session to discuss Texas-specific reporting requirements so that Division staff and insurance carrier representatives can discuss the need for submission of data elements that are specific to the Texas system.

Agency Response: The Division disagrees that additional input is necessary prior to adopting these rules. During the course of this rulemaking initiative the Division sought and received valuable feedback from its stakeholders on required data elements through posting an informal working draft and formal proposal for public comment, and holding a public hearing on the formal posting on February 28, 2011. For the purpose of these adopted rules the Division has received the public input necessary to move forward and adopt these rules. In future rule making efforts affecting EDI data submissions the Division will continue to seek stakeholder input on such efforts and will consider the requestor's suggestion to form an EDI workgroup.

General: A commenter requests that the Division either adopt other payers' procedures that require documentation only if audited or aberrant billing or certain episode limitations are met or provide a method to attach scanned documentation with the claims submitted.

Agency Response: The Division notes that this comment concerns requirements in §133.210 of this title (relating to Medical Documentation) and the Division's eBilling sections. This comment is outside the scope of this rule initiative. The scope of these sections relate to medical EDI reporting by insurance carriers and do not add or reduce any documentation requirements associated with health care provider submission of medical bills.

General: Commenters recommend that the Division suspend rulemaking activities on medical state reporting until sometime after the current legislative session. Commenters opine that pending legislation may impact various components of the rules.

Agency Response: The Division disagrees. The 82nd Legislature, Regular Session, ended on May 30, 2011. No bill passed by the legislature during this regular session would impact med-

ical EDI reporting by insurance carriers in a way to require the Division to suspend these rulemaking activities. Further, no legislation pending in the current special session will impact medical EDI reporting by insurance carriers.

General: A commenter recommends a central reporting site handling pharmacy reporting for all insurance carriers rather than reporting individually.

Agency Response: The Division disagrees because designating a single entity to handle pharmacy reporting for all insurance carriers would require a significant amount of time and resources to study whether such an entity with the capability of reporting pharmacy data only for all insurance carriers in the Texas workers' compensation system currently exists or could be implemented effectively. Implementing such a system will require significant research and discussion with industry stakeholders. Attempting to implement such a system now in lieu of these adopted rules would delay the Division from achieving the legislative directives in Labor Code §413.007. The Division clarifies that the adopted rules require insurance carriers to submit medical EDI transactions to the Division or the Division's data collection agent which is a central reporting site.

§134.800(b): Commenters request that the Division modify the effective date of the rules to a later date. Commenters suggest a bifurcated approach with notice requirements becoming effective on the proposed date and the technical requirements becoming effective on a later date such as April 1, 2012. Commenters provide various reasons for the extension, primarily due to other regulatory changes, and suggest dates ranging from six months after adoption through September 1, 2012.

Agency Response: The Division agrees that some stakeholders may need additional time to implement the system changes necessary to comply with these adopted rules. The Division has therefore provided in each section an effective date of September 1, 2011, which will provide stakeholders sufficient time to make the system changes outlined in the adopted rules while ensuring that the standards for reporting medical EDI records to the Division are aligned with the changes made to the newly adopted medical billing rules which are effective on August 1, 2011. The new effective date will also ensure that there is no delay in the Division's collection of medical state reporting data.

§134.801: A commenter requests that the Division remove the reference to "medical charges" and "actual payments" from the purpose. Commenter raises concerns that this language may result in the release of information that may conflict with confidentiality requirements contained in certain payment contracts.

Agency Response: The Division disagrees. Labor Code §413.007(a) requires the Division to maintain a statewide data base of "medical charges, actual payments, and treatment protocols" that may be used by the Commissioner in adopting the medical policies and fee guidelines and the Division in administering the medical policies, fee guidelines, or rules. Labor Code §413.007(b) states that the Division shall ensure that this data base contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols and can be used in a meaningful way to allow the Division to control medical costs as provided by the Act. The adopted section is in compliance with these very specific statutory directives.

§134.802: A commenter requests that the Division add a definition for "federal health care facility" in order to avoid confusion among health care providers. Commenter asks if this is a reference to veteran's hospitals and military base hospitals.

Agency Response: The Division disagrees. The plain language of the phrase "federal health care facility" is sufficient to provide the stakeholders with notice of its meaning. This will include veteran's administration hospitals and military base hospitals.

§134.803(a): A commenter indicates that there is a more recent version of the *IAIABC EDI Implementation Guide for Medical Bill Payment Records* and recommends the Division adopt the recent version.

Agency Response: The Division disagrees. While the Division recognizes that the IAIABC has published a newer version of the implementation guide and is working on a subsequent version, the adopted rules are intended to minimize the potential impact on system participants. As such, the adopted rules adopt the version of the implementation guide that has already been implemented and used by the Division and system participants for the last several years.

§134.803(a): A commenter suggests the Division consider the adoption of the Batch Version 1.1 standard published by the National Council for Prescription Drug Program (NCPDP) for pharmacy reporting based on the assertion that most pharmacies are already familiar with this standard and the data content of those transactions.

Agency Response: The Division disagrees. This NCPDP standard was developed for the submission of pharmacy bills from health care providers to payers, as opposed to reporting data from payers to jurisdictions. Implementing an additional standard for medical EDI reporting would require duplication and replication of systems that have already been implemented by the Division and system participants.

§134.803(b): A commenter opposes the adoption of the three Texas-specific tables based on their deviation from the national standard. Commenter suggests that if the tables are adopted the number of deviations should be kept to a minimum.

Agency Response: The Division disagrees. It is the Division's intent for these adopted rules to reflect current reporting requirements for medical state reporting in Texas with minimal deviations from current practice. This approach will significantly reduce the impact these adopted rules will have on system participants.

Further, these tables are necessary for successful medical state reporting as required by Labor Code §413.007. The IAIABC EDI implementation guide is structured to provide the technical framework regarding the file structure, but does not define what data elements are required to be reported or which edits will be applied by an individual jurisdiction to incoming medical EDI transactions. The *Texas EDI Medical Data Element Requirement Table* sets out the usage requirements for data elements in the IAIABC EDI implementation guide, including defining the mandatory trigger for conditional data elements. The IAIABC EDI implementation guide recognizes that jurisdictions will create this table in order to define the usage requirements to meet a particular jurisdiction's requirements. This table is necessary because it identifies the data that must be included in the data base required by Labor Code §413.007. For example, this table defines as mandatory data regarding the amount billed by the health care provider and total amount paid per bill, as well as other data relating to the bill such as the affected injured employee's name and the billing health care provider. The *Texas*

EDI Medical Data Element Edit Table identifies the edits the Division will apply on each data element. This table is necessary because it will notify insurance carriers of the applicable edits and will ensure the data sent to the Division is complete and contains valid data. This table therefore will improve the quality and usefulness of the data which will enable the Division to achieve the legislative purposes under Labor Code §413.007. The *Texas EDI Medical Difference Table* outlines the technical deviations from the IAIABC implementation guide and represents the current infrastructure implemented by the Division and system participants. This table is necessary in order to allow programmers to develop the necessary systems.

§134.803(b); *Texas EDI Medical Data Element Requirement Table:* A commenter questions the purpose for requiring the Jurisdiction Claim Number and opines that this data element would not be contained on all medical bills submitted by health care providers. A commenter also asks for clarification as to whether the Jurisdiction Claim Number is a conditional data element or a mandatory data element.

Agency Response: The Division clarifies that the Jurisdiction Claim Number is a unique identifier that is necessary to appropriately match medical bill data to the workers' compensation claim. The source of this data element is from the payer and not the medical bill. The insurance carrier receives the Jurisdiction Claim Number in the acknowledgment that is sent by the Division to the insurance carrier upon acceptance of a First Report of Injury claims EDI record. The jurisdictional claim number is useful for matching medical data to the workers' compensation claim because this number does not change. The Division notes that other data elements may change with the acquisition of claims, claim transfer to a different third party administrator, payer system upgrades, data inconsistencies, or adjudication outcomes. The insurance carrier is responsible for ensuring that its agents, including trading partners, have the required data for submission in a medical EDI record. The Jurisdiction Claim Number is a conditional data element that becomes required to be submitted when the insurance carrier has received the Jurisdiction Claim Number from the Division.

§134.803(b); *Texas EDI Medical Data Element Requirement Table:* Commenters request that the Division define the term "inpatient admission" in the mandatory trigger for the "ICD-9 CM Principal Procedure Code" and the "Admitting Diagnosis Code."

Agency Response: The Division disagrees that a definition for "inpatient admission" is necessary. The plain language of this phrase gives adequate notice as to its meaning and this meaning is consistent with its meaning as it is used in Chapter 134 of this title (relating to Benefits-Guidelines for Medical Services, Charges, and Payments). Further, there should be no confusion as to this term's meaning as this term is currently used in the medical state reporting system.

§134.803(b); *Texas EDI Medical Data Element Requirement Table:* Commenters request that the Division include a reference to the appropriate data element number and name in the mandatory trigger for the "Day(s) Unit(s) Code" and "Day(s) Unit(s) Billed."

Agency Response: The Division agrees. The mandatory trigger for these data elements has been modified to reflect the appropriate data element number and name. This change will provide clarity regarding the mandatory trigger for these data elements.

§134.803(b); *Texas EDI Medical Data Element Requirement Table:* Commenters request that the Division define the term "admission" for the mandatory trigger for the "Admission Type Code." A commenter opines that the term admission applies to all inpatient and outpatient services.

Agency Response: The Division agrees that clarification is needed. The Division notes that the "Priority (Type) of Admission or Visit" is required on all paper institutional medical bills, situational on electronic institutional medical bills submitted before January 1, 2012, and required on all electronic institutional medical bills submitted on and after January 1, 2012. Based on these requirements and the new effective date of these sections, the secondary condition "and involved an admission" has been removed from the mandatory trigger.

§134.803(b); *Texas EDI Medical Data Element Requirement Table:* A commenter requests that the Division include a reference that the NCPDP number may be provided when reporting the "Rendering Bill Provider National Provider ID."

Agency Response: The Division disagrees. The Division notes that the purpose of the *Texas EDI Medical Data Element Requirement Table* is to specify the requirements associated with reporting data elements and is not intended to define the format or content of the data element. The ability to report the NCPDP number in this data element is already recorded in the *Texas EDI Medical Difference Table* and duplication in the *Texas EDI Medical Data Element Requirement Table* is unnecessary.

§134.803(b); *Texas EDI Medical Data Element Edits Table:* Commenters suggest that the "Mandatory Field Not Present" edit is not appropriate for conditional data elements.

Agency Response: The Division disagrees. When the *Texas EDI Medical Data Element Requirement Table* establishes that a data element is conditionally required and the condition contained in the mandatory trigger has been met, then the data element becomes required. This edit will reject a medical EDI record that fails to include a conditional data element where the mandatory trigger for that data element has been met. When a record is rejected for such a reason, these adopted rules will require the insurance carrier to correct and resubmit the rejected record within 30 days of the action that triggered the reporting requirement. This edit therefore prevents incomplete records from populating the data base and will put the insurance carrier on notice to submit to the Division a record that is complete. This edit is therefore necessary because it will ensure that the data base contains complete records that relate to medical charges, actual payments, and treatment protocols as required by Labor Code §413.007(a). This edit will also help the Division to ensure that the data base contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols and can be used in a meaningful way to allow the Division to control medical costs.

§134.803(b); *Texas EDI Medical Data Element Edits Table:* Commenters suggest adding additional error codes on multiple data elements.

Agency Response: The Division agrees. The *Texas EDI Medical Data Element Edits Table* was designed to reflect the edits currently contained in the existing automated system. After reviewing the data elements and error codes suggested by the commenters, the Division has modified the edit indicators because the edits are in current use today. These changes include adding "Must be a valid date" and "Must be <=Current date" to the "Procedure Date" data element and adding "Code/ID invalid" to the "Revenue Billed Code," "Revenue Paid Code," "HCPCS Line Procedure Paid Code," and "NDC Paid Code" data ele-

ments. Applying these edits will ensure that this data is valid data. If the data is not valid as determined by the edit, the record will be rejected and the insurance carrier will be required to correct and resubmit the data in the time period required by these adopted rules. These edits will therefore prevent a record containing invalid data from populating the data base and will result in insurance carriers correcting and resubmitting the data. These edits therefore ensure that data collected relating to Labor Code §413.007(a) is valid. Enforcing the requirements relating to the validity of data allows the Division to ensure that the data base contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols and can be used in a meaningful way to allow the Division to control medical costs.

The Division disagrees with adding "Must be >= Date of Injury" to the "Procedure Date" data element. Under Labor Code §408.007, the date of injury for an occupational disease is the "date on which the employee knew or should have known that the disease may be related to the employment." Accordingly, there will be certain situations where an injured employee receives medical services before the date of injury.

The Division also disagrees with adding "Code/ID invalid" to the "ADA Procedure Paid Code," "Billing Provider National Provider ID," "Rendering Bill Provider National Provider ID," and "Referring Provider National Provider ID" data elements. The Division's current technical infrastructure does not use these edits and therefore they are not necessary to achieve the purposes of Labor Code §413.007.

§134.804: A commenter asks that the Division clarify how it intends to reconcile original bills, if Requests for Reconsideration are required to be submitted as original medical bills with their own unique bill identification numbers. The commenter states that proposed language in §134.804(a) creates such a contradiction.

Agency Response: The Division agrees that clarification is necessary on how the Division intends to reconcile original bills where requests for reconsideration are required to be submitted as original bills with their own unique bill identification numbers. The Division also agrees that there is a contradiction in proposed §134.804(a) that will prevent the Division from reconciling original bills where there is a request for reconsideration. In reviewing this comment, the Division discovered that it inadvertently did not provide for the use of the 'W3' service adjustment reason code which is being used in the current medical EDI framework. Providing for the use of this code will allow the Division to associate requests for reconsideration with original medical bills. Accordingly, the Division has added language to the text of this rule, the *Texas EDI Medical Data Element Requirement Table,* and the *Texas EDI Medical Difference Table* that provides for the use of the 'W3' code.

§134.804: A commenter requests information on whether the Division accepts negative amounts in the amount paid fields or if they should not submit events associated with an insurance carrier's receipt of a refund.

Agency Response: The Division clarifies that §134.805 requires insurance carriers to submit medical EDI records when the insurance carrier "receives a refund for a medical bill..." The IAIABC EDI Implementation Guide, the Accredited Standards Committee X12 004010 standard, and the Texas implementation support the submission of negative amounts in the amount paid fields.

§134.805: A commenter recommends that the Division restructure the rules to require insurance carriers and pharmacy benefit managers to submit medical EDI records on pharmacy bills reflecting the amount paid by the sending entity. The commenter states this recommendation will recognize both the need for the Division to collect actual payments made to pharmacies and the concerns of pharmacy benefit managers about the reporting of what they consider to be proprietary data. Commenter also recommends that these rules provide a corresponding definition for "Pharmacy Benefit Manager." Commenter recognizes that the Division would need to redraft and repropose these rules to implement the commenter's suggestion.

Agency Response: This comment addresses concerns by pharmacy benefit managers with proposed §134.807(f)(3)(D) as that provision relates to the reporting of amounts pharmacy benefit managers pay pharmacies. Proposed §134.807(f)(3)(D) has not been adopted as provided in the Division's response to the comments concerning that subparagraph. Therefore, a provision requiring pharmacy benefit managers to report to the Division amounts paid to pharmacies and a definition for "pharmacy benefit manager" is not necessary.

§134.805: A commenter recommends that medical bills related to pre-1991 injuries be required to be reported. Commenter indicates that these medical bills are reimbursed under the same fee guidelines and that the Division has never excluded the reporting of these records.

Agency Response: The Division disagrees. Injuries that occurred before January 1, 1991 are governed by a different regulatory framework. Medical bills related to pre-1991 dates of injury are reimbursed under Chapter 42 of the Texas Administrative Code. Although the Division in the current medical EDI framework has not rejected medical EDI records for health care services related to pre-1991 injuries, the Division clarifies that these medical bills have never been required to be reported. These adopted rules provide that medical EDI records related to pre-1991 injuries are not to be reported.

§134.805(b): A commenter requests removing the "not considered received" language and revising the language to predicate any timeliness finding on the results of Division monitoring, audit, investigation, or analysis. Commenter notes that the language contained in this subsection may render a medical EDI record as untimely even if a subsequent correction is filed with the Division.

Agency Response: The Division disagrees. A purpose of this rule is to require insurance carriers to submit accurate data in a timely fashion. As such, a medical EDI record is not timely submitted if any inaccuracies in that record are not corrected within the 30 day period for submitting the record. This is true regardless of any subsequent correction after the 30 day deadline. The insurance carrier is ultimately responsible for sending the required data to the Division in a timely and accurate fashion. These provisions clearly state the requirements related to data accuracy and any medical EDI record that contains inaccurate data is not considered timely received. Insurance carriers possess the source data for a medical EDI report and should employ sufficient quality control activities to ensure that the data submitted to the Division, including the data sent by a trading partner, accurately reflects the information associated with the medical bill and the payment action.

§134.805(c): Commenters raise concerns about data that is rejected by the Division due to missing code values in the Divi-

sion's processing systems. Commenters reference situations that have occurred in the past, including the omission of certain National Drug Codes, which resulted in rejected records. A commenter suggested an internal validation process within the Division before records are rejected.

Agency Response: The Division disagrees. The current process used by insurance carriers and trading partners to report and correct these issues is sufficient without additional changes to the proposed language. During the month of January 2011, the Division received 386,884 medical EDI records of which 8,083 were rejected. Of the number rejected, only 15 or .0000387% were identified as resulting from code table issues similar to the situation described by the commenters. Insurance carriers that have records rejected for code table issues should follow the current procedure of notifying the TxCOMP EDI Help Desk and retain documentation regarding the issue. The insurance carrier should provide this documentation in response to an audit or other action by the Division to ensure these types of medical EDI records are excluded from the audit or action.

§134.806: A commenter requests that the denial of duplicate medical bills be listed as a record which is excluded from reporting. Commenter indicates that requiring reporting of these medical bills will add unnecessary and duplicate medical bill data to the Division's data base.

Agency Response: The Division disagrees. The Division notes that payment denials related to duplicate medical bill submission are identified by a singular claim adjustment reason code and can easily be identified when performing analysis related to medical charges and payments. However, the failure to include these payment denials would remove the ability of the Division to identify health care providers that are submitting medical bills in a manner that is contrary to the provisions contained in Chapter 133 of this title (relating to General Medical Provisions).

§134.807: A commenter recommends that the Division limit Texas-specific reporting requirements as much as possible.

Agency Response: The Division generally agrees that it should limit Texas-specific reporting requirements as much as possible. As stated before, the adopted rules limit Texas-specific reporting requirements to those reflected in the current technical implementation of medical EDI reporting in Texas with minimal modifications necessary to meet the requirements of Labor Code §413.007.

§134.807: A commenter requests the Division add two new subsections to the proposed language to allow an insurance carrier to use a contracted agent to report the data, state that the reported data is not releasable under the Public Information Act, and establish penalty provisions for the inappropriate release of data by the agent.

Agency Response: The Division disagrees. Sections governing what data is releasable and not releasable under the Public Information Act and setting penalties are not necessary because state law, including Chapter 552 of the Government Code, governs these matters. The Division notes that the adopted rules include language in §134.808 which allow an insurance carrier to use one or more external trading partners on its behalf to report medical EDI records to the Division. The Division also notes that these rules do not prohibit an insurance carrier from establishing confidentiality provisions regarding the exchange of data between the insurance carrier and its agents, including trading partners, through contractual provisions.

§134.807(a): A commenter states that the change from 500 medical EDI records contained in a file to 100 medical EDI records is a drastic change and will be difficult to implement.

Agency Response: The Division clarifies that the file size limit for a medical EDI transaction is 1.5 megabytes, not 100 medical EDI records. The limit of 100 medical EDI records applies to a single claimant hierarchical loop, not the size of the file.

§134.807(f): A commenter notes that one of the methods for submitting an electronic medical bill using the NCPDP Telecommunication Standard Implementation Guide Version 5, Release 1 (Version 5.1), dated September 1999, includes submitting only the "highest priced ingredient" when a compound medication is dispensed. Commenter notes that the NCPDP Telecommunication Standard Implementation Guide, Version D, Release 0 (Version D.0), dated August 2007, requires the multiple ingredients be reported when a compound medication is dispensed. Commenter recommends that if the Division intends on having multiple ingredients reported, the Division should postpone this requirement until January 1, 2012 when NCPDP Version D.0 will be required.

Agency Response: The Division disagrees. The Division notes that the adopted rules require a separate line for each reimbursable component of the compound medication and the compound fee as a separate service line. In situations where the NCPDP 5.1 method of submitting only the "highest priced ingredient" is used, the related medical EDI records would include one line for the only reimbursable component and one line for the compounding fee. In situations in NCPDP Version 5.1 or Version D.0 is used and the pharmacy medical bill contains multiple reimbursable components, the related medical EDI records would contain a separate line for each reimbursable component and one line for the compounding fee. For either billing scenario, the adopted rules support the proper reporting of the compound medication and delaying the effective date is therefore unnecessary.

§134.807(f)(3)(A): Commenters recommend amending this provision to provide that the total charge per bill is the total amount charged by the pharmacy, "pharmacy benefit manager or network to the carrier." A commenter recommends striking the language "pharmacy or pharmacy processing agent" and replacing the language with "from the carriers designated agent".

Agency Response: The Division disagrees. Labor Code §413.007 requires the data base to contain information concerning medical charges. "Medical charges" in Labor Code §413.007 references the amount the health care provider, which includes a pharmacy, charges the insurance carrier for the health care services. The definition of health care provider, as defined by Labor Code §401.011(22), does not include insurance carriers or their agents, including pharmacy benefit managers and networks. Further, the commenter's suggested language would allow insurance carriers to report one of three charged amounts: the pharmacy's charge, the pharmacy benefit manager's charge, or the network's charge. This would cause the data base to contain inconsistent data regarding medical charges for pharmacy services in the Texas workers' compensation system. The suggested language requiring only what the insurance carrier's agent charged the insurance carrier would cause the data base to not contain any information regarding charges by a pharmacy. Both suggestions would prevent the Division from ensuring that the data base contains information necessary to detect practices and patterns in medical charges for pharmacy services. These suggestions would also prevent

the data base from being used in a meaningful way to control pharmacy costs and to assist in the development of a pharmacy fee guideline.

§134.807(f)(3)(B): Commenters recommend that the received date of a pharmacy bill be the date the insurance carrier or "the insurance carrier's agent" received the bill.

Agency Response: The Division disagrees that the recommended language is necessary. If an insurance carrier contracts with an agent to process pharmacy bills then the received date would be when the agent received the pharmacy bill because the agent would be acting on behalf of the insurance carrier. If the bill is sent directly to the carrier then the received date would be the date the carrier actually received the bill.

§134.807(f)(3)(C): Commenters recommend including the term "or insurance carrier's agent" to this subparagraph so that the date the bill is paid by the insurer may be the date the insurance carrier or the insurance carrier's agent paid the pharmacy or the pharmacy processing agent. Commenters also recommend striking "pharmacy processing agent" from this provision. A commenter recommends changing the language to reflect that the date the bill is paid by the insurance carrier to the agent is the date that the insurance carrier paid the bill.

Agency Response: The Division disagrees. The data the Division seeks is the date the insurance carrier paid the medical bill to the pharmacy or pharmacy processing agent because a pharmacy processing agent acts on behalf of the pharmacy. This data is necessary to ensure that the insurance carrier is in compliance with applicable provisions in the Act and Division rules such as statutes and rules setting out medical bill payment timeframes. If the rule is amended to allow insurance carriers to report the date the insurance carrier paid their agent, then the data base would not contain the information necessary to allow the Division to determine whether the insurance carrier is complying with the Act and Division rules. The collection of inconsistent data is contrary to the statutory directives in Labor Code §413.007. Additionally, the Division disagrees to include the term "or insurance carrier's agent" to this subparagraph as it is not necessary. An insurance carrier's agent acts on behalf of an insurance carrier. Therefore, if an insurance carrier contracts with an agent to process pharmacy bills then the payment date would be the date the agent paid the pharmacy or the pharmacy processing agent. This situation would be true for the length of the contract between the insurance carrier and the insurance carrier's agent.

§134.807(f)(3)(D): Commenters oppose this provision because this provision will require insurance carriers to report data regarding the amount a pharmacy or pharmacy processing agent is actually paid for a prescription, compared to the amount that an insurance carrier paid a bill review agent or pharmacy benefit manager for the prescription. Commenters list the following reasons for their opposition to this provision: (1) the amount a pharmacy benefit manager pays a pharmacy is proprietary information and made confidential by their contracts with the pharmacies; (2) insurance carriers do not have possession, custody, or control of this information; (3) disclosing this information will adversely affect competition in the marketplace and destroy pharmacy benefit managers operating in Texas; (4) this data will not provide the Division with the true costs of pharmacy services; (5) requiring this data will deviate from national standards and make Texas an anomaly in the country; (6) there is no sound policy objective obtained by requiring this data; (7) requiring this data will lead to higher costs in the system and harm access to health care; and (8) other system changes are currently occurring. A commenter recommends deleting this provision. Other commenters recommend various types of edits to this provision that would authorize insurance carriers to report the actual amount paid to the pharmacy benefit manager or network. Several commenters recommend adding the term "pharmacy benefit manager" and "network" to this provision. One commenter recommended that the Division should require both payment amounts to be reported; the amount paid to a pharmacy or pharmacy processing agent and the amount paid by the insurance carrier to a bill review agent or pharmacy benefit manager.

Agency Response: The Division disagrees but does not adopt §134.807(f)(3)(D) at this time and has relettered the subsequent subparagraphs accordingly. Although the Division has the statutory authority to adopt rules requiring insurance carriers to report to the Division data related to medical charges and actual payments, the Division has determined that it will be beneficial to continue discussions with its stakeholders on this issue. There are other recently adopted Division rules, such as Chapter 133 Subchapter G rules regarding electronic medical billing and Chapter 134 Subchapter F regarding pharmaceutical benefits that will become effective at or around the same time as these adopted rules. Not adopting §134.807(f)(3)(D) will allow system participants to implement these adopted rules in a more timely manner, minimizing the need for extensions to the effective date. The implementation guide adopted by reference in adopted §134.803 will provide the definition for DN516 Total Amount Paid Per Bill, which is the definition applied in the current medical EDI reporting system.

Commenters raise various reasons for not adopting this provision; however, the Division clarifies that there exists statutory authority and a sound policy basis for requiring insurance carriers to report data regarding the amount a pharmacy benefit manager pays a pharmacy or pharmacy processing agent. Labor Code §413.007 requires the Division to maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by the Commissioner in adopting medical policies and fee guidelines and the Division in administering the medical policies, fee guidelines, or rules. This statute imposes a duty upon the Division to ensure that this data base contains accurate information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols and can be used in a meaningful way to allow the Division to control medical costs as provided by the Act.

As already stated, the legislature has given the Commissioner broad rulemaking authority to promulgate rules to regulate the workers' compensation system and enforce the Act. This rulemaking authority includes the authority to adopt rules to implement the legislative directives in Labor Code §413.007. Finally, Labor Code §413.008 provides that on request from the Division for specific information, an insurance carrier shall provide to the Division any information in the insurance carriers' possession, custody, or control that reasonably relates to the Division's duties and to health care treatment, services, fees, and charges.

Collecting data regarding the actual payments made to pharmacies and pharmacy processing agents is consistent with Labor Code §413.007 because that statute requires the data base required by that section to contain information concerning actual payments. Further, this data would greatly assist the Division in carrying out the purposes of that statute. For example, data regarding actual payments to pharmacies provides the Division with data regarding what amount pharmacies are willing to ac-

cept for payment for providing pharmaceutical services in the Texas workers' compensation system. This data would be valuable to the Division in setting reimbursement rates in a pharmacy fee guideline.

Commenters argue that data regarding the amount a pharmacy benefit manager paid a pharmacy or pharmacy processing agent is not in the insurance carrier's possession, custody, or control. The Division notes that Labor Code §408.027(b) requires, in part, the insurance carrier to pay, reduce, deny, or determine to audit the health care provider's claim not later than the 45th day after the date of receipt by the insurance carrier of the health care provider's claim. When a pharmacy submits a medical bill for reimbursement, Labor Code §408.027(b) requires the insurance carrier to process the medical bill. In light of statutory requirements placed upon insurance carriers for processing medical bills, the insurance carrier does have possession, custody, and control of information related to medical billing and reimbursement including actual amounts paid to pharmacies. Commenters cite *In re Kuntz,* 124 S.W.3d 179 (Tex. 2003) as authority for the argument that insurance carrier's do not have possession, custody, or control of this data and therefore are unable to provide this data to the Division. This case is distinguishable in light of the statutory requirements the Act places upon insurance carriers.

§134.807(f)(3)(D): Commenters recommend modifying this provision to provide that the amount paid per bill is the net amount the insurance carrier or insurance carrier's agent actually paid to the pharmacy or pharmacy processing agent. Commenters also recommend modifying this provision to provide that the amount paid to a pharmacy benefit manager or network may be reported by the insurance carrier as the amount paid per bill.

Agency Response: The Division disagrees with these recommendations because §134.807(f)(3)(D) as proposed is not adopted. Although the Division has the statutory authority to enact rules requiring insurance carriers to report data related to medical charges and actual payments to the Division, the Division has determined that it will be beneficial to continue discussions with its stakeholders on this issue as set forth previously. The Division has therefore deleted §134.807(f)(3)(D) as proposed.

§134.808: A commenter recommends that the term "Pharmacy Benefit Manager" be added to this section in the event that the Division requires a pharmacy benefit manager to report data in addition to the insurance carrier.

Agency Response: The Division disagrees as such a requirement is not included in these adopted rules.

§134.808(b): A commenter requests clarification with regard to the "centrally-located employee" and asks whether this means a person in Texas or can the person be located in any state.

Agency Response: The Division clarifies that this requirement related to the EDI Compliance Coordinator is not intended to be a geographical limitation. The Division's intent is to ensure that the person designated as the EDI Compliance Coordinator has ready access to information relating to medical EDI reporting.

§134.808(d): A commenter requests that the Division "grandfather" all existing DWC EDI-01 forms instead of requiring existing trading partners to resubmit new or revised forms. Commenter raises questions regarding which forms will be required to be submitted on or before the effective date of these rules.

Agency Response: The Division clarifies that the text of this subsection requires the information set out in this subsection be provided at least five working days before the first transaction. The Division notes that the "Trading Partner Profile" component of the DWC EDI-01 form contains the same information that will be required on the new DWC EDI-02 form. As such, existing trading partners with an up-to-date DWC EDI-01 on file with the Division will not be required to complete and submit the new DWC EDI-02 form unless there is a change to the information required to be reported.

§134.808(e): A commenter requests clarification on the requirement for trading partners to complete testing and receive Division approval for the submission of production data. Commenter asks if the testing and approval process for a trading partner is singular or must the trading partner receive Division approval for each insurance carrier it has contracted with.

Agency Response: The Division clarifies that the trading partner testing and approval process is singular.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: None

For, with changes: American Insurance Association, CompPharma, Corvel, Coventry Workers' Comp Services, Cypress Care, Healthesystems, Injured Workers' Pharmacy, Insurance Council of Texas, Medco Health Solutions, Modern Medical, myMatrixx, Pharmacy Management Services, Inc. (PMSI), Progressive Medical, Inc., Property Casualty Insurers Association of America, StrataCare, Texas Mutual Insurance Company, StoneRiver Pharmacy Solutions, United Surgical Partners.

Against: None

Neither for or Against: Texas Physical Therapy Association.

These amendments and new sections are adopted under Labor Code §§401.011(31-a), 401.011(27), 402.00111(a), 402.00128(b)(12), 402.061, 402.075(c), 405.0025(a)(5) and (b), 408.007, 408.027(b) and (e), 408.028(f), 413.007(a)-(c), 413.008(a), 413.011(a) and (d), 413.012, 413.0511, 413.0512, 413.052, 414.002, 414.004, 504.053(b)(2), 504.053(d)(7), and Insurance Code §§1305.154(c)(8), 1305.501, and 1305.502.

Labor Code §401.011(27) provides that "insurance carrier" means an insurance company; a certified self-insurer for workers' compensation insurance; a certified self-insurance group under Labor Code Chapter 407A; or a governmental entity that self-insures, either individually or collectively.

Labor Code §401.011(31-a) provides that the definition for "network" or "workers' compensation health care network" means an organization that is formed as a health care provider network to provide health care services to injured employees; certified in accordance with Insurance Code, Chapter 1305, and rules of the commissioner of insurance; and established by, or operates under contract with, an insurance carrier.

Labor Code §402.00111(a) provides that the division is administered by the commissioner of workers' compensation as provided by Labor Code, Title 5, Subchapter A. Except as otherwise provided by Labor Code, Title 5 the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Labor Code, Title 5.

Labor Code §402.00128(b)(12) provides that the commissioner or the commissioner's designee may exercise other powers and

perform other duties as necessary to implement and enforce Labor Code, Title 5.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary for the implementation and enforcement of Labor Code, Title 5, Subchapter A.

Labor Code §402.075(c) requires that at least biennially, the division shall assess the performance of insurance carriers and health care providers in meeting the key regulatory goals. Further, the division shall examine overall compliance records and dispute resolution and complaint resolution practices to identify insurance carriers and health care providers who adversely impact the workers' compensation system and who may require enhanced regulatory oversight. Additionally, the division shall conduct the assessment through analysis of data maintained by the division and through self-reporting by insurance carriers and health care providers.

Labor Code §405.0025(a)(5) requires the workers' compensation research and evaluation group to conduct professional studies and research related to the quality and cost of medical benefits. Labor Code §405.0025(b) requires the workers' compensation research and evaluation group to objectively evaluate the impact of the workers' compensation health care networks certified under Chapter 1305, Insurance Code, on the cost and the quality of medical care provided to injured employees and report the group's findings to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature not later than December 1 of each even-numbered year.

Labor Code §408.007 provides that, for purposes of Labor Code, Title 5, Subtitle A, the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.

Labor Code §408.027(b) provides, in part, that the insurance carrier must pay, reduce, deny, or determine to audit the health care provider's claim not later than the 45th day after the date of receipt by the insurance carrier of the health care provider's claim.

Labor Code §408.027(e) provides that if the insurance carrier disputes the amount of payment or the health care provider's entitlement to payment, the insurance carrier shall send to the division, the health care provider, and the injured employee a report that sufficiently explains the reasons for the reduction or denial of payment for health care services provided to the employee. The insurance carrier is entitled to a hearing as provided by Labor Code §413.031(d).

Labor Code §408.028(f) requires the commissioner to adopt a fee schedule for pharmacy and pharmaceutical services.

Labor Code §413.007(a) provides that the division shall maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by the commissioner in adopting the medical policies and fee guidelines; and the division in administering the medical policies, fee guidelines, or rules. Labor Code §413.007(b) states that the division shall ensure that the data base contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols; and can be used in a meaningful way to allow the division to control medical costs as provided by the Workers' Compensation Act. Labor Code §413.007(c) states the division shall ensure that the data base is available for public access for a reasonable fee established by the commissioner. Further, the identities of injured workers and beneficiaries may not be disclosed.

Labor Code §413.008(a) provides that on request from the division for specific information, an insurance carrier shall provide to the division any information in the insurance carrier's possession, custody, or control that reasonably relates to the division's duties under this subtitle and to health care treatment, services, fees, and charges.

Labor Code §413.011(a) states that the commissioner shall adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupation injury requirements. Additionally, to achieve standardization, the commissioner shall adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirement as necessary to meet the requirement of Labor Code §413.053.

Labor Code §413.053 requires the commissioner by rule to establish standards of reporting and billing governing both form and content.

Labor Code §413.011(d) states that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commissioner shall consider the increased security of payment afforded by Labor Code, Title 5, Subchapter A.

Labor Code §413.012 states that the medical policies and fee guidelines shall be reviewed and revised at least every two years to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable or necessary at the time the review and revision is conducted.

Labor Code §413.0511 and §413.0512 require the division's medical advisor and medical quality review panel to monitor the quality of health care and recommend appropriate actions regarding doctors, other health care providers, insurance carriers, utilization review agents, and independent review organizations.

Labor Code §413.052 provides that the commissioner by rule shall establish procedures to enable the division to compel the production of documents.

Labor Code §414.002(a) provides that the division shall monitor for compliance with commissioner rules, the Labor Code, Title 5, Subtitle A, and other laws relating to workers' compensation the conduct of persons subject the Labor Code, Title 5, Subtitle A and persons to be monitored include insurance carriers and health providers. Labor Code §414.004(a) and (b) provide that the division shall review regularly the workers' compensation records of insurance carriers as required to ensure compliance with Labor Code, Title 5, Subtitle A. Further, each insurance carrier, insurance carrier's agent, and those with whom the insurance carrier has contracted to provide, review, or monitor services under Labor Code, Title 5, Subtitle A shall cooperate with the division, make available to the division any records or

other necessary information, and allow the division access to the information at reasonable times at the person's offices.

Labor Code §504.053(b)(2) provides that a political subdivision or a pool that determines that a workers' compensation health care network certified under Insurance Code, Chapter 1305 is not available or practical for use by the political subdivision or pool, the political subdivision or pool may provide medical benefits to its injured employees or to the injured employees of the members of the pool by directly contracting with health care providers or by contracting through a health benefits pool established under Chapter 172, Local Government.

Labor Code §504.053(d)(7) provides that if the political subdivision or pool provides medical benefits in the manner authorized under subsection (b)(2) of this section, then the political subdivision or pool shall continue to report data to the appropriate agency as required by Labor Code, Title 5 and Insurance Code, Chapter 1305.

Insurance Code §1305.154(c)(8) provides that a network's contract with an insurance carrier must include a requirement that the insurance carrier, the network, any management contractor, and any third party to which the network delegates a function comply with the data reporting requirements of the Texas Workers' Compensation Act and rules of the commissioner of workers' compensation.

Insurance Code §1305.501 pertains to the evaluation of networks and provides that in accordance with the research duties assigned to the group under Chapter 405, Labor Code, the group shall, in accordance with the requirements adopted under §405.0025, Labor Code objectively evaluate the impact of the workers' compensation health care networks certified under this chapter on the costs and quality of medical care provided to injured employees and report the group's findings to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature not later than December 1 of each even-numbered year.

Insurance Code §1305.502 pertains to consumer report cards and requires the group to develop and issue an annual informational report card that meets the requirements of this section.

§134.800. Applicability.

(a) This subchapter applies to all insurance carriers as defined in Labor Code §401.011(27), including insurance carriers that have contracted with or established a workers' compensation health care network as defined in Labor Code §401.011(31-a) and insurance carriers that provide medical benefits in a manner authorized by Labor Code §504.053(b)(2). All insurance carriers are required to report information prescribed by the commissioner under Labor Code §413.007 and §413.008 for each medical bill on a workers' compensation claim.

(b) This section is effective September 1, 2011. Insurance carriers and trading partners may submit medical EDI records in accordance with this subchapter prior to this effective date.

§134.801. Purpose.

(a) The purpose of this subchapter is to prescribe the reporting requirements for information and data submitted to the division and to adopt by reference the implementation guide and specifications necessary for successful electronic data interchange transaction processing. The reporting of information and data is necessary to maintain a statewide data base of medical charges, actual payments, and treatment protocols pursuant to Labor Code §413.007 and §413.008.

(b) This section is effective September 1, 2011.

§134.802. Definitions.

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

(1) Division--The Texas Department of Insurance, Division of Workers' Compensation or its data collection agent.

(2) EDI--Electronic data interchange.

(3) Medical EDI Record--The data associated with a single medical bill which is being reported in a Medical EDI Transaction.

(4) Medical EDI Transmission--The data that is contained within the interchange envelope.

(5) Medical EDI Transaction--The data that is contained within the functional group.

(6) Person--An individual, partnership, corporation, hospital district, insurance carrier, organization, business trust, estate trust, association, limited liability company, limited liability partnership or other entity. This term does not include an injured employee.

(7) Trading Partner--A person that has entered into an agreement with the insurance carrier to format electronic data for transmission to the division, transmits electronic data to the division, and responds to any technical issues related to the contents or structure of an EDI file.

(b) This section is effective September 1, 2011.

§134.803. Reporting Standards.

(a) Except as provided in this subchapter, the commissioner adopts by reference the IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 1.0, dated July 4, 2002 (IAIABC EDI Implementation Guide) published by the International Association of Industrial Accident Boards and Commissions (IAIABC).

(b) The commissioner adopts by reference the Texas EDI Medical Data Element Requirement Table, Version 1.0, dated June 2011, the Texas EDI Medical Data Element Edits Table, Version 1.0, dated June 2011, and the Texas EDI Medical Difference Table, Version 1.0, dated June 2011. All tables are published by the division.

(c) Information on how to obtain or inspect copies of the IAIABC EDI Implementation Guide and the adopted division tables may be found on the division's website: http://www.tdi.state.tx.us/wc/indexwc.html.

(d) In the event of a conflict between the IAIABC EDI Implementation Guide and the Labor Code or division rules, the Labor Code or division rules shall prevail.

(e) This section is effective September 1, 2011.

§134.804. Reporting Requirements.

(a) Insurance carriers shall submit an '00' original medical EDI record for each action (initial processing, request for reconsideration, or subsequent orders) taken on an individual medical bill. Original medical EDI records shall be reported within 30 days after the date of the action. Each iteration of an '00' original medical EDI record must contain a different unique medical bill identification number. The amount paid on each action related to a medical bill must contain only the amount issued for that event and must not contain a cumulative amount reflecting all events related to an individual medical bill. Original medical EDI records on subsequent payment actions must contain a service adjustment reason code of 'W3' when a payment is made following a request for reconsideration or appeal and the service adjustment amount associated with this code value may be populated with zero.

(b) Insurance carriers shall submit an '01' cancel medical EDI record if the '00' original medical EDI record should not have been sent or contained the incorrect insurance carrier identification number. Cancel medical EDI records shall be reported within 30 days after the earliest date the insurance carrier discovered the reporting error. The '01' cancel medical EDI record must contain the same unique bill identification number as the '00' original medical EDI record that was previously submitted and accepted.

(c) Insurance carriers shall submit an '05' replacement medical EDI record when correcting data on a previously submitted medical EDI record. Replacement medical EDI records shall be submitted within 30 days after the earliest date the insurance carrier discovered the reporting error. The '05' replacement medical EDI record must contain the same unique bill identification number as the associated '00' original medical EDI record.

(d) Insurance carriers are responsible for the timely and accurate submission of medical EDI records. For the purpose of this section, a medical EDI record is considered to have been accurately submitted when the record:

(1) received an Application Acknowledgment Code of accepted;

(2) where applicable, contained the same data as the source medical bill and explanation of benefits; and

(3) to the extent supported by the format, contained all appropriate modifiers, code qualifiers, and data elements necessary to identify health care services, charges and payments.

(e) Insurance carriers are responsible for correcting and resubmitting rejected medical EDI records within 30 days of the action that triggered the reporting requirement. The insurance carrier's receipt of a rejection does not modify, extend or otherwise change the date the transaction is required to be reported to the division. The resubmitted medical EDI record must contain the same unique bill identification number as the previously rejected medical EDI record.

(f) This section is effective September 1, 2011.

§134.805. Records Required to be Reported.

(a) Insurance carriers shall submit medical EDI records when the insurance carrier:

(1) pays a medical bill;

(2) reduces or denies payment for a medical bill;

(3) receives a refund for a medical bill; or

(4) discovers that a medical EDI record should not have been submitted to the division and the medical EDI record had previously been accepted by the division.

(b) Regardless of the Application Acknowledgment Code returned in an acknowledgment, medical EDI records are not considered received by the division if the medical EDI record:

(1) contains data which does not accurately reflect the code values used or actions taken when the insurance carrier processed the medical bill; or

(2) fails to contain a conditional data element and the mandatory trigger condition existed at the time the insurance carrier processed the medical bill.

(c) Except in situations where the health care provider included an invalid service or procedure code on the medical bill, rejected medical EDI records are not considered received and shall be corrected and resubmitted to the division as provided in §134.804(e) of this title (relating to Reporting Requirements). Medical EDI records submitted in the test environment are not considered received and do not comply with the reporting requirements of this section.

(d) This section is effective September 1, 2011.

§134.806. Records Excluded from Reporting.

(a) Insurance carriers shall not report medical EDI records for health care services:

(1) rendered outside the United States;

(2) related to dates of injury before January 1, 1991;

(3) rendered at a Federal health care facility and the health care facility does not provide the insurance carrier with the data required to be reported;

(4) related to an injured employee's travel reimbursement as provided in §134.110 of this title (relating to Reimbursement of Injured Employee for Travel Expenses Incurred); or

(5) related to a request for reimbursement by a health care insurer in accordance with the provisions of Labor Code §409.0091.

(b) Insurance carriers shall not report interest and penalty payments paid on health care services, medical cost containment expenses, medical bill review expenses or data transmission expenses in medical EDI records.

(c) This section is effective September 1, 2011.

§134.807. State Specific Requirements.

(a) A medical EDI transmission shall not exceed a file size of 1.5 megabytes. A transaction set shall not contain more than 100 medical EDI records in a claimant hierarchical loop.

(b) Insurance carriers shall submit medical EDI transactions using Secure File Transfer Protocol (SFTP). All alphabetic characters used in the SFTP file name must be lower case and the file must be compressed/zipped. Files that do not comply with these requirements or the naming convention may be rejected and placed in appropriate failure folders. Insurance carriers must monitor these folders for file failures and make corrections in accordance with §134.804(e) of this title (relating to Reporting Requirements).

(c) SFTP files must comply with the following naming convention:

(1) Two digit alphanumeric state indicator of 'tx';

(2) Nine digit trading partner Federal Employer Identification Number (FEIN);

(3) Nine digit trading partner postal code;

(4) Nine digit insurance carrier FEIN or 'xxxxxxxxx' if the file contains medical EDI transactions from different insurance carriers;

(5) Three digit record type '837';

(6) One character Test/Production indicator ('t' or 'p');

(7) Eight digit date file sent 'CCYYMMDD';

(8) Six digit time file sent 'HHMMSS';

(9) One character standard extension delimiter of '.'; and

(10) Three digit alphanumeric standard file extension of 'zip' or 'txt'.

(d) The transaction types accepted by the division include '00' original, '01' cancel, and '05' replacement.

(e) Insurance carriers are required to use the following delimiters:

(1) Date Element Separator--'*' asterisk;

(2) Sub-element Separator--':' colon; and

(3) Segment Terminator--'~' tilde.

(f) In addition to the requirements adopted under §134.803 of this title (relating to Reporting Standards), state reporting of medical EDI transactions shall comply with the following formatting requirements:

(1) Loop 2400 Service Line Information shall not contain more than one type of service. Only one of the following data segments may be contained in an iteration of this loop: SV1 Professional Service, SV2 Institutional Service, SV3 Dental Service or SV4 Pharmacy Service.

(2) When reporting compound medications, Loop 2400 Service Line Information SV4 Pharmacy Drug Service shall include a separate line for each reimbursable component of the compound medication. The compounding fee must be reported using a default NDC number equal to '99999999999' as a separate service line.

(3) When reporting pharmacy medical EDI records, the following data element definition clarifications apply:

(A) DN501 Total Charge Per Bill is the total amount charged by the pharmacy or pharmacy processing agent;

(B) DN511 Date Insurer Received Bill is the date the insurance carrier received the bill;

(C) DN512 Date Insurer Paid Bill is the date the insurance carrier paid the pharmacy or pharmacy processing agent;

(D) DN638 Rendering Bill Provider Last/Group Name is the name of the dispensing pharmacy;

(E) DN690 Referring Provider Last/Group Name is the last name of the prescribing doctor; and

(F) DN691 Referring Provider First Name is the first name of the prescribing doctor.

(g) This section is effective September 1, 2011.

§134.808. Insurance Carrier EDI Compliance Coordinator and Trading Partners.

(a) Insurance carriers may submit medical EDI records directly to the division or may contract with an external trading partner to submit the records on the insurance carrier's behalf.

(b) Each insurance carrier, including those using external trading partners, must designate one individual to the division as the EDI Compliance Coordinator and provide the individual's name, working title, mailing address, email address, and telephone number in the form and manner prescribed by the division. The EDI Compliance Coordinator must:

(1) be a centrally-located employee of the insurance carrier who has the responsibility for EDI reporting;

(2) receive and appropriately disperse data reporting information received from the division; and

(3) serve as the central compliance control for data reporting under this subchapter.

(c) At least five working days prior to sending its first transaction to the division under this subchapter, the insurance carrier shall send a notice to the division by fax or email at TxCOMP.Help@tdi.state.tx.us. The notice shall be in the form and manner established by the division. The notice shall include the name of the insurance carrier, the insurance carrier's FEIN, the insurance carrier's TxCOMP customer number, the name of the trading partner(s) authorized to conduct medical EDI transactions on behalf of the insurance carrier, the FEIN of the trading partner(s), and the EDI Compliance Coordinator's signature. The insurance carrier shall report changes within five working days of any amendment to data sharing agreements, including the addition or removal of any trading partners. The failure to timely submit updated information may result in the rejection of medical EDI records.

(d) At least five working days prior to sending its first test transaction to the division under this subchapter, the insurance carrier or trading partner sending the medical EDI transmission shall send a notice to the division by fax or email at TxCOMP.Help@tdi.state.tx.us. The notice shall be in the form and manner established by the division. The notice shall include the entity's name, FEIN, nine-digit postal code, address, and the technical contact's name, address, phone number, and email address. The insurance carrier or trading partner shall report changes within five working days of any amendment to the information required to be reported.

(e) Insurance carriers and trading partners must successfully complete testing prior to transmitting any production data. Trading partners must receive approval to submit data for at least one insurance carrier prior to initiating the testing process. Insurance carriers and trading partners must submit each transaction type during the testing process which can be successfully processed by the division. The division will not approve an insurance carrier or trading partner for production submissions until the insurance carrier or trading partner has:

(1) successfully submitted ten percent of its anticipated monthly volume per service type, not to exceed 100 bills per service type;

(2) received and reviewed the acknowledgments generated by the division; and

(3) correctly resubmitted rejected records identified in the acknowledgments.

(f) Insurance carriers are responsible for the acts or omissions of their trading partners. The insurance carrier commits an administrative violation if the insurance carrier or its trading partner fails to timely or accurately submit medical EDI records.

(g) This section is effective September 1, 2011.

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 June 20, 2011.

TRD-201102291
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: September 1, 2011
Proposal publication date: January 28, 2011
For further information, please call: (512) 804-4703

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER B. PEACE OFFICERS

37 TAC §§97.71, 97.73, 97.75, 97.77

The Texas Youth Commission (TYC) adopts the repeal of §97.71, concerning peace officer commissioning, §97.73, concerning peace officer jurisdiction, §97.75, concerning peace officer continuum of force, and §97.77, concerning peace officer firearms management, without changes to the proposal as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2087).

During TYC's most recent rule review, as published in the October 29, 2010, issue of the *Texas Register* (35 TexReg 9747), TYC determined that the reasons for adopting Chapter 97, Subchapter B, no longer exist. The duties and responsibilities described by Subchapter B are governed by, and more appropriately addressed in, specific statutes and rules which apply to all peace officers in the State of Texas and by recently enacted portions of the Human Resources Code applicable to the TYC Office of Inspector General.

Section 97.71, concerning peace officer commissioning, is governed by Human Resources Code §61.0931 and §61.0451 relating to peace officer commissioning by the TYC Office of Inspector General; 37 TAC §217.7, relating to reporting the appointment and termination of a licensee; and 37 TAC §211.29, relating to responsibilities of agency chief administrators.

Section 97.73, concerning peace officer jurisdiction, is governed by the Code of Criminal Procedure, Articles 2.13, concerning duties and powers; 14.03, concerning authority of peace officers; and 18.06, concerning execution of warrants.

Section 97.75, concerning peace officer continuum of force, is governed by Penal Code §9.51, relating to arrest and search and use of force.

Section 97.77, concerning peace officer firearms management, is governed by Penal Code §46.02, relating to unlawful carrying of weapons; §46.03, relating to places weapons are prohibited; and §46.15, relating to the non-applicability of §46.02 and §46.03 to peace officers.

The repeals are adopted under Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The adopted repeals implement Human Resources Code §61.034.

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 June 15, 2011.

TRD-201102180
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Effective date: July 5, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 424-6475

♦ ♦ ♦

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.

Agency Rule Review Plan

State Pension Review Board

Title 40, Part 17

TRD-201102240
Filed: June 17, 2011

♦ ♦ ♦

Proposed Rule Reviews

Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, Subchapter F (§§291.101 - 291.105), concerning Non-Resident Pharmacy (Class E), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., August 8, 2011.

TRD-201102321
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: June 21, 2011

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The Texas State Board of Pharmacy files this notice of intent to review Chapter 295 (§§295.1 - 295.9, 295.11 - 295.13, 295.15), concerning Pharmacists, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., August 8, 2011.

TRD-201102322
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: June 21, 2011

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Texas Department of Savings and Mortgage Lending

Title 7, Part 4

On behalf of the Finance Commission of Texas ("Commission"), the Texas Department of Savings and Mortgage Lending files this notice of intention to review and consider for re-adoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 80, Texas Residential Mortgage Loan Originator Regulations, comprised of Subchapter A (§§80.1 - 80.7); Subchapter B (§§80.8 - 80.11); Subchapter C (§§80.12 - 80.14); Subchapter D (§80.15); Subchapter E (§80.16); Subchapter F (§80.17); Subchapter G (§80.18); Subchapter H (§80.19); Subchapter I (§§80.20 - 80.21); Subchapter J (§80.22); Subchapter K (§80.23); and Subchapter L (§§80.301 - 80.307).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this notice of intention to review should be directed to Caroline C. Jones, Deputy Commissioner/General Counsel, Texas Department of Savings and Mortgage Lending, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705, or e-mailed to smlinfo@sml.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register.* Proposed rules are subject to public comment for a reasonable period prior to final adoption by the Commission.

TRD-201102292
Caroline C. Jones
Deputy Commissioner/General Counsel
Texas Department of Savings and Mortgage Lending
Filed: June 20, 2011

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On behalf of the Finance Commission of Texas ("Commission"), the Texas Department of Savings and Mortgage Lending files this notice of intention to review and consider for re-adoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 81, Mortgage Banker Registration and Residential Mortgage Loan Officer Licensing, comprised of Subchapter A (§§81.1 - 81.6); Subchapter B (§§81.7 - 81.9); Subchapter C (§81.10); Subchapter D (§81.11); Subchapter E (§81.12 and §81.13); Subchapter F (§81.14); Subchapter G (§81.15); Subchapter H (§81.16); Subchapter I (§81.17); Subchapter J (§81.18); and Subchapter K (§81.19).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register.*

Any questions or written comments pertaining to this notice of intention to review should be directed to Caroline C. Jones, Deputy Commissioner/General Counsel, Texas Department of Savings and Mortgage Lending, 2601 N. Lamar Blvd., Suite 201, Austin, Texas 78705, or e-mailed to smlinfo@sml.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register.* Proposed rules are subject to public comment for a reasonable period prior to final adoption by the Commission.

TRD-201102331
Caroline C. Jones
Deputy Commissioner/General Counsel
Texas Department of Savings and Mortgage Lending
Filed: June 22, 2011

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Adopted Rule Reviews

Texas Department of Banking

Title 7 Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 12 (Loans and Investments) in its entirety, specifically Subchapter A (§§12.1 - 12.11); Subchapter B (§§12.31 - 12.33); Subchapter C (§12.61 and §12.62); and Subchapter D (§12.91).

Notice of the review of Chapter 12 was published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2739). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 12 continue to exist. However, the commission has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 12 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-201102229
A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: June 17, 2011

♦ ♦ ♦

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 25 (Prepaid Funeral Contracts) in its entirety, specifically Subchapter A (§§25.1 - 25.8); Subchapter B (§§25.10 - 25.14, 25.17 - 25.19, 25.21 - 25.25, 25.31 and 25.41); and Subchapter C (§§25.51 - 25.59).

Notice of the review of Chapter 25 was published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2739). No comments were received in response to the notice.

The commission believes the reasons for initially adopting the rules in Chapter 25 continue to exist, with the exception of Subchapter C (§§25.51 - 25.59). Statutory changes have rendered the rules in Subchapter C unnecessary and they will be repealed. In addition, the commission has determined that certain revisions and changes are appropriate and necessary. Proposed amended and repealed Chapter 25 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

With the exception of Subchapter C, the commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-201102230
A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: June 17, 2011

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Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Texas Administrative Code, Title 7, §§91.808 (Reporting Investment Activities to the Board of Directors), 91.901 (Reserve Requirements), and 91.902 (Dividends) as published in the March 11, 2011, issue of the*Texas Register* (36 TexReg 1695).

The rules were reviewed as a result of the Credit Union Department (Department)'s general rule review.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§91.808, 91.901, and 91.902 continue to exist and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

TRD-201102278
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 20, 2011

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §10.13

Acreage Inspection Fees for Certification
Table 1

	All Classes
Agrotricum	$ .70 [$ .62]
Alfalfa	1.40 [1.25]
Buckwheat	.70 [.62]
Cantaloupe	6.90 [6.24]
Clover (all kinds)	1.40 [1.25]
Corn	4.30 [3.90]
Cotton	1.00 [.50]
Cowpea, field bean, flat pea, and partridge pea	1.40 [1.25]
Flax and rape	1.75 [1.56]
Forest tree seed	6.90 [6.24]
Forest tree seedlings	55.00 [50.00]
Grass (seeded)	5.50 [4.99]
Grass (vegetatively propagated)	13.25 [12.00]
(preplant is same)	
Guar	.55 [.50]
Illinois bundleflower, and englemanndaisy	4.30 [3.90]
Millet (foxtail and pearl)	1.40 [1.25]
Millet (gahi and hybrids)	3.75 [3.38]
Okra and pepper	4.30 [3.90]
Peanut	1.00 [.94]
Rice **(Other than hybrids)**	4.00 [3.90]

Rice (hybrids).....5.00

Small grain ..... **.70** [~~.62~~]

Sorghum (open-pollinated) ..... **1.20** [~~1.09~~]

Sorghum (commercial hybrids) ..... **3.60** [~~3.28~~]

Sorghum (A, B, & R Lines)..... **10.50** [~~9.36~~]

Soybean and mungbean..... **.80** [~~.72~~]

Sugarcane..... **7.00** [~~6.24~~]

Sunflower (commercial hybrids)..... **3.50** [~~3.12~~]

Sunflower (A & R Lines)..... **10.30** [~~9.36~~]

Sunflower (open-pollinated),
bushsunflower, maximilian..... **3.50** [~~3.12~~]

Watermelon..... **7.50** [~~6.78~~]

Other kinds not listed ..... **7.00** [~~6.00~~]

$30 [~~$25~~] application fee for EACH production field applied on for certification and preplant inspection

Late fee: **$50** [~~$25~~] per field

Reinspection fee: Not less than **$50** [~~$25~~] per field

Interagency certification: **$200** [~~$100~~] per lot

Figure: 7 TAC §84.308(e)(1)

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)(2)

Original Financing Term (Months)	Rate per $100 or Percentage of Amount Financed
0-12	6.50
13-35	7.50
36+	9.00

Figure: 22 TAC §7.10(b)

Fee Description	Architects	Landscape Architects	Interior Designers
Exam Application	$100	$100	$100
Examination	****	***	**
Registration by Examination--Resident	155	*355	*355
Registration by Examination--Nonresident	180	*380	*380
Reciprocal Application*****	150	150	150
Reciprocal Registration	*400	*400	*400
Active Renewal--Resident	*305	*305	*305
Active Renewal--Nonresident	*400	*400	*400
Active Renewal 1-90 days late--Resident	*457.50	*457.50	*457.50
Active Renewal greater than 90 days late--Resident	*610	*610	*610
Active Renewal 1-90 days late--Nonresident	*600	*600	*600
Active Renewal greater than 90 days late--Nonresident	*800	*800	*800
Emeritus Renewal--Resident	10	10	10
Emeritus Renewal--Nonresident	10	10	10
Emeritus Renewal 1-90 days late--Resident	15	15	15
Emeritus Renewal greater than 90 days late--Resident	20	20	20
Emeritus Renewal 1-90 days late--Nonresident	15	15	15
Emeritus Renewal greater than 90 days late--Nonresident	20	20	20
Inactive Renewal--Resident	25	25	25
Inactive Renewal--Nonresident	125	125	125
Inactive Renewal 1-90 days late--Resident	37.50	37.50	37.50
Inactive Renewal greater than 90 days late--Resident	50	50	50
Inactive Renewal 1-90 days late--Nonresident	187.50	187.50	187.50
Inactive Renewal greater than 90 days late--Nonresident	250	250	250
Reciprocal Reinstatement	610	610	610
Change in Status--Resident	65	65	65

Change in Status--Nonresident	95	95	95
Reinstatement--Resident	685	685	685
Reinstatement--Nonresident	775	775	775
Certificate of Standing--Resident	30	30	30
Certificate of Standing--Nonresident	40	40	40
Replacement or Duplicate Wall Certificate--Resident	40	40	40
Replacement of Duplicate Wall Certificate--Nonresident	90	90	90
Duplicate Pocket Card	5	5	5
Reopen Fee for closed candidate files	25	25	25
Examination--Administrative Fee	-	40	-
Examination--Record Maintenance	25	25	25
Returned Check Fee	25	25	25
Application by Prior Examination	-	-	100

*These fees include a $200 professional fee required by the State of Texas and deposited with the State Comptroller of Public Accounts into the General Revenue Fund. The fee for initial architectural registration by examination does not include the $200 professional fee. Under the statute, the professional fee is imposed only upon each renewal of architectural registration.

**Examination fees are set by the Board examination provider, the National Council for Interior Design Qualification ("NCIDQ"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

***Examination fees are set by the Board's examination provider, the Council of Landscape Architectural Registration Boards ("CLARB"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination is to be given.

****Examination fees are set by the Board's examination provider, the National Council of Architectural Registration Boards ("NCARB"). Contact the Board or the examination provider for the amount of the fee, and the date and location where each section of the examination will be given.

*****Applies to engineers seeking an administrative finding of experience pursuant to House Bill 2284 as passed by the 82nd Legislature. This administrative fee as applied to engineers takes effect September 1, 2011 and expires January 1, 2012.

Figure: 40 TAC §711.401(a)

The investigator notifies...	Within...	Does the investigator reveal the identity of the reporter?
The administrator or CEO	One hour of receipt of the allegation by DFPS.	Only if the alleged perpetrator is a Mental Health Services Provider and the allegation is sexual exploitation.
DADS Office of Consumer Rights and Services, by fax, at (512) 438-4302 of allegations involving an HCSW provider.	24 hours of receipt of the allegation by DFPS or the next working day.	
Law enforcement of any allegation of abuse, neglect, or exploitation involving a child.	One hour of receipt of the allegation by DFPS.	Yes
Law enforcement of any allegation of abuse, neglect, or exploitation believed to constitute a criminal offense under any law, involving an adult person served.		
Office of Inspector General of any allegation of abuse, neglect, or exploitation in state supported living centers or the ICF-MR component of Rio Grande State Center believed to constitute a criminal offense under any law involving a child or adult person served.		

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.

Texas Department of Agriculture

2011 Operation New Fences: Request for Participation

Purpose: The Texas Department of Agriculture (TDA) is seeking participation in the Operation New Fences (Program). The Program is designed to provide relief to Texas agricultural producers adversely impacted by wildfires between November 15, 2010 and June 30, 2011 (please note a second round of assistance is anticipated to be announced at a later date to help producers still being affected by wildfire destruction). Funding for the program is available through the State of Texas Agriculture Relief Fund (STAR Fund) established by Commissioner Todd Staples to collect monetary contributions from private individuals and entities to fund specific disaster recovery efforts. TDA will provide vouchers to qualified producers. Vouchers may be redeemed at participating Qualified Vendors for agricultural fencing supplies.

Information regarding the application process to become a Qualified Vendor and the application process for eligible agricultural producers is available on the TDA website at www.TexasAgriculture.gov, under the Star Fund link.

Questions: For questions or requests for additional information, counties may contact Ms. Jessica Glover at (512) 475-1615 or by email at Grants@TexasAgriculture.gov.

TRD-201102334
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: June 22, 2011

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Weights and Measures Enforcement Guidelines; Weights and Measures Penalty and Sanction Matrix

This filing updates the Texas Department of Agriculture Weights and Measures Enforcement Guidelines and the Weights and Measures Penalty and Sanction Matrix (matrix) accomplishing two primary purposes: 1) implementing a zero-tolerance policy for failure to register weights and measures devices; and 2) enhancing numerous weights and measures penalties to further deter noncompliance.

The department will no longer give grace periods for persons failing to initially register their devices or who fail to renew their registrations on time. The agency is also enhancing penalties against retailers who shortchange consumers and fail to adhere to state weights and measures laws. These guidelines and the matrix have been developed to encourage consistent, uniform, and fair assessment of penalties by the department's enforcement staff for violations of the aforementioned statutory and rule provisions.

The Texas Legislature, under Chapter 13 of the Texas Agriculture Code (Code), has given the Texas Department of Agriculture (the department) the authority and responsibility to monitor and regulate weighing and measuring devices and metrological standards in this state. The department's regulatory goals are to provide consumers and businesses with a fair and efficient trade environment, to encourage business development, and to inspire consumer confidence. To achieve these goals, the department enforces a variety of weights and measures standards, specifications, prohibitions, or other requirements through routine and risk-based inspection programs, complaint investigations, and other regulatory activities involving owners and operators (users) of weighing and measuring devices and metrological standards.

Department enforcement occurs through administration actions, including stop-sales, and by direct enforcement with monetary administrative penalties or license sanctions. In instances of serious fraud, widespread deliberate violation of the law, or repeat offenders who have failed to be deterred through administrative action, the matter may be referred to the Office of the Attorney General for assessment of civil penalties or to a local district or county attorney for assessment of civil penalties, criminal prosecution, or both. Civil penalties under Chapter 13 can be as high as $10,000 per violation. Civil penalties or criminal prosecution may be pursued instead of or in addition to any administrative action.

The department's authority to assess administrative penalties for the enforcement of Chapter 13 and associated rules is found in §12.020 of the Code. Such penalties can range up to a statutorily-imposed maximum of $5,000 for each violation. Each day that a violation continues or occurs may be considered a separate violation. Each transaction may be considered a separate violation and, under certain circumstances, each unit of measure involved in a transaction also may be considered a separate violation. Given the wide variety of possible motor fuel transactions, the department cannot describe all possible circumstances that would constitute a separate violation for which the maximum penalty may be assessed.

The department publishes these Weights and Measures Enforcement Guidelines, including the Weights and Measures Penalty and Sanction Matrix, to inform the regulated public about the department's enforcement policies. These guidelines describe in general the most likely consequences of noncompliance with Chapter 13 of the Code and rules adopted under that chapter, as published in Chapter 12 of Title 4 of the Texas Administrative Code (TAC).

Penalty amounts have been doubled, quadrupled and even increased as much as tenfold for violations that pose a high risk for cheating Texas consumers. For instance, retailers who fail to maintain devices such as fuel pumps or grocery store scales in proper working order now face a $250 penalty, up from $100. Retailers who fail to register a new device are now fined a minimum of $1,000, doubled from $500; and any licensed service company that does not submit a timely service report for new device installations will be forced to pay a fine of $5,000 for each outlet, up from $500. Additionally, unregistered locations will have all devices tagged out of order and prohibited from use in sales transactions, and be fined for failure to register with TDA.

These guidelines do not constitute a policy or rule of general applicability. Under §12.020(d) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsections when appropriate. Although the department has determined that in general the NCEG and HPH of the violations described in the matrix,

as well as any other factors, will vary little from case to case for the violations listed therein, thus establishing a prescribed penalty for each such violation type, the actual penalty amount to be assessed in a particular case remains within the department's prosecutorial discretion. That discretion will be informed by those factors and circumstances for a particular violator and violation that might warrant deviation from the prescribed penalty. Thus, in extraordinary circumstances outside the general principles that inform these basic guidelines, the penalties set forth in the matrix may be adjusted upwards or downwards as justice may require.

The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture. The department encourages all respondents to timely respond to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or which would, as justice requires, warrant reduction or waiver of the penalty. The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action, including information about recent calibration of noncompliant devices that may serve as a basis for reduction or rescission of an assessed penalty, before further legal action is taken to enforce the assessed penalty.

The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapter 13 and associated rules are as follows:

1. The standards, prohibitions, duties, or other requirements of Chapter 13 and the rules adopted under the authority of that chapter are considered strict liability laws, unless intent or knowledge is expressly required by the underlying Chapter 13 provision or applicable rule.

2. The prescribed penalties in the first-occurrence column of the matrix, therefore, are generally the minimum penalties to be assessed for unintentional or unknowing noncompliance with a Chapter 13 standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the amount of the penalty for a first violation, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Thus, unless the matrix provision expressly states that a penalty is to be assessed only upon proof that the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.

3. The penalties in the matrix, for all offense levels, also assume no significant, specific, identifiable harm has occurred as the result of the noncompliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has in fact occurred or cannot be shown to have occurred, in order to deter future noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.

4. Because the penalties in the matrix are for noncompliant conduct that is presumed, in the absence of evidence to the contrary, not intentional or knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.

5. A person who has previously been assessed a penalty or license sanction for violating the same or a similar provision of the law or who has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct may be presumed to have acted with intent when committing subsequent violations of the same or a similar provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department, however, will not readily presume intent and a single previous violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

6. The department evaluates prior violations at the client or owner level, not the managerial level. In other words, for a single legal entity operating multiple separate locations, whether concurrently or sequentially, a violation at any one location will be considered a prior violation with respect to any future violation(s) committed by that same entity at the same or a different location. For many violations, however, the penalty remains a flat amount across multiple subsequent violations and the penalty amount for such violations, therefore, will not automatically increase as the result of a prior violation absent clear evidence demonstrating that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law.

7. The date of a violation is the actual date the violation occurred, the date the violation first began occurring in the case of a continuing violation that occurs over a number of consecutive days, or any date within the period of consecutive days that constitutes a continuing violation, as appropriate to the violation and circumstances.

If the date of first occurrence cannot be determined, the date of the violation is the date the department first discovers the violation (or the date of the first provable violation) and any consecutive day thereafter on which the violation continues (or continued).

8. In determining whether a particular respondent has a prior violation, the department will review the five-year time period immediately preceding the date of the current violation to determine whether an order was issued during this period that either (1) found the respondent committed the same or a similar violation or (2) approved a no-contest plea regarding the same or a similar violation. If such an order is found, then a prior violation exists.

9. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any such penalty payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or otherwise contest any portion of the department's notice of violation, the respondent must request a hearing or negotiate a settlement with the department's enforcement staff that addresses the respondent's objections.

Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the ab-

sence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

Partial payments of an assessed penalty, absent an approved settlement, shall be returned and the department shall consider any such failure to pay the full penalty amount to be a request for a hearing.

10. The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision, however, shall prevent the department from adopting policies that provide for no penalty, waiver of penalty, or reduction of a penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which it is based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, or at after the end of a specific time period following publication.

For purposes of these Guidelines, "Respondent" means a person who is alleged to have or has committed a violation.

These guidelines and the Weights and Measures Administrative Penalty Matrix is effective immediately upon publication in the *Texas Register* and supersedes the Weights and Measures Administrative Penalty Matrix as published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2888) for those violations committed on or after the date this matrix is published.

Figure: 176 - Weights and Measures Enforcement Guidelines; Weights and Measures Penalty and Sanction Matrix

Weights and Measures Penalty and Sanction Matrix

Source Law	Violation	First Offense - Penalty Description	Subsequent Offenses[1] - Penalty Description
G-UR.1.1*	Failure to use suitable device[2] (use of not legal for trade devices)[3]	$250 for each device marked "Not Legal for Trade"; written warning if unmarked	$500 for each device, whether marked or unmarked[5]
G-UR.2.5	Failure to permanently, plainly, and visibly mark the fill connection for a product storage tank and, if the connection is marked by means of a color code, to conspicuously display the code key at the place of business.	$250	$500
G-UR.3.1*	Failure to operate device[2] only in the manner that is obviously indicated by its construction or that is indicated by instructions on the equipment; failure to operate equipment as it was designed to be used.[3]	$250 for each device improperly operated	$250 - $1000 for each device improperly operated[5]
G-UR.3.1; G-UR.4.1; G-UR.4.2*	Failure of device[2] to hold zero until product dispensing mechanism is engaged (aka, pump jump).[3] NOTE: For motor fuel dispensers, each grade constitutes a separate device for purposes of calculating penalties under this provision of the penalty matrix.	$100 for each device improperly maintained; or $250 for each device improperly maintained, if 50% or more but less than 75% of all operable devices fail or if 50% or more but less than 75% of the operable devices of a particular grade fail; or $500 for each device improperly maintained, if 75% or more of all operable devices, but less than 100%, fail or if 75% or more of the operable devices of a particular grade, but less than 100%, fail; or $750 for each device improperly maintained if 100% of all operable devices fail or if 100% of the operable devices of a particular grade fail.[5]	$1000 for each device improperly maintained[5]
G-UR.3.3*	Failure to position device[2] properly (e.g. readout visible).[3]	$100 for each device improperly positioned	$100 - $1000 for each device improperly positioned[5]
G-UR.4.1*	Failure to maintain device[2] in proper working order (maintenance of equipment) - the difference between delivered and displayed quantities falls outside of the allowable tolerance range.[3] NOTE: For motor fuel dispensers, each grade constitutes a separate device for purposes of calculating penalties under this provision of the penalty matrix.	• 2x or greater, but less than 3x, in excess of tolerance in favor of the operator or owner of the device, $250 for each device improperly maintained • 3x or greater, but less than 4x, in excess of tolerance in favor of the operator or owner of the device, $500 for each device improperly maintained • 4x or greater in excess of tolerance in favor of the operator or owner of the device, $1000 for each device improperly maintained	• 2x or greater, but less than 3x, in excess of tolerance in favor of the operator or owner of the device, $250 for each device improperly maintained • 3x or greater, but less than 4x, in excess of tolerance in favor of the operator or owner of the device, $500 for each device improperly maintained • 4x or greater in excess of tolerance in favor of the operator or owner of the device, $1000 for each device improperly maintained

G-UR.4.1*	Failure to maintain device[2] in proper working order (maintenance of equipment) - the displayed quantities of the delivered commodity deviate from true value (the quantities actually delivered) predominately in favor of the device user (owner or operator).[3] NOTES: For motor fuel dispensers, each grade constitutes a separate device for purposes of calculating penalties under this provision of the penalty matrix. G-UR.4.1 specifies "equipment in service" to be the basis for evaluating compliance with its requirements. Therefore, only operable devices are used in calculating the % of devices that deviate from true value in favor of the device owner.	• 60% - 80% of operable devices found to measure or weigh in favor of the operator or owner of the device (even if within tolerance), $100 for each device found to measure or weigh in favor of the operator or owner of the device • > 80% but < 100% of operable devices found to measure or weigh in favor of the operator or owner of the device (even if within tolerance), $250 for each device found to measure or weigh in favor of the operator or owner of the device • 100% of operable devices found to measure or weigh in favor of the operator or owner of the device (even if within tolerance), $500 for each device found to measure or weigh in favor of the operator or owner of the device	• 60% - 80% of operable devices found to measure or weigh in favor of the operator or owner of the device (even if within tolerance), $100 for each device found to measure or weigh in favor of the operator or owner of the device • > 80% but < 100% of operable devices found to measure or weigh in favor of the operator or owner of the device (even if within tolerance), $250 for each device found to measure or weigh in favor of the operator or owner of the device • 100% of operable devices found to measure or weigh in favor of the operator or owner of the device (even if within tolerance), $500 for each device found to measure or weigh in favor of the operator or owner of the device
G-UR.4.1*	Failure to maintain device[2] in proper working order (maintenance of equipment) - other.[3] NOTE: For motor fuel dispensers, each grade constitutes a separate device for purposes of calculating penalties under this provision of the penalty matrix.	$100 - $500 for each failure for each device improperly maintained[5]	$500 - $1000 for each failure for each device improperly maintained[5]
G-UR.4.4	Failure to assist in testing operations by providing necessary equipment, accessories, or labor.	$1000 for each day during which the person refuses to assist in testing	$2500 for each day during which the person refuses to permit a test; plus, at the department's discretion, suspension or revocation of license[5]
G-UR.4.5*	Failure to place and maintain a security seal on a device adjustment mechanism designed to be sealed.[2, 3]	$1000 for each device without a properly maintained security seal	$5000 for each device without a properly maintained security seal; plus, at the department's discretion, suspension or revocation of license[5]
UR.3.4*	Failure to show all required information on the printed ticket issued from a device.[3]	$100 per noncompliant point-of-sale output device (if all output devices at a single location are affected because of a defect in a single controller for all such output devices, then penalty is per point-of-sale system)	$250 - $500 per noncompliant point-of-sale output device[5] (if all output devices at a single location are affected because of a defect in a single controller for all such output devices, then penalty is per point-of-sale system)
UR.3.2*	Failure to display or post the product identity on a retail motor-fuel dispenser.[3]	$50 for each product for which the identity is not displayed	$100 - $250 for each product for which the identity is not displayed[5]
UR.3.2*	Failure to display or post the unit price of a product on a retail motor-fuel dispenser.[3]	$50 for each product for which the unit price is not displayed	$100 - $250 for each product for which the unit price is not displayed[5]

§13.035†	False price advertisement (price verification).[4] Item Overcharge Percentage (IOP) Adjustment Table Overcharge Percentage — Adjustment < 10% — $0 10 - 50% — $25 51 - 150% — $50 151 - 200% — $75 201 - 300% — $100 301 - 400% — $150 > 400% — $200	for each overcharged item, $150 plus IOP adjustment	for each overcharged item, $150 plus IOP adjustment
§13.036†	False representation of commodity weight or measure - standard weight or measure packages.	$500 for each commodity whose weight or measure has been falsely represented	$1000 for each commodity whose weight or measure has been falsely represented; plus, at the department's discretion, suspension or revocation of license
§13.036†	False representation of commodity weight or measure - random weight or measure packages.	$500 for each commodity whose weight or measure has been falsely represented	$1000 for each commodity whose weight or measure has been falsely represented; plus, at the department's discretion, suspension or revocation of license
§13.036†	False representation of commodity weight or measure - bulk commodities, seller furnishing weight or measure.	$500 for each transaction involving a false representation	$1000 for each transaction involving a false representation; plus, at the department's discretion, suspension or revocation of license
§13.036†	False representation of commodity weight or measure - bulk commodities, buyer furnishing weight or measure.	$500 for each transaction involving a false representation	$1000 for each transaction involving a false representation; plus, at the department's discretion, suspension or revocation of license
§13.040†	Violation of a stop-sale order NOTE: Each individual package or item sold in violation of the stop-sale order constitutes a separate violation. A penalty may be assessed for violation of the order as a whole or for each individual violation of the order, as specified in the penalty descriptions.	$1000 for each order violated	$2500 for each order violated plus, if more than one violation occurs in connection with the stop-sale, the greater of $50 for each additional individual package or item sold or distributed in violation of the stop-sale order

§13.116†	Use of a weight or measure without a seal affixed to or stamped on the weight or measure by the Texas Department of Agriculture.[3]	$250 for each unsealed weight or measure used	$250 - $500 for each use of an unsealed weight or measure[5]
§13.117†	Failing or refusing to permit test of weight or measure.	$1000 for each day during which the person refuses to permit a test; $250 for each day during which the person fails to permit a test	$2500 for each day during which the person refuses to permit a test; plus, at the department's discretion, suspension or revocation of license;[5] $1000 for each day during which the person fails to permit a test
§13.118†	Hindering the department or a sealer in the performance of official duties.	$1000 for each day during which the person acts to hinder the department or a sealer	$2500 for each day during which the person acts to hinder the department or a sealer; plus, at the department's discretion, suspension or revocation of license[5]
§13.119†	Unauthorized removal of an out-of-order tag or device.	$500 for each tag or device removed without authorization	$1000 for each tag or device removed without authorization; plus, at the department's discretion, suspension or revocation of license[5]
§13.120† §13.037†	Use, sale, or possession of a false weight or measure.[3]	$500 for each use or sale; $250 for each false weight or measure in possession	$1000 for each use or sale; $500 for each false weight or measure in possession plus, at the department's discretion, suspension or revocation of license[5]
§13.121†	Improper disposal of a condemned weight or measure.	$250 for each condemned weight or measure	$500 for each condemned weight or measure
§13.259†	Intentionally or knowingly issuing a false certificate of weight or measure.	$2500 for each false certificate	$5000 for each false certificate; and/or suspension or revocation of license[5]
§13.260†	Intentionally or knowingly issuing a certificate of weight or measure without authority.	$500 for each false certificate	$1000 for each false certificate
§13.1011†	Failure to register device (new business) [3, 6]	The greater of: $1000; or $100 for each device for each year or portion of a year during which the device was not registered (penalty is in addition to any registration fees due)	The greater of: $2500; or $250 for each device for each year or portion of a year during which the device was not registered (penalty is in addition to any registration fees due)

§13.1011†	Failure to register additional devices[3, 6]	The greater of: $500; or $100 for each device not registered (penalty is in addition to any registration fees due)	The greater of: $1250; or $250 for each device not registered (penalty is in addition to any registration fees due)
§13.1011†	Failure to register a device as the correct type before the end of a 30 day penalty-free period which begins to run the day after the person operating the devices is notified by the department that the device is not registered as the correct type.[3]	The greater of: $250; or $50 for each device not properly registered Exception: above per-device penalties shall be doubled if due to the improper registration TDA did not have the appropriate testing equipment on hand at the time the device was first inspected. (penalty is in addition to any registration fees due)	The greater of: $500; or $100 for each device not properly registered Exception: above per-device penalties shall be doubled if due to the improper registration TDA did not have the appropriate testing equipment on hand at the time the device was first inspected. (penalty is in addition to any registration fees due)
§13.1011†	Operating a device with a registration that is expired for a time period less than one year.[3, 6]	The greater of: $250; or $50 for each device with a registration that is expired for a time period of less than one year (penalty is in addition to any registration fees due, including any late fees)	The greater of: $1000; or $250 for each device with a registration that is expired for a time period of less than one year (penalty is in addition to any registration fees due, including any late fees)
§13.1011†	Operating a device with a registration that is expired for a time period of one year or more.[3, 6]	The greater of: $2500; or $500 for each device with a registration expired for a time period of one year or more (penalty is in addition to any registration fees due)	The greater of: $5000; or $1000 for each device with a registration expired for a time period of one year or more (penalty is in addition to any registration fees due)
§13.1011†	Operating a device whose use has been prohibited by the department under §13.1011.[3]	$1000 for each device whose use has been prohibited for each day the device is operated	$2500 for each device whose use has been prohibited for each day the device is operated; plus, at the department's discretion, suspension or revocation of license[5]

§12.11‡	Failure to prominently post a Weights and Measures Certificate of Registration at the registered location so as to be in plain sight of, legible to, and physically accessible to the average consumer of weighed or measured products sold or offered for sale at the registered location.[3]	$500	$1000
§12.11‡	Failure to affix a sticker or other notice required by rule to be affixed by the operator or owner of the device.[3]	$250 for each device that does not have a sticker or other required notice affixed	$500 for each device that does not have a sticker or other required notice affixed
§12.11‡	Unauthorized removal of a TDA-affixed seal, sticker, or other notice.[3]	$250 for each device with unauthorized removal of a TDA-affixed seal, sticker, or other notice	$500 for each device TDA-affixed seal, sticker, or other notice
§12.42‡	Failure to submit a service report in a timely manner - new installations.	$5000 for each outlet	The greater of: $5000; or $1000 per device installed; plus, at the department's discretion, suspension or revocation of license[5]
§12.42‡	Failure to submit a service report in a timely manner - other than new installations. NOTE: A report is not "submitted" until it has been received by the department.	$250 if service report submitted within 30 days after date of notice of penalty; $1000 if service report is not submitted within 30 days	$500 if service report submitted within 30 days after date of notice of penalty; $2500 if service report is not submitted within 30 days; plus, at the department's discretion, suspension or revocation of license[5]
§12.42‡	Submission of a service report that is incomplete, inaccurate, or which contains false information. NOTE: An unsigned service report is incomplete; each combination of an out-of-order report # and associated device ID# not reported, inaccurately reported, incompletely reported, or falsely reported constitutes a separate missing, incomplete, inaccurate, or false item.	$500 for each report that contains an incomplete, inaccurate, or false item plus $100 for each additional item in the report that is missing, incomplete, inaccurate, or false	$1000 for each report that contains an incomplete, inaccurate, or false item plus $250 for each additional item in the report that is missing, incomplete, inaccurate, or false; plus, at the department's discretion, suspension or revocation of license[5]

§12.42‡ §12.52‡ §12.61‡	Failure to perform an adequate test or service of a device.	$250 for each device inadequately tested or serviced	$1000 for each device inadequately tested or serviced; plus, at the department's discretion, suspension or revocation of license[5]
§12.52‡	Failure to submit test reports in a timely manner - Licensed Inspection Companies NOTE: A report is not "submitted" until it has been received by the department.	$250 if service report submitted within 30 days after date of notice of penalty; $1000 if service report is not submitted within 30 days	$500 if service report submitted within 30 days after date of notice of penalty; $2500 if service report is not submitted within 30 days; plus, at the department's discretion, suspension or revocation of license[5]
§12.52‡	Submission of a test report that is incomplete, inaccurate, or which contains false information - Licensed Inspection Companies	$500 for each report that contains an incomplete, inaccurate, or false item plus $100 for each additional item in the report that is missing, incomplete, inaccurate, or false	$1000 for each report that contains an incomplete, inaccurate, or false item plus $250 for each additional item in the report that is missing, incomplete, inaccurate, or false; plus, at the department's discretion, suspension or revocation of license[5]
§12.40‡ §13.401† §13.1012†	Failure to obtain or renew a license - Licensed Service Company	$1000	$2500
§12.50‡ §13.302† §13.352† §13.1012†	Failure to obtain or renew a license - License Inspection Company	$1000	$2500
§12.60‡ §13.1012†	Failure to obtain or renew a registration - Registered Technician	$1000	$2500
§12.40‡ §12.50‡ §12.60‡ §13.302† §13.352† §13.401† §13.1012†	Operating with a license expired by one year or more - Licensed Service Companies, Licensed Inspection Companies, and Registered Technicians	$1000 (penalty is in addition to any registration fees due)	$2500 (penalty is in addition to any registration fees due)
§12.61‡	Placing a device into service, removing an out-of-order tag or performing inspections of LPG meters or ranch scales without being employed by a licensed service company or licensed inspection company - Registered Technicians.	$1000	$2500; plus, at the department's discretion, suspension or revocation of license[5]
§12.40‡ §12.50‡ §12.61‡	Failure to use annually certified test standards.	$2500	$5000; plus, at the department's discretion, suspension or revocation of license[5]

§12.74‡	Failure to retain for two years a copy of an issued official certificate.	$500	$1000; plus, at the department's discretion, suspension or revocation of license[5]
Various	Failure to comply with any requirement (of Chapter 13, Texas Agriculture Code, or department rules adopted under the authority of that chapter) which is not expressly described in this matrix.	$50 - $5000, per outlet or device[2, 5]	$50 - $5000, per outlet or device[2, 5]; plus, at the department's discretion, suspension or revocation of license[5]

[1] The department will evaluate whether a current violation is considered to be a "subsequent offense" by consulting the continuous five-year period immediately preceding the date on which the current violation occurred, or if that date is uncertain the first date on which the violation was discovered by the department, for an order finding that a similar violation was committed by the respondent. The penalty for a subsequent offense will be assessed if the department has issued an order within the aforementioned period of time that found the respondent had committed a similar violation or that approved a no-contest plea to the same or a similar violation. The current violation occurs on the date the respondent failed to comply with the law, including a department order, or if that date is uncertain the first date on which the violation was discovered by the department. A continuous current violation that occurs during a period of consecutive days occurs on any or all days during that period and the department may use the first day, the last day, any other day, or all days of, within, or during that period for purposes of determining when the current violation occurred and the number of individual penalties to assess.

[2] The term "equipment" as used in the NIST standards encompasses the term "device" as used in this penalty matrix.

[3] All devices found out-of-tolerance will be issued an out-of-order tag requiring the device to be recalibrated, repaired, replaced or reconditioned prior to further commercial use.

[4] A penalty is assessed for each overcharged item. An overcharged item is one whose price on the final receipt printed during the inspection checkout is higher than the lowest advertised price for that item. The item overcharge percentage is determined by taking the absolute value of the difference between the price charged and the lowest advertised price (the correct price), dividing the result by the correct price, and rounding to the nearest whole percent by adding 0.5% and truncating any decimal remainder. The amount of the upward adjustment is then determined by consulting the IOC Adjustment Table in the violation column of the matrix. The maximum penalty for any one overcharged item is $5000. The total penalty to be assessed is the sum of the penalties for all overcharged items.

[5] As deemed necessary to address the nature, circumstances, extent, and gravity and the hazard or potential hazard of the violation.

[6] Unregistered devices and devices whose registration has expired will be prohibited from use and tagged out-of-order, as authorized by Section 13.1011 of the Texas Agriculture Code, until a valid department registration has been obtained and the tags have been removed by a TDA official.

* NIST Handbook 44, adopted by reference, Texas Administrative Code, Chapter 12 Weights and Measures, Subchapter B, Section 12.10

† Texas Agriculture Code, Chapter 13 Weights and Measures

‡ Texas Administrative Code, Chapter 12 Weights and Measures

TRD-201102342
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: June 22, 2011

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Office of the Attorney General

Texas Health and Safety and 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 Health and Safety Code and Texas Water Code. Before the State may settle a judicial enforcement action under the 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: *Harris County, Texas and the State of Texas v. American Opportunity for Housing 2002 Portfolio, L.L.C.;* Cause No. 2010-34880; in the 157th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant operated an apartment complex in Harris County, Texas. Defendant unlawfully discharged raw sewage onto the ground. In addition, Harris County investigators observed problems with the complex swimming pool and open outdoor burning violations.

Proposed Agreed Judgment: The Agreed Final Judgment orders the Defendant to collectively pay $123,550 in civil penalties to Harris County and the State of Texas along with attorney's fees and injunctive relief.

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 Anthony W. Benedict, 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) 320-0911. 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-201102327
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: June 22, 2011

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Cancer Prevention and Research Institute of Texas

Request for Applications R-12-ETRA-1 Early Translational Research Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for innovative research projects addressing critically important questions that will significantly advance the treatment of cancer. The objective of this award is to "bridge the gap" between promising new discoveries achieved in the research laboratory and commercial development by funding attainment of a Target Product Profile for the therapeutic, device, or diagnostic assay through activities up to and including preclinical proof-of-principle data that demonstrate applicability to the planned clinical scenario. The work funded under this request for applications must be deemed sufficiently robust such that successful completion would result in identification of a "lead" compound, assay, or device that, as a next stage, could be taken into full development in compliance with International Conference on Harmonization (ICH) Guidelines and U.S. regulatory guidance documents and regulations. Applicants must identify a clear path of development to achieve the Target Product Profile outlined in the application. Successful applicants would be eligible for a grant award of up to $1,000,000 for a period of 1 - 3 years.

A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on August 4, 2011, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. Central Time on November 22, 2011. There is a cap on the number of applications that may be submitted per institution. Applicants are advised to consult with their institution's Office of Research and Sponsored Programs (or equivalent). CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201102223
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: June 17, 2011

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - May 2011

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period May 2011, as required by Tax Code, §202.058, is $79.43 per barrel for the three-month period beginning on February 1, 2011, and ending April 30, 2011. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of May 2011, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period May 2011, as required by Tax Code, §201.059, is $3.18 per mcf for the three-month period beginning on February 1, 2011, and ending April 30, 2011. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of May 2011, from a qualified Low-Producing Well, is eligible for 25% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of May 2011, is $101.36 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of May 2011, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of May 2011, is $4.34 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of May 2011, from a qualified low-producing gas well.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201102303
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: June 21, 2011

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/27/11 - 07/03/11 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 06/27/11 - 07/03/11 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/11 - 07/31/11 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/11 - 07/31/11 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-201102290
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 20, 2011

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East Texas Council of Governments

Public Notice

East Texas Council of Governments (ETCOG) is accepting proposals from experienced individuals, organizations or agencies to provide senior nutrition services under Title III of the Older Americans Act in Rains County and two meal sites in Wood County (Hainesville and Yantis). The proposal packet may be obtained by submitting a request to Claude Andrews by fax (903) 983-1440 or by email at claude.andrews@etcog.org. Proposal packets are available in an electronic format upon request and may be obtained by going to www.etcog.org. Deadline to submit a proposal is 5:00 p.m. (CST) on July 20, 2011. Proposals will be opened and read at the ETCOG Office after this date and time. The ETCOG reserve the right to reject any and/or all proposals and to waive any technicalities in the best interest of these entities. Equal opportunity employer. Auxiliary Aids and Services are available upon request.

EAST TEXAS COUNCIL OF GOVERNMENTS
3800 Stone Road
Kilgore, Texas 75662
(903) 984-8641
TDD: 711 or 1-800-735-2989
FAX: (903) 983-1440

TRD-201102297
Lindsay Vanderbilt
Communications Manager
East Texas Council of Governments
Filed: June 20, 2011

♦ ♦ ♦

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 (TWC), §7.075. TWC, §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. TWC, §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 August 1, 2011. TWC, §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 August 1, 2011. 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, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Akram Rihani dba Oakland Shell; DOCKET NUMBER: 2010-1868-PST-E; IDENTIFIER: RN102780855; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(1) and Texas Health and Safety Code, §382.085(b), by failing to successfully complete the Stage II vapor recovery system testing to ensure that the system meets the performance criteria for the system within 30 days of major system replacement or modification; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the underground storage tanks (USTs); and 30 TAC §334.8(c)(4)(A)(vii)

and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; PENALTY: $8,699; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: AM/PM GROCERY, INCORPORATED; DOCKET NUMBER: 2011-0201-PST-E; IDENTIFIER: RN101497717; LOCATION: Pflugerville, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: Arthur Mitchell, Jr.; DOCKET NUMBER: 2010-1276-SLG-E; IDENTIFIER: RN103008785; LOCATION: Rusk County; TYPE OF FACILITY: sludge transportation; RULE VIOLATED: 30 TAC §312.142(a), by failing to apply for a transporter registration and receive a registration from the executive director prior to commencing operations; and 30 TAC §312.143, by failing to prevent the unauthorized disposal of domestic septage; PENALTY: $3,053; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Bismilla, Incorporated dba Exclusive Food Mart; DOCKET NUMBER: 2011-0413-PST-E; IDENTIFIER: RN101910396; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of Pasadena; DOCKET NUMBER: 2011-0519-UTL-E; IDENTIFIER: RN101422145; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o)(1) and §291.162(a) and (j) and TWC, §13.1395(b)(2), by failing to submit to the executive director for approval by the required deadline, an adoptable emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $525; ENFORCEMENT COORDINATOR: Andrea Byington, (512) 239-2579; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: City of Rosebud; DOCKET NUMBER: 2011-0367-MWD-E; IDENTIFIER: RN101918423; LOCATION: Falls County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010731001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010731001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2010 by September 1, 2010; PENALTY: $9,100; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Esteban Rey Renteria; DOCKET NUMBER: 2011-0466-PST-E; IDENTIFIER: RN102356128; LOCATION: Palestine, Anderson County; TYPE OF FACILITY: property with three inactive underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Fall Creek Utility Company, Incorporated; DOCKET NUMBER: 2011-0525-MWD-E; IDENTIFIER: RN101609766; LOCATION: Hood County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013809001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number WQ0013809001 Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2010; PENALTY: $8,760; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Forestar (USA) Real Estate Group Incorporated; DOCKET NUMBER: 2011-0423-EAQ-E; IDENTIFIER: RN106056518; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: land development; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to receive approval of a Contributing Zone Plan before beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: $7,500; Supplemental Environmental Project offset amount of $3,000 applied to Hill Country Conservancy, Bunny Run Preserve Restoration; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(10) COMPANY: GULFLANDER PARTNERS GROUP, L.P.; DOCKET NUMBER: 2011-0505-PWS-E; IDENTIFIER: RN101241438; LOCATION: Orange County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(B), by failing to locate the facility's well at least 500 feet from a sewage treatment plant; and 30 TAC §290.41(c)(3)(C), by failing to seal the space between the casing and drill hole by using enough cement under pressure to completely fill and seal the annular space between the well casing and the drill hole; PENALTY: $660; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Horizon Regional Municipal Utility District; DOCKET NUMBER: 2011-0422-MWD-E; IDENTIFIER: RN102329075; LOCATION: El Paso County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010795001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(5) and TPDES Permit Number WQ0010795001, Operational Requirements Number 1 and Other Requirements Number 10.f, by failing to install adequate equipment to determine the application rate and volume of effluent used for irrigation; 30 TAC §305.125(1) and TPDES Permit Number WQ0010795001, Other Requirements Number 10.n, by failing to maintain a trace chlorine residual at the point of irrigation application; and 30 TAC §210.5(d), by failing to obtain a Reclaimed Water Use Authorization; PENALTY: $3,420; ENFORCEMENT COORDINATOR: Heather Brister, (254)

761-3034; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(12) COMPANY: MHBS, Incorporated; DOCKET NUMBER: 2011-0524-MSW-E; IDENTIFIER: RN106084619; LOCATION: Yorktown, Dewitt County; TYPE OF FACILITY: solid waste hauling; RULE VIOLATED: 30 TAC §330.103(b) and §330.15(c), by failing to ensure that all waste collected is unloaded only at facilities authorized to accept the type of waste being transported; PENALTY: $900; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: Mirando City Water Supply Corporation; DOCKET NUMBER: 2011-0318-PWS-E; IDENTIFIER: RN101195360; LOCATION: Mirando City, Webb County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c) and TCEQ Agreed Order Docket Number 2009-0952-PWS-E, Ordering Provision Number 2.d.i, by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c) and TCEQ Agreed Order Docket Number 2009-0952-PWS-E, Ordering Provision Number 2.d.ii, by failing to provide an elevated storage capacity of 100 gallons per connection; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and operation, and a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage that is located outside the chlorination room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation, which includes both high level and floor level screened vents for the chlorine storage room; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's ground storage tanks annually; 30 TAC §290.46(n)(3), by failing to provide copies of well completion data; 30 TAC §290.46(s)(2)(C)(i), by failing to calibrate the manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations; 30 TAC §290.110(e)(4), by failing to prepare and submit Disinfectant Level Quarterly Operating Reports to the commission each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; and 30 TAC §290.42(a)(1) and THSC, §341.0315(c), by failing to provide production capacities that meet or exceed the facility's maximum daily demand; PENALTY: $4,389; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(14) COMPANY: Octavio Farias; DOCKET NUMBER: 2011-0299-PST-E; IDENTIFIER: RN101764942; LOCATION: Houston, Harris County; TYPE OF FACILITY: property with four inactive underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $5,500; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Olympia C-Store Management LLC dba Olympia C Store; DOCKET NUMBER: 2011-0390-PST-E; IDENTIFIER: RN103150926; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $6,455; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Shanil Oil Company dba Runway Smoke Shop; DOCKET NUMBER: 2011-0639-PST-E; IDENTIFIER: RN101377349; LOCATION: Groves, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons and by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §115.244(3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $7,033; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: SPEEDEXX ENTERPRISE INCORPORATED dba Speedexx Food Store; DOCKET NUMBER: 2011-0391-PST-E; IDENTIFIER: RN101804599; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $2,750; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Stars Impex, Incorporated dba S & S Mart; DOCKET NUMBER: 2011-0249-PST-E; IDENTIFIER: RN101540599; LOCATION: Joshua, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,000; ENFORCEMENT COORDINATOR: Thomas

Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Structural Metals, Incorporated; DOCKET NUMBER: 2011-0557-IHW-E; IDENTIFIER: RN102413689; LOCATION: Seguin, Guadalupe County; TYPE OF FACILITY: steel manufacturing facility; RULE VIOLATED: 30 TAC §37.251(c)(2) and (3), by failing to demonstrate acceptable financial assurance that meets the requirements of the financial test option; PENALTY: $5,525; Supplemental Environmental Project offset amount of $2,210 applied to Texas State University River Systems Institute, Continuous Water Quality Monitoring Network; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: TUFF ENTERPRISE, INCORPORATED dba Kirkwood Mart; DOCKET NUMBER: 2011-0314-PST-E; IDENTIFIER: RN102487840; LOCATION: Stafford, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and Texas Health and Safety Code, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Victoria County Water Control and Improvement District Number 1; DOCKET NUMBER: 2011-0526-MWD-E; IDENTIFIER: RN101516714; LOCATION: Bloomington, Victoria County; TYPE OF FACILITY: municipal wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010513002, Effluent Limitations and Monitoring Requirements Number 1, by failing to maintain compliance with permitted effluent limitations; PENALTY: $8,360; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-201102307
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 21, 2011

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Enforcement Orders

An agreed order was entered regarding Scott Kimble and Karena Kimble dba Medina Highlands, Docket No. 2008-1176-PWS-E on June 13, 2011 assessing $6,581 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed suspension order was entered regarding Jerry D. Penner, Docket No. 2009-0386-OSS-E on June 13, 2011.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, 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 Post Oak Grinding, L.L.C., Docket No. 2009-0585-MSW-E on June 13, 2011 assessing $8,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, 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 Cranfills Gap, Docket No. 2009-1288-MWD-E on June 13, 2011 assessing $4,625 in administrative penalties with $925 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 City of Carl's Corner, Docket No. 2009-1496-PWS-E on June 13, 2011 assessing $9,050 in administrative penalties.

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 Beacon Estates Water Supply Corporation, Docket No. 2009-1545-MLM-E on June 13, 2011 assessing $16,997 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, 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 Wayman Grigson, Executor of the Imogene Grigson Holloway Estate, Docket No. 2009-1650-MLM-E on June 13, 2011 assessing $7,811 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, 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 Travis D. Hester and Soil Works of Dallas, Inc., Docket No. 2009-1757-MSW-E on June 13, 2011 assessing $8,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pasadena Refining System, Inc, Docket No. 2009-1807-AIR-E on June 13, 2011 assessing $279,125 in administrative penalties.

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 order was entered regarding Noortima, Inc. dba Nice N Easy Food Store, Docket No. 2009-1891-PST-E on June 13, 2011 assessing $8,395 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, 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 Equistar Chemicals, LP, Docket No. 2009-1896-IHW-E on June 13, 2011 assessing $67,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, 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 Coastal Crushed Concrete LLC, Docket No. 2010-0005-AIR-E on June 13, 2011 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, 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 LAPORTE BUSINESS, INC. dba Quick Stop, Docket No. 2010-0118-PST-E on June 13, 2011 assessing $9,401 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, 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 Quality Container and Environmental Services LLC, Docket No. 2010-0208-IHW-E on June 13, 2011 assessing $37,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallan, 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 JP Environmental Recycling, LLC Contractors Abatement Services, Inc. and BBC AF Management/Development LLC, Docket No. 2010-0234-MSW-E on June 13, 2011 assessing $30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (210) 403-4023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Veolia ES Technical Solutions, L.L.C. fka Onyx Environmental Services, L.L.C., Docket No. 2010-0272-MLM-E on June 13, 2011 assessing $17,840 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, 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 Rayburn Country Municipal Utility District, Docket No. 2010-0347-MWD-E on June 13, 2011 assessing $10,035 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding NPJ ENTERPRISES, INC. dba Z-P Mart, Docket No. 2010-0400-PST-E on June 13, 2011 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, 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 Water Association of North Lake, Inc., Docket No. 2010-0413-PWS-E on June 13, 2011 assessing $9,842 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, 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 New A & S Investments Inc dba Quickway Food Store 3, Docket No. 2010-0426-PST-E on June 13, 2011 assessing $12,817 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, 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 VSV, INC. dba BEST STOP #4, Docket No. 2010-0452-PST-E on June 13, 2011 assessing $4,704 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, 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 PS Royal Car Wash, L.P., Docket No. 2010-0567-WQ-E on June 13, 2011 assessing $2,377 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, 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 D & K Del Bosque, Inc. dba Old Gringo Lake Supply, Docket No. 2010-0574-PWS-E on June 13, 2011 assessing $4,034 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, 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 Santos Barcenas dba Tyre King Recycling, Docket No. 2010-0575-MSW-E on June 13, 2011 assessing $13,200 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 HAPP Y CHAP, LLC dba Happy Chap, Docket No. 2010-0576-PST-E on June 13, 2011 assessing $6,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Antonio Reys dba Ivys Trucking, Docket No. 2010-0606-MLM-E on June 13, 2011 assessing $1,574 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, 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 Dempsey Dunn, Docket No. 2010-0714-MSW-E on June 13, 2011 assessing $1,050 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 Dolores A. Luke dba Little Big Horn Services, Docket No. 2010-0745-PWS-E on June 13, 2011 assessing $688 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.

A default order was entered regarding Horacio Tomas Meneses Bonilla, Docket No. 2010-0774-MSW-E on June 13, 2011 assessing $262 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.

A default order was entered regarding Alfredo Solalinde dba Pine Oak Forest Water System, Docket No. 2010-0794-PWS-E on June 13, 2011 assessing $378 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.

A default order was entered regarding Dennie Shelton, Docket No. 2010-0883-MSW-E on June 13, 2011 assessing $7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James 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 Rafael Mendoza III dba Kwik-E-Mart Concenience Store, Docket No. 2010-0934-PST-E on June 13, 2011 assessing $5,408 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 Felix DeHerrera and Christine DeHerrera, Docket No. 2010-0941-WQ-E on June 13, 2011 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, 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 Charles Simmons, Docket No. 2010-0955-PST-E on June 13, 2011 assessing $6,000 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.

A default order was entered regarding Cary Cantu dba Cary's Lawn & Landscaping, Docket No. 2010-0957-LII-E on June 13, 2011 assessing $262 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, 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 Juan Kozer dba Kozer & Associates, LLC, Docket No. 2010-0958-LII-E on June 13, 2011 assessing $250 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 610 ENTERPRISES INC. dba 610 Valero, Docket No. 2010-0993-PST-E on June 13, 2011 assessing $8,896 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, 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 JASANI'S INTERNATIONAL INC. dba Silsbee Shell, Docket No. 2010-1018-PST-E on June 13, 2011 assessing $8,601 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James 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 Birda Miller and Mary Madison, Docket No. 2010-1026-MSW-E on June 13, 2011 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, 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 SETX Clearwater Environmental, L.L.C., Docket No. 2010-1047-MLM-E on June 13, 2011 assessing $4,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Patricia Fuller, Docket No. 2010-1072-PST-E on June 13, 2011 assessing $3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, 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 William F. Stephens dba W S Tire Transport, Docket No. 2010-1124-MSW-E on June 13, 2011 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, 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 Darrell Hall dba 2620 Estates, Docket No. 2010-1149-PWS-E on June 13, 2011 assessing $1,497 in administrative penalties.

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 Hadi & Aga Store Management LLC dba Fina Gas Station, Docket No. 2010-1204-PST-E on June 13, 2011 assessing $18,181 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 City of Odem, Docket No. 2010-1208-MWD-E on June 13, 2011 assessing $5,495 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, 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 Hi Tech Auto Restyling Inc., Docket No. 2010-1210-AIR-E on June 13, 2011 assessing $2,100 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.

A default order was entered regarding Otila Tillie Grimes dba Gold Mine Restaurant, Docket No. 2010-1226-MLM-E on June 13, 2011 assessing $24,705 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, 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 PLACE PROPERTIES DEVELOPMENT SERVICES, LLC, Docket No. 2010-1278-EAQ-E on June 13, 2011 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding National Priority Enterprises, Inc. dba Food Mart #1, Docket No. 2010-1281-PST-E on June 13, 2011 assessing $2,388 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.

A default order was entered regarding Terry Beverlin, Docket No. 2010-1294-MSW-E on June 13, 2011 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, 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 Bret Lydel Rice dba A-1 recycling Center, Docket No. 2010-1304-WQ-E on June 13, 2011 assessing $3,000 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.

A default order was entered regarding Marvin Wayne Taylor, Docket No. 2010-1311-MSW-E on June 13, 2011 assessing $600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, 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 Shell Oil Company, Docket No. 2010-1351-MLM-E on June 13, 2011 assessing $158,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, 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 Comal County, Docket No. 2010-1353-EAQ-E on June 13, 2011 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Louisa Valdez, Docket No. 2010-1356-PST-E on June 13, 2011 assessing $2,750 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 Texas Blending and Warehousing Corporation, Docket No. 2010-1365-AIR-E on June 13, 2011 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, 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 Overseas Enterprises USA, Inc. dba Gateway Travel Plaza, Docket No. 2010-1372-PST-E on June 13, 2011 assessing $8,589 in administrative penalties with $1,717 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANMOL ENTERPRISES INC dba Tarkington Exxon, Docket No. 2010-1379-PST-E on June 13, 2011 assessing $5,680 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 Diamond Shamrock Refining Company, L.P., Docket No. 2010-1410-AIR-E on June 13, 2011 assessing $60,433 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tom Green County Fresh Water Supply District 2, Docket No. 2010-1414-PWS-E on June 13, 2011 assessing $604 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2010-1421-AIR-E on June 13, 2011 assessing $411,776 in administrative penalties with $82,355 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Garland Kimbrell dba Timber We'll Take It, Docket No. 2010-1423-MSW-E on June 13, 2011 assessing $78,225 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, 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 Las Palomas Water Services Company dba Lake Valley Water Company, Inc., Docket No. 2010-1427-PWS-E on June 13, 2011 assessing $392 in administrative penalties with $78 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hermenegildo Bueno dba Paisano Truck Stop, Docket No. 2010-1428-PST-E on June 13, 2011 assessing $5,145 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, 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 ALAMO RECYCLE CENTERS LLC, Docket No. 2010-1438-MSW-E on June 13, 2011 assessing $2,393 in administrative penalties with $478 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEST OREM FOOD MART LLC dba Yours Citgo Mart, Docket No. 2010-1459-PST-E on June 13, 2011 assessing $8,035 in administrative penalties with $1,607 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 Mikyan Retail Inc dba Quick Shop, Docket No. 2010-1489-PST-E on June 13, 2011 assessing $2,811 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Maclovio Ramon, Docket No. 2010-1490-MSW-E on June 13, 2011 assessing $9,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James 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 SENTINEL RESOURCES CORPORATION, Docket No. 2010-1503-MSW-E on June 13, 2011 assessing $24,000 in administrative penalties.

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 Shell Oil Company, Docket No. 2010-1538-AIR-E on June 13, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Montgomery County Municipal Utility District No. 42, Docket No. 2010-1543-MWD-E on June 13, 2011 assessing $8,740 in administrative penalties with $1,748 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.

A default order was entered regarding Geneva England, Docket No. 2010-1568-PST-E on June 13, 2011 assessing $3,675 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 Cray Valley USA, LLC, Docket No. 2010-1580-MLM-E on June 13, 2011 assessing $18,213 in administrative penalties with $3,642 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United States Department of The Navy, Docket No. 2010-1595-IHW-E on June 13, 2011 assessing $87,242 in administrative penalties with $17,448 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.

A default order was entered regarding Felipe J. Aguirre, Docket No. 2010-1605-PST-E on June 13, 2011 assessing $3,850 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.

A default order was entered regarding Mithani's Inc. dba Indio Food Mart, Docket No. 2010-1607-PST-E on June 13, 2011 assessing $3,675 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 City of Arlington, Docket No. 2010-1625-WQ-E on June 13, 2011 assessing $7,500 in administrative penalties.

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 Newell Recycling Company of El Paso, L.P., Docket No. 2010-1665-AIR-E on June 13, 2011 assessing $2,140 in administrative penalties with $428 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 The Queen Ready Mix, Inc., Docket No. 2010-1669-IWD-E on June 13, 2011 assessing $3,360 in administrative penalties with $672 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 Raul Chapa, Docket No. 2010-1678-WOC-E on June 13, 2011 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, 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 Aus-Tex Parts & Services, Ltd., Docket No. 2010-1683-MWD-E on June 13, 2011 assessing $13,510 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Baytown Asphalt Materials, Ltd., Docket No. 2010-1685-AIR-E on June 13, 2011 assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting Gena Hawkins, Enforcement Coordinator at (239) 2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B & B Water Supply Corporation, Docket No. 2010-1695-PWS-E on June 13, 2011 assessing $210 in administrative penalties with $42 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 Carter Glassblowing, Inc., Docket No. 2010-1702-MLM-E on June 13, 2011 assessing $31,000 in administrative penalties with $6,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ruben Zumaya, Docket No. 2010-1704-PST-E on June 13, 2011 assessing $3,850 in administrative penalties with $770 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.

An agreed order was entered regarding Harris County, Docket No. 2010-1707-MWD-E on June 13, 2011 assessing $10,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marc Roger Meeker, Docket No. 2010-1717-MWD-E on June 13, 2011 assessing $14,678 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marty Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ramblewood Utility & Water Supply Corporation, Docket No. 2010-1727-UTL-E on June 13, 2011 assessing $420 in administrative penalties with $84 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARC Communities 8 LLC, Docket No. 2010-1731-PWS-E on June 13, 2011 assessing $215 in administrative penalties with $43 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Youth Commission, Docket No. 2010-1751-PST-E on June 13, 2011 assessing $2,300 in administrative penalties with $460 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding West Cedar Creek Municipal Utility District, Docket No. 2010-1792-MWD-E on June 13, 2011 assessing $1,169 in administrative penalties with $233 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 Equistar Chemicals, LP, Docket No. 2010-1794-AIR-E on June 13, 2011 assessing $10,000 in administrative penalties with $2,000 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 WTG Gas Processing, L.P., Docket No. 2010-1796-AIR-E on June 13, 2011 assessing $30,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BEN CORPORATION dba Super K Food Mart, Docket No. 2010-1811-PST-E on June 13, 2011 assessing $3,000 in administrative penalties with $600 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 E & S, Inc. dba In and Out Diamond Shamrock, Docket No. 2010-1823-PST-E on June 13, 2011 assessing $3,151 in administrative penalties with $630 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 Ryan C. Hoerauf, Inc. dba O'Ryan Oil and Gas, Docket No. 2010-1827-AIR-E on June 13, 2011 assessing $7,125 in administrative penalties with $1,425 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 FIN & FEATHER RESORT LLC, Docket No. 2010-1829-MWD-E on June 13, 2011 assessing $2,300 in administrative penalties with $460 deferred.

Information concerning any aspect of this order may be obtained by contacting Marty Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2010-1836-AIR-E on June 13, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DANESH GROUP CORPORATION dba Manor Food Store, Docket No. 2010-1859-PST-E on June 13, 2011 assessing $2,250 in administrative penalties with $450 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 GOOD BY MARKETING CO. dba Pakco #3, Docket No. 2010-1860-PST-E on June 13, 2011 assessing $6,112 in administrative penalties with $1,222 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 Flint Hills Resources Port Arthur, LLC, Docket No. 2010-1865-AIR-E on June 13, 2011 assessing $20,000 in administrative penalties with $4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.E., 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 Veolia ES Technical Solutions, L.L.C., Docket No. 2010-1870-IWD-E on June 13, 2011 assessing $11,500 in administrative penalties with $2,300 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 Shell Chemical LP, Docket No. 2010-1889-AIR-E on June 13, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VAM USA, LLC, Docket No. 2010-1892-IWD-E on June 13, 2011 assessing $71,424 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Caddo Mills, Docket No. 2010-1901-MWD-E on June 13, 2011 assessing $1,200 in administrative penalties with $240 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pearsall Ventures, Inc. dba Pearsall Shell, Docket No. 2010-1904-PST-E on June 13, 2011 assessing $3,250 in administrative penalties with $650 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 E. I. du Pont de Nemours and Company, Docket No. 2010-1909-AIR-E on June 13, 2011 assessing $8,375 in administrative penalties with $1,675 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Addison Enterprises Inc dba Lavon Shell, Docket No. 2010-1913-PST-E on June 13, 2011 assessing $4,322 in administrative penalties with $864 deferred.

Information concerning any aspect of this order may be obtained by contacting Mikel 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 J&J Homes Corporation, Docket No. 2010-1915-WQ-E on June 13, 2011 assessing $3,600 in administrative penalties with $720 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.G., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. REALTY HOLDINGS, LTD. dba ASA Seminary, Docket No. 2010-1916-PST-E on June 13, 2011 assessing $2,900 in administrative penalties with $580 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 Venus Operating Corp. dba Venus Corner Store, Docket No. 2010-1921-PST-E on June 13, 2011 assessing $2,918 in administrative penalties with $583 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 Heldenfels Enterprises, Inc., Docket No. 2010-1924-IWD-E on June 13, 2011 assessing $6,570 in administrative penalties with $1,314 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DONNA GOTTWALD, D.D.S., P.C., Docket No. 2010-1926-EAQ-E on June 13, 2011 assessing $5,100 in administrative penalties with $1,020 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 Mohamed Amin Baniabbasi dba Amin's Texaco, Docket No. 2010-1936-PST-E on June 13, 2011 assessing $4,310 in administrative penalties with $862 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 Air Products, LLC, Docket No. 2010-1945-AIR-E on June 13, 2011 assessing $5,450 in administrative penalties with $1,090 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vistacon, Inc., Docket No. 2010-1947-WQ-E on June 13, 2011 assessing $2,100 in administrative penalties with $420 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 City of Houston, Docket No. 2010-1953-PST-E on June 13, 2011 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Houston, Docket No. 2010-1955-PST-E on June 13, 2011 assessing $4,500 in administrative penalties with $900 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 SBGJ INVESTMENTS, INC. dba Haley's One Stop, Docket No. 2010-1961-PST-E on June 13, 2011 assessing $2,500 in administrative penalties with $500 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 ANANTNATH INVESTMENT, INC. dba Bay Area Chevron, Docket No. 2010-1963-PST-E on June 13, 2011 assessing $5,424 in administrative penalties with $1,085 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 City of Big Lake, Docket No. 2010-1984-MWD-E on June 13, 2011 assessing $11,934 in administrative penalties.

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.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2010-1991-AIR-E on June 13, 2011 assessing $1,975 in administrative penalties with $395 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I L.P., Docket No. 2010-1997-PWS-E on June 13, 2011 assessing $262 in administrative penalties with $52 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Memorial Point Utility District, Docket No. 2010-2002-PWS-E on June 13, 2011 assessing $710 in administrative penalties with $142 deferred.

Information concerning any aspect of this order may be obtained by contacting Kelly Wisian, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Industries, Inc., Docket No. 2010-2008-WR-E on June 13, 2011 assessing $765 in administrative penalties with $153 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kopperl Independent School District, Docket No. 2010-2016-MWD-E on June 13, 2011 assessing $9,160 in administrative penalties with $1,832 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Linden, Docket No. 2010-2024-PWS-E on June 13, 2011 assessing $2,635 in administrative penalties with $527 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cibolo Waste, Inc. dba Bexar Waste Recycling Facility, Docket No. 2010-2044-MSW-E on June 13, 2011 assessing $2,354 in administrative penalties with $470 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 K.L. Comfort Park, Ltd., Docket No. 2010-2088-PWS-E on June 13, 2011 assessing $422 in administrative penalties.

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 Hines Land and Cattle Company, Ltd, Docket No. 2011-0016-EAQ-E on June 13, 2011 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Donald Smith dba Kingmont Mobile Home Park, Docket No. 2011-0023-MWD-E on June 13, 2011 assessing $6,080 in administrative penalties with $1,216 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 Bruce F. Neibrandt dba 5 O'Clock Somewhere Bar, Docket No. 2011-0062-PWS-E on June 13, 2011 assessing $3,053 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, 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 Douglas Meier dba Meier Recycle Center, Docket No. 2011-0066-WQ-E on June 13, 2011 assessing $26,400 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 City of Duncanville, Docket No. 2011-0119-WQ-E on June 13, 2011 assessing $4,000 in administrative penalties.

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.

A field citation was entered regarding Delton Osborn, Docket No. 2011-0305-WOC-E on June 13, 2011 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201102335
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2011

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Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Major Amendment Permit No. 1312a

APPLICATION. The City of Farmers Branch, 13000 William Dodson Parkway, Farmers Branch, Dallas County, Texas 75234, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Solid Waste Type I Limited Scope Major Permit Amendment

to expand the Camelot Sanitary Landfill permit boundary. The existing 350.77-acre area within the permit boundary will be increased to 469.62 acres to expand the buffer zone along the northern portion of the site. The facility is located at 580 Huffines Boulevard, Lewisville, Denton County, Texas 75056. The TCEQ received the application on April 25, 2011. The permit application is available for viewing and copying at the Lewisville Public Library, 1197 West Main Street, Lewisville, Denton County, Texas 75067-3425. Also available for viewing at http://www.ftwweaverboos.com.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201102336
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2011

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Notice of Water Quality Applications

The following notices were issued on June 10, 2011 through June 17, 2011.

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

POSSUM KINGDOM WATER SUPPLY CORPORATION, which operates George N. Bailey, Jr. Water Treatment Plant (WTP), a potable water treatment plant, has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004325000 to authorize an increase in flow at Outfall 001 for a proposed plant expansion. The request will add an interim phase with a daily average flow of 480,000 gallons per day and a daily maximum flow of 960,000 gallons per day; and a final phase with a daily average flow of 600,000 gallons per day and a daily maximum of 1,200,000 gallons per day. The current permit authorizes the discharge of backwash water, process sampling water, and reverse osmosis concentrate at a daily average flow not to exceed 220,000 gallons per day and a daily maximum flow of 340,000 gallons per day via Outfall 001. The facility is located at 300 Lago Vista Road, approximately 0.5 mile south of intersection of Farm-to-Market Road 2951 and Harris Drive, and approximately 16 miles west of the town of Graford, Palo Pinto County, Texas 76449.

CITY OF ALTO has applied for a renewal of TPDES Permit No. WQ0010546001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 4,000 feet southeast of the

intersection of State Highway 21 and U.S. Highway 69 in Cherokee County, Texas 75925.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0010875003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 255,000 gallons per day. The facility is located approximately 3,500 feet southwest of the intersection of Farm-to-Market Road 1132 and State Highway 105 in Orange County, Texas 77662.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0010875008 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 630,000 gallons per day. The facility is located 1,320 feet east of the intersection of Willow Drive and Dogwood Drive in Vidor and approximately 3,960 feet southwest of the intersection of State Highway 105 and the Southern Pacific Railroad in Orange County, Texas 77662.

CITY OF WINONA has applied for a renewal of TPDES Permit No. WQ0010922001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located west of Harris Creek and south of Farm-to-Market Road 16, approximately 1,000 feet due south of the intersection of Farm-to-Market Road 16 and State Highway 155 in Smith County, Texas 75792.

WARREN INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0011308001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located approximately 0.7 mile southwest of the intersection of U.S. Highway 69 and Farm-to-Market Road 1943 in Tyler County, Texas 77664.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0011630002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 330,000 gallons per day. The facility will be located 3,700 feet northeast of the intersection of Kuykendahl and Kuykendahl-Huffsmith Road, and 9,300 feet west of Gosling Road in Harris County, Texas 77389.

GRAND RANCH TREATMENT COMPANY has applied for a renewal of TPDES Permit No. WQ0013846001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,500 gallons per day. The facility is located at 5620 Big Sky Drive, 1,000 feet south of County Road 915 and approximately 1.3 miles west of Farm-to-Market Road 1902 in Joshua, Johnson County, Texas 76058.

APPLE SPRINGS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0014086001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,200 gallons per day. The facility is located approximately 1,000 feet northwest of the intersection of Farm-to-Market Road 357 and Farm-to-Market Road 2501, and north of State Highway 94 in Trinity County, Texas 75926.

SJWTX, INC. has applied for a major amendment to TCEQ Permit No. WQ0014131001, to authorize an increase in the daily average flow from 20,000 gallons per day to 60,000 gallons per day and to increase the acreage irrigated from 7.4 acres to 15.25 acres of public access forest/grassland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 20475 State Highway 46 West, approximately 0.15 mile west of U.S. Highway 281, on the south side of State Highway 46, in Spring Branch in Comal County, Texas 78070.

DAVID JOSEPH SORRELL has applied for a renewal of TPDES Permit No. WQ0014171001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,500 gallons per day. The facility is located at 321 Private Road 5534, approximately 2.8 miles north of the intersection of Farm-to-Market Road 17 and State Highway 182, north of the community of Alba in Wood County, Texas 75410.

CARLISLE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0014292001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 17,500 gallons per day. The facility is located at 8960 Farm-to-Market Road 13, approximately 900 feet south of the intersection of Farm-to-Market Road 13 and State Highway 42, and 500 feet west of State Highway 42 in Rusk County, Texas 75687.

CITY OF WEST TAWAKONI has applied for a renewal of TPDES Permit No. WQ0014344001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 1.5 miles south of Farm-to-Market Road 35 and 7 miles east of the City of Quinlan in Hunt County, Texas 75474.

JOHNSON COUNTY SPECIAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0014350001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 2.5 miles northeast of the intersection of State Highway 174 and Farm-to-Market Road 917 in the City of Joshua in Johnson County, Texas 76058.

TRINITY BAY CONSERVATION DISTRICT has applied for a renewal of TPDES Permit No. WQ0014734001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located 500 feet north of the intersection of Farm to Market Road 562 and Hawkins Camp Road in Smith Point in Chambers County, Texas 77514.

VAL VERDE UTILITY COMPANY, LLC has applied for a renewal of TPDES Permit No. WQ0014777001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility will be located between the City of Del Rio and Laughlin Air Force Base, approximately 1,000 feet northwest of U.S. Highway 277 and approximately 500 feet west of Spur 317 in Val Verde County, Texas 78840.

AIR PRODUCTS LLC, which operates the Pasadena Plant, a manufacturing facility of organic and inorganic chemicals, has applied for a renewal of TPDES Permit No. WQ0002382000, which authorizes the discharge of utility wastewater and storm water on an intermittent and flow variable basis via Outfalls 001 and 002. The facility is located at 1423 State Highway 225, on the northeast corner of the intersection of Red Bluff Road with State Highway 225 and west of Davison Road in the City of Pasadena, Harris County, Texas 77506.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, which operates the Kendleton Intermodal Facility WWTP, has applied for a new permit, proposed Permit No. WQ0004944000, to authorize the disposal of crane and truck wash water at a daily average flow not exceed 80 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal site are located at the intersection of Gin Road and West Tavener Road, approximately 1.38 miles northeast of the intersection of U.S. Highway 59 and Farm to Market Road 2919 (one mile north of Kendleton), Fort Bend County, Texas 77417.

LETOURNEAU TECHNOLOGIES, INC., which operates LeTourneau Technologies, a heavy equipment manufacturing plant, has

applied for a renewal of TPDES Permit No. WQ0001603000, which authorizes contact and noncontact cooling water, parts and equipment washdown water, and previously monitored effluents (wastewater from the vacuum degassing process, non-contact cooling water, contact cooling water, storm water and wastewater from the hot forming process) and storm water runoff on an intermittent and flow variable basis via Outfall 001. The facility is located at 2400 S. McArthur Boulevard, approximately 0.25 mile northwest of the intersection of Estes Parkway and Farm-to-Market Road 1845, and approximately 0.75 mile north of Interstate Highway 20 in the southwestern portion of the City of Longview, Gregg County, Texas 75602.

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-201102337
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2011

♦ ♦ ♦

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on June 17, 2011, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Federico C. Villarreal dba A-1 Paint & Body Shop aka Paint & Body Works; SOAH Docket No. 582-10-1638; TCEQ Docket No. 2009-0942-PST-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Federico C. Villarreal dba A-1 Paint & Body Shop aka Paint & Body Works on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201102338
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2011

♦ ♦ ♦

Revised Notice of Receipt of Application for Land Use Compatibility Determination for a Municipal Solid Waste Proposed Permit No. 2374

APPLICATION. Rancho Viejo Waste Management, LLC, 1116 Calle del Norte, Laredo, Webb County, Texas 78041, a waste management facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Permit No. 2374, to operate the Pescadito Environmental Resource Center, a MSW Type I Landfill, a Type V Grease and Grit (GG) processing facility, and a recycling facility. The facility is located approximately 5 miles southeast of U.S. Highway 59 at Ranchitos Las Lomas, Laredo, Webb County, Texas 78043. The TCEQ received the application on April 15, 2011. The permit application is available for viewing and copying at the Laredo Public Library, 1120 East Calton Road, Laredo, Webb County, Texas 78041-7328.

ADDITIONAL NOTICE. The TCEQ Executive Director has determined that the land use compatibility portion of the application is administratively complete and will conduct a substantive review of this portion of the application. Following completion of that review, the TCEQ will make a separate determination on the question of land use compatibility. If the site is determined to be compatible with the surrounding land uses, the TCEQ may at another time consider conformity with other regulatory requirements. After completing the land use compatibility review, the TCEQ will issue a Notice of Application and Preliminary Decision. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201102355
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: June 22, 2011

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Texas Facilities Commission

Request for Proposals #303-2-20285

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department (TPWD), announces the issuance of Request for Proposals (RFP) #303-2-20285. TFC seeks a 5 or 10 year lease of approximately 9,433 square feet of office and warehouse space in San Antonio, Bexar County, Texas.

The deadline for questions is July 11, 2011 and the deadline for proposals is July 26, 2011 at 3:00 p.m. The award date is September 1, 2011. 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 the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. 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=95258.*

TRD-201102294
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 20, 2011

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Requests for Proposals #303-2-20286

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-2-20286. TFC seeks a 5 (five) or 10 (ten) year lease of approximately 7,427 square feet of office space/training facility in Austin, Travis County, Texas.

The deadline for questions is July 11, 2011 and the deadline for proposals is July 25, 2011 at 3:00 p.m. The award date is September 1, 2011. 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 the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. 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=95309.*

TRD-201102330
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 22, 2011

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Rule Amendment to the Reimbursement Methodology for Inpatient Hospitals and on Proposed Rates Effective September 1, 2011

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Thursday July 28, 2011, at 1:30 p.m., to receive comment on proposed amendments to the administrative rule at Title 1 Texas Administrative Code §355.80521 that governs the payment methodology for Medicaid inpatient hospital reimbursement. The public hearing will also receive public comments on proposed rates developed as a result of these proposed rule amendments. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Texas Government Code §2001.029, which provides an opportunity for a public hearing, when requested, before adoption of a rule. The hearing will also be held in compliance with Human Resources Code §32.0282 and the Texas Administrative Code, Title §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. HHSC proposes to repeal current §355.8052 and replace it with new §355.8052 describing the prospective payment system applicable to Medicaid inpatient hospital payments. The proposed methodology establishes a statewide base standard dollar amount (SDA) that is intended to address the issue of significant disparity of payment for the same services by hospitals that are similarly situated in the state. Teaching hospitals and trauma-designated hospitals are eligible for increases to the statewide base SDA, in recognition of the high-cost functions of those groups of providers. Increases to the statewide base SDA are also available based on wage differences related to the geographic area in which each prospectively-paid inpatient hospital is located.

The proposed rule complies with the 2012-13 General Appropriations Act (Article II, Health and Human Services Commission, H.B. 1, Rider 67 and Rider 61(b)(17), 82nd Legislature, Regular Session, 2011), in which HHSC was directed to develop a statewide SDA and was authorized to consider high-cost hospital functions and services, including regional differences. The proposed rule also reflects direction in Article II regarding inpatient hospital rates, including HHSC Rider 61(b)(29), related to paying more appropriately for outliers, HHSC Rider 67, related to mitigating disproportionate losses up to September 1, 2012, and Special Provisions, Section 16(b)(5), related to reducing hospital rates

by eight percent. The proposal is also in compliance with §355.201(d) regarding the adjustment of fees, rates, and charges.

Methodology and Justification. The payment rates were calculated in accordance with the proposed new rule at §355.8052, which addresses the reimbursement methodology for Medicaid Inpatient Hospital Services.

Rate Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtmlon or after July 13, 2011. Those interested may also obtain a copy of the briefing package before the hearing by contacting Esther Brown at (512) 491-1358, by fax at (512) 491-1983; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the rule proposal or proposed payment rates may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or e-mail to the attention of Esther Brown, HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201102293
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 20, 2011

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Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services (CMS) a request for a renewal to the Primary Care Case Management waiver program, under the authority of §1915(b) of the Social Security Act. The Primary Care Case Management waiver program is currently approved for the two-year period beginning January 1, 2010, and ending December 31, 2011. The proposed effective date for the renewal is January 1, 2012.

The Primary Care Case Management program includes a Medicaid waiver which allows beneficiaries to obtain waiver covered services through hospitals contracted with the Primary Care Case Management program. The waiver renewal allows a reimbursement methodology that would permit the Texas Medicaid claims administrator to continue negotiating Primary Care Case Management hospital contracts and discount rates with non-Tax Equity Fiscal Responsibility Act hospitals. Service provision to Primary Care Case Management clients by Primary Care Case Management hospitals have improved since the last waiver as 17 hospitals have been added to improve client access to hospital provided services. A total of 407 Primary Care Case Management hospitals are now contracted throughout the state, of which approximately 97 percent are contracted at a discount from the standard daily amount. HHSC has the oversight authority to approve the final negotiated contracts and rates.

HHSC is requesting that the waiver renewal be approved for the period beginning January 1, 2012, through December 31, 2013. This renewal maintains cost savings for waiver years 2012 through 2013.

To obtain copies of the proposed waiver renewal, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by email at Christine.Longoria@hhsc.state.tx.us.

TRD-201102207
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 17, 2011

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 30 to the Texas State Plan for the Children's Health Insurance Program (CHIP), under Title XXI of the Social Security Act. The proposed effective date of this amendment is September 1, 2011.

Amendment 30 will allow children of public employees who meet CHIP eligibility requirements to enroll in CHIP. Federal CHIP law formerly prohibited federal CHIP funding for children with access to a "state health benefits plan." Therefore, in 1999, Texas created the State Kids Insurance Program (SKIP) to provide state employees, whose children would have otherwise been eligible for CHIP, with a state premium subsidy contribution towards Employees Retirement System (ERS) dependent coverage based on their family size and income. The Health and Human Services Commission determines eligibility for SKIP and ERS provides the premium subsidy.

The Patient Protection and Affordable Care Act of 2010, which was signed into federal law on March 23, 2010, allows states to provide federally-matched CHIP coverage to the children of public employees effective March 23, 2010, if the state employee health benefits plan out-of-pocket costs pose a financial hardship for families. Texas public employees meet this financial hardship criterion if their family income is 200 percent of the federal poverty level, which is the income limit for Texas CHIP.

The proposed amendment is estimated to result in a savings of state general revenue funds of $14.7 million for state fiscal year 2012 and $15.1 million for SFY 2013.

To obtain copies of the proposed amendments, interested parties may contact Monica Thyssen by mail at P.O. Box 85200, MC: H-310, Austin, TX 78708; by telephone at (512) 491-1404 by facsimile at (512) 491-1953; or by e-mail at monica.thyssen@hhsc.state.tx.us.

TRD-201102295
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 20, 2011

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 11-019, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

Per directive from the Centers for Medicare and Medicaid Services (CMS), the purpose of this amendment is to add language from the Code of Federal Regulations to the service description for case management services to high risk pregnant women. The proposed amendment is effective October 1, 2011. As the proposed amendment has no impact on service provision or reimbursement of services, there is no fiscal impact to state or federal budgets.

To obtain copies of the proposed amendment, interested parties may contact Ashley Fox by mail at the Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H6000, Austin, TX 78711; by telephone at (512) 491-1165; by facsimile at (512) 491-1953; or by e-mail at ashley.fox@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201102298
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 20, 2011

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 11-021 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

Section 6505 of the Affordable Care Act, Prohibition on Payments to Institutions or Entities Located Outside of the United States, amends section 1902(a) of the Act by prohibiting a state from providing any payments for items or services provided under the State Plan or under a waiver to any financial institution or entity located outside of the United States. At CMS's direction, HHSC is submitting the proposed amendment to provide a statement of compliance with Section 6505 of the Affordable Care Act. The requested effective date for the proposed amendment is June 1, 2011. There is no anticipated fiscal impact with this amendment.

To obtain copies of the proposed amendment, interested parties may contact Ashley Fox by mail at P.O. Box 13247, MC H-600, Austin, Texas 78711; by telephone at (512) 491-1165; by facsimile at (512) 491-1953; or by e-mail at ashley.fox@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201102301
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 21, 2011

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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 August 1, 2011.

The amendment will modify the reimbursement methodology in the Texas Medicaid State Plan for Ambulance Services by allowing cost-based reimbursement for all Texas Health and Human Services Commission-approved governmental ambulance service providers. The providers will be subject to annual cost-reporting requirements, cost reconciliation, and cost settlement.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $1,679,239 for federal fiscal year (FFY) 2011, with approximately $1,116,022 in federal funds and $563,217 in State General Revenue (GR). For FFY 2012, the estimated additional aggregate expenditure is $15,128,801, with approximately $8,807,988 in federal funds and $6,320,813 in GR. For FFY 2013, the estimated additional aggregate expenditure is $15,582,665, with approximately $8,941,333 in federal funds and $6,641,332 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-201102333
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 22, 2011

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Texas Department of Housing and Community Affairs

Notice of Public Hearings for the Community Services Block Grant (CSBG) 2012-2013 State Application and Plan

In accordance with the U.S. Department of Health and Human Services' requirement for CSBG and 10 TAC Chapter 5, Subchapter B, §5.209 on the use of CSBG funds, the Texas Department of Housing and Community Affairs (TDHCA) is conducting public hearings. The primary purpose of the hearings is to solicit comments on the proposed Texas 2012-2013 CSBG State Application and Plan which describes the proposed use and distribution of CSBG funds for Federal Fiscal Years 2012 and 2013. As federal statute requires, not less than ninety percent of the CSBG funds will be distributed to the State's CSBG eligible entities and not more than five percent will be used for state administration, including support for monitoring and for the provision of training and technical assistance. The remaining five percent will be utilized to fund state discretionary projects/initiatives and for disaster assistance recovery.

The draft Application/Plan is to be presented to the TDHCA Board of Directors on June 30, 2011. Once approved, the document will be posted and available for review on the Department's website at www.tdhca.state.tx.us in the CSBG Program category.

The public hearings are to be held on Monday, July 18, 2011 from 1:30 p.m. to 3:30 p.m. at City of Fort Worth, City Council Chambers, 1000 Throckmorton Street, Fort Worth, Texas and on Friday, July 29, 2011 from 1:30 p.m. to 3:30 p.m. in Room #116 at the TDHCA headquarters office located on 221 East 11th Street in Austin, Texas.

A representative from TDHCA will be present at the hearings to explain the planning process and receive comments from interested citizens and affected groups regarding the proposed Application/Plan. For questions, contact J. Al Almaguer, Senior Planner, in the Community Services Section at (512) 475-3908 or al.almaguer@tdhca.state.tx.us. Comments may be provided in writing or by oral testimony at the hearing. Written comments may be submitted to TDHCA at the time of the hearing, by e-mail to al.almaguer@tdhca.state.tx.us or by mail to P.O. Box 13941, Austin, TX 78711-3941 no later than close of business **August 12, 2011.**

Individuals who require auxiliary aids or services should contact Gina Esteves, ADA Responsible Employee, at least two days before the scheduled hearing at (512) 475-3943 or Relay Texas at 1-800-735-2989 so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Rita Gonzales-Garza, (512) 475-3905, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Rita Gonzales-Garza al siguiente número (512) 475-3905 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201102328
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Filed: June 22, 2011

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Texas Department of Insurance

Third Party Administrator Application

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application of PMSI, INC. (DOING BUSINESS AS PMSI), a foreign third party administrator. The home office is TAMPA, FLORIDA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201102329
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 22, 2011

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Texas Department of Public Safety

Request for Applications

The Pre-Disaster Mitigation (PDM) and Repetitive Flood Claims (RFC) FY 2012 grant application window is open. This offers eligible applicants an opportunity to obtain grant funding for projects that mitigate risks from natural hazards.

The State encourages PDM projects that address acquisition and demolition of residences on flood prone properties or the elevation of residences or non-residential properties to reduce flood damage; individual or community safe rooms for tornado and high wind hazards; and localized drainage and flood management projects. A PDM grant may also be used to create or update a local mitigation plan. The RFC program addresses the acquisition or elevation of current National Flood Insurance Program (NFIP) insured properties with repetitive losses.

Eligible applicants are state agencies, local jurisdictions, recognized Indian Tribal governments, state supported colleges/universities and councils of governments. Private non-profit agencies are not themselves eligible but may be able to find a local government entity to apply on their behalf. All eligible applicants applying for projects other than mitigation planning grants must have a Federal Emergency Management Agency (FEMA) approved local mitigation plan in accordance with Code of Federal Regulations, Title 44, §201.6.

To submit an application, a web-based account managed by FEMA is set up through the Texas Division of Emergency Management (TDEM). The chief elected officer must mail a letter to TDEM requesting access for identified individuals to create and submit an application. For further information go to www.preparingtexas.org under "HOT TOPICS", click on "Pre-Disaster Mitigation (PDM) and Repetitive Flood Claims (RFC) Grant Program for FY 2012 Announced" then click on "clicking here for the guidance document" to view the FY2012 PDM & RFC Guidance document.

The deadline for requesting e-Grant access through TDEM is August 5, 2011.

The deadline for submitting a PDM application is October 28, 2011.

The deadline for submitting an RFC application is November 4, 2011.

TRD-201102296
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: June 20, 2011

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Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 17, 2011, for 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 Nortex Communications Company d/b/a Nortex Communications for State-Issued Certificate of Franchise Authority, Project Number 39510.

The requested CFA is for the service area of Collinsville and Lake Kiowa, see maps filed with application.

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 39510.

TRD-201102304
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2011

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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 of an application on June 17, 2011, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas) request for assignment of eight thousands-blocks of numbers in the Laredo rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 39515.

The Application: AT&T Texas requested eight thousands-blocks of numbers on behalf of its customer, United Independent School Dis-

trict, in the Laredo rate center. 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 July 8, 2011. 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 39515.

TRD-201102300
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2011

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of Southwestern Bell Telephone Company d/b/a AT&T Texas' application filed with the Public Utility Commission of Texas (commission) on May 31, 2011, to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas to Withdraw DS1 High Capacity Automatic Loop Transfer Pursuant to P.U.C. Substantive Rule §26.208(h) - Docket Number 39452.

The Application: On May 31, 2011, Southwestern Bell Telephone Company d/b/a AT&T Texas filed an application to withdraw DS1 High Capacity Automatic Loop Transfer pursuant to P.U.C. Substantive Rule §26.208(h). AT&T Texas states that there are no current customers. The proceedings were docketed and suspended on June 1, 2011, to allow adequate time for review and intervention.

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 Docket Number 39452.

TRD-201102284
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2011

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on June 21, 2011, with the Public Utility Commission of Texas (commission) of a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or after July 1, 2011.

Docket Title and Number: Application of Verizon Southwest, Inc. for Approval of LRIC Study for FiOS Bundle Suspension Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 39521.

Any party that demonstrates a justiciable interest may file with the administrative law judge written comments or recommendations concerning the LRIC study referencing Docket Number 39521. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll free (800) 735-2989. All comments should reference Docket Number 39521.

TRD-201102339
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2011

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on June 21, 2011, with the Public Utility Commission of Texas (commission) of a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or after July 1, 2011.

Docket Title and Number: Application of Verizon Southwest, Inc. for Approval of LRIC Study for Call Mover Services (CMS) Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 39522.

Any party that demonstrates a justiciable interest may file with the administrative law judge written comments or recommendations concerning the LRIC study referencing Docket Number 39522. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 39522.

TRD-201102340
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2011

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on June 21, 2011, with the Public Utility Commission of Texas (commission) of a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or after July 1, 2011.

Docket Title and Number: Application of Verizon Southwest, Inc. for Approval of LRIC Study for Engineering Design Study Fee Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 39523.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 39523. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 39523.

TRD-201102341
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2011

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Notice of Petition for Approval of Net Metering Tariff

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on June 17, 2011 of a petition for approval of a net metering tariff.

Tariff Control Number: Petition of Southwestern Electric Power Company for Approval of Net Metering Tariff. Tariff Control Number 39508.

The Petition: Southwestern Electric Power Company (SWEPCO) filed a petition for approval of a net metering tariff. SWEPCO stated the tariff will allow the company to provide service to and purchase excess energy from customers within the SWEPCO Texas service territory who install distributed generation facilities by providing for net metering. SWEPCO proposed an effective date of July 29, 2011.

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 (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 Tariff Control Number 39508.

TRD-201102305
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2011

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Public Notice of Open Meeting/Workshop Concerning Project to Evaluate the Direct Assignment of Costs for Wholesale Classes in the Oncor Service Area

The Public Utility Commission of Texas (commission) will hold a workshop regarding the project to evaluate the direct assignment of costs for wholesale classes in the Oncor service area on Wednesday, August 3, 2011 from 9:00 a.m. to 4:00 p.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project No. 38808, *Project to Evaluate the Direct Assignment of Costs for Wholesale Classes in the Oncor Service Area*, has been established for this proceeding.

The commission requests that interested persons file comments to the following questions on or before Wednesday, July 20, 2011:

1. How should the direct assignment of distribution costs be defined?

A. Define direct assignment in the context of cost causation.

B. Define direct assignment for distribution service customer classes.

C. Identify and explain any cost methodologies for different customer usage characteristics that could be affected by any of the following:

i. Load-based system average vs. location of facilities;

ii. Retail vs. wholesale customers;

iii. Individual, aggregate, class; and

iv. Historical vs. current vs. future.

D. Identify and explain any cost methodologies for different facilities that could be affected by any of the following:

i. Shared facilities among customers;

a. Inter-class; and

b. Intra-class.

ii. Radial lines;

a. One customer; and

b. More than one customer.

iii. Differences in facilities to serve customers.

E. Identify and explain any direct assignment cost methodology precedents in Texas, and outside of Texas.

F. Identify and explain any rate impacts of different cost methodologies based on how the direct assignment of distribution costs is defined.

2. Would the direct assignment of distribution costs have competitive market implications for wholesale customers in the context of the following:

A. System average costs vs. "direct assignment" costs;

B.Subsidization of classes:

i. Subsidization defined;

ii. Effects;

C. Effect on Facilities Extension Agreements; and

D. Stranded costs for customers who leave the system.

3. What are the cost of service and rate implications of the direct assignment of distribution costs in the context of the following:

A. Effects on the allocation of O&M and A&G Costs, taxes, and other income;

B. Frequency of rate updates when facilities are replaced; and

C. Rate effects from Storm Catastrophe

4. Would the direct assignment of costs conflict with any provisions in PURA, Commission precedent, or the commission's Substantive Rules?

These questions address whether the direct assignment of costs for wholesale customers costs is appropriate. Depending on the resolution of these questions, the project may move into a second phase, which would address the actual implementation of the direct assignment of costs.

Responses may field by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 14 days of

the date of the publication of this notice. All responses should reference Project No. 38808.

Ten days prior to the workshop the commission shall make available in Central Records under Project No. 38808 an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Richard Lain, Director of Tariff & Rate Analysis, Rate Regulation Division, at (512) 936-7454. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201102343
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 22, 2011

♦ ♦ ♦

Public Notice of Workshop

The Public Utility Commission of Texas (commission) will hold a workshop on Entergy Texas Inc.'s (ETI) proposal to join the Midwest Independent System Operator (MISO). The workshop will be held on Thursday, July 28, 2011, at 9:30 a.m. in the Commissioners' Hearing Room at the commission offices at 1701 N. Congress, 7th floor, Austin, Texas 78701. At the workshop, ETI will present information on its proposal to join MISO and answer questions from the commission and interested parties. The workshop is part of ongoing research by the commission to evaluate the benefits of ETI joining a regional transmission operator and the specific proposal by the Entergy operating companies and ETI to join MISO.

The commission requests that interested persons submit questions for ETI to address at the workshop. Questions shall be filed in Project Nos. 38708 and 39385 no later than Thursday, July 21, 2011. This notice is not a formal notice of proposed rulemaking; however, the information discussed at the workshop may assist the commission in developing commission policy. Ten days prior to the workshop the commission will make an agenda for the workshop available under Project Nos. 38708 and 39385. The workshop will be webcast on www.texasadmin.com.

Questions concerning the workshop or this notice should be referred to Richard Greffe, Competitive Markets Division, at (512) 936-7404, or Jason Haas, Legal Division, at (512) 935-7295. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201102299
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2011

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Request for Comments on Project to Develop a Standard Form for the Prepaid Disclosure Statement Pursuant to P.U.C. Substantive Rule §25.498

The Public Utility Commission of Texas (commission) requests comments regarding the standard form for the Prepaid Disclosure Statement, pursuant to P.U.C. Substantive Rule §25.498, regarding Prepaid Service, which requires Retail Electric Providers to provide a prepaid disclosure statement to their customers. Project Number 39357 has been established for this proceeding. The draft form can be found on the commission's website under "Interchange Retrieval," Control Number 39357 (http://www.puc.state.tx.us/interchange/index.cfm) and as follows:

Format of Prepaid Disclosure Statement (PDS). In compliance with §25.498, regarding Prepaid Service, REPs must use the following format for the PDS, including the headings and text shown. The REP shall fill-in the information required in the bracketed REP instructions. The REP may fill-in the utility fee information with the applicable fees for a specific service area if the PDS is service area specific, or if the same PDS is used for a product offered across service areas, with a range of the applicable fees or the maximum fees for all service areas in which the product is offered. For move-in fees, the REP shall fill in the blank with either a range of charges or the maximum charge with the prefix statement "up to" including any applicable standard move-in and priority move-in fees from the utility's tariff. For switching fees, the REP shall fill in the blank with either a range of charges or the maximum charge with the prefix statement "up to" including any applicable charges which would result from a meter read for the purpose of a standard switch and from an out-of-cycle meter read for the purpose of a self-selected switch. The REP may note any additional information in any section of the form with footnotes which reference to the additional information section at the end of the form. The REP shall assign and place on each PDS an identification number to each version. Each PDS shall be printed in a type no smaller than 12 point size and shall be formatted as shown in this paragraph:

Prepaid Disclosure Statement (PDS)

{Name of REP}, {Name of Product *(optional)*}, {Service area *(if applicable)*}, {Date}

Important Notice *Prepaid electric service means you purchase electricity before it is used. You will not receive a regular, monthly bill. The continuation of electric service depends on you prepaying for service on a timely basis and if your current balance falls below the disconnection balance, your service may be disconnected with little notice.* ***Prepaid service is not available to customers who are officially designated as a Critical Care Residential Customer or Chronic Condition Residential Customer.*** ***Some assistance agencies may not provide bill payment assistance programs to customers that use prepaid service. Additional information is provided below.***	
Connection Balance: ***How do I start prepaid service?***	To open your prepaid account, you must make a payment to establish a balance of __. {the REP may fill in the blank with a dollar amount connection balance, or if the product has no REP fees deducted from the connection balance, the REP may choose to fill in the box with either the connection balance or the phrase, "an amount of your choice."} {If there are REP non-recurring charges, that will be deducted from the connection balance to establish service, include the following: "The payment amount includes the charges listed below: [List any non-recurring REP fees, and the total amount of those fees, that will be deducted from the connection balance to establish service] "After these fees are deducted, your account will have $__ available. "}
	Utility fees may also apply. {If applicable, "Typical charges you can expect for starting electric service are: Move-In $___ Switch $___ Utility charges could increase if a new meter must be installed at your residence or you require a non-standard service, holiday service or a service call."} The fees will be: {check one} ☐ paid in addition to the costs of enrolling in the service. ☐ subtracted from your account balance. For more information about utility fees you may contact {Name of REP}.
Fees: ***What other fees may I be charged?***	{If applicable, "{Name of REP} has the following fees:" List any non-recurring fees, including any applicable early termination fee, that the customer may be charged, the amount of the fee and a description of the fee using the following format: [Name of fee] $___ [Description of when fee is applied]. "Fees charged are subtracted from your account balance."} . {if there the product is not subject to any non-recurring REP fees, "This is a no fee product."}
Making a Payment:	Acceptable forms of payment: {List the acceptable methods of payment, hours payment can be made [for the hours that are listed, the payment methods must be identified] instructions on how to make payments, and any fees associated with making a payment. **List any no fee payment method first.**}

How do I make a payment?	Do I have to verify payments? [yes/no] {if yes, include the following paragraphs: When you make payments through [List payment method(s)], you must verify that payment if you need to establish a connection balance or a balance above your disconnection balance. You may verify payment by [description of method required to verify payment.]}
Electricity Payment Assistance: ***Will payment assistance be available to me?***	If you qualify for low-income status or low-income assistance, have received energy assistance in the past, or you think you will be in need of energy assistance in the future, you should contact the billing assistance program to confirm that you can qualify for energy assistance if you need it. Energy or bill payment assistance may be available, please call {name of REP} for additional information. {A REP may optionally include any contact information for electricity assistance programs other than bill payment assistance, such as weatherization or the LITE-UP Texas Discount. The REP may also include the contact information for 211 information and referral services.}
Communications: ***How will the company contact me for important notices?***	We will contact you by {list communications method(s) as required by §25.498(c)(5)(A)} for important notifications including current balance requests, payment confirmation codes, and disconnection warnings. {If applicable, include the statement, "{Name of REP} may communicate additional notifications through United States Postal Service."}
Disconnection: ***How can I avoid having my electricity disconnected?***	It is important to maintain an account balance at or above $___ or your service may be disconnected. This is called a "disconnection balance." You will be notified ___ days before your account balance is *expected* to fall below $___. If your account balance falls below $___ more quickly than expected, service may be disconnected as little as one day after you receive the low balance notification. If applicable, "{Name of REP} may charge a $___ disconnection fee." {If applicable, "Separately, your utility will charge a disconnection fee. The standard disconnection fee is $___. Utility charges could increase if a non-standard service or a service call is required."}
Reconnection: ***How do I restart prepaid service if my electricity is disconnected?***	If your service is disconnected, and your account has a negative balance, you must pay off that amount in addition to the amounts disclosed below. In order to restart prepaid electric service, you must make a payment to establish a balance of __ {the REP may fill in the blank with a dollar amount connection balance, or if the product has no REP fees deducted from the connection balance, the REP may choose to fill in the box with either the connection balance or the phrase, "an amount of your choice."} {If there are REP non-recurring charges, that will be deducted from the connection balance to reconnect service, include the following: "The payment amount includes the charges listed below: [List any non-recurring REP fees, and the total amount of those fees, that will be deducted from the connection balance to reconnect service]} "After these fees are deducted, your account will have $__ available."} Utility fees may also apply. {If applicable, "Your utility will charge a reconnection fee. The standard reconnection fee is $___. Utility charges could increase if a non-standard service

	or a service call is required"} The fees will be: {check one} ☐ paid in addition to the costs of reconnecting service. ☐ subtracted from your account balance.
Deferred Payment Plans: ***When is a deferred payment plan available?***	Deferred payment plans are available upon request in the following situations: • If your account reaches a negative balance of $50 or more during an extreme weather event. • If a state of disaster has been declared in your area by the Governor of Texas and the Public Utility Commission requires that deferred payment plans be offered. • If {Name of REP} has underbilled your account by $50 or more for reasons other than theft of service. {If applicable, "Please contact {Name of REP} for any additional deferred payment plan options."}
	If you enter into a deferred payment plan, {Name of REP} may apply a switch-hold until your deferred payment plan is paid in full. A switch-hold means you will not be able to buy electricity from another company while the switch-hold is in place. For more information regarding switch-holds, contact {Name of REP}.
	{Contact info, certification number, version number} *{Additional information may be added below}*

Type used in this format
Title: 16 point boldface
Headings: 12 point boldface
Body: 12 point

Initial comments are due Friday, July 22, 2011. Reply comments are due Friday, July 29, 2011. Comments should be organized in a manner consistent with the organization of the form. Initial comments on the new rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, Sixteen copies of comments are required to be filed pursuant to P.U.C. Procedural Rule §22.71(c) of this title. Comments must be filed no later than 3:00 p.m. on the day it is due. All comments should reference Project Number 39357.

The commission staff will conduct a workshop in this form project, if requested, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Friday, July 22, 2011, at 10:00 a.m. The request for a workshop must be received by Thursday, July 21, 2011.

Questions concerning Project Number 39357 should be referred to Ms. Rebecca Reed, Competitive Markets Division, at (512) 936-7371, or Ms. Scottie Aplin, Legal Division, at (512) 936-7289.

Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201102306
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2011

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Cleburne, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Cleburne. TxDOT CSJ No. 1102CLBRN. Scope: Provide engineering/design services to install game proof fence at Cleburne Municipal Airport.

The DBE goal is set at 8%. TxDOT Project Manager is Stephanie Kleiber.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent airport layout plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Cleburne Municipal Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may

be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **July 26, 2011,** 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff members and one local government member. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager at 1-800-68-PILOT at extension 4518. For technical questions, please contact Stephanie Kleiber, at 1-800-68-PILOT at extension 4524.

TRD-201102215
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 17, 2011

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

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-201102323
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 21, 2011

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Stephen F. Austin State University

Notice of Consultant Contract Amendment

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract amendment. The original Master Software License, Services and Maintenance Agreement is between The State of Texas, acting by and through the Department of Information Resources, and SunGard SCT, Inc., as amended between SunGard SCT, Inc. and the State of Texas, administered by Texas A&M University - Corpus Christi, for and on behalf of the Texas Connection Consortium. The original contract was executed in 2002 and amended by a Work Order for services to Stephen F. Austin State University, a member institution, on September 10, 2004. The first amendment was published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9879). The total sum of the services for the University was estimated to be $1,567,279 for the period through August 31, 2011. The second amendment was published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6043). The sum of the services for the University was amended in the amount of $932,800 for additional consulting and services relative to the major software conversion within the Institution due to a required upgrade. This contract is being amended to extend the time period for final consulting services through December 31, 2011.

Vendor contact for the contract is Scott Pruitt, Account Manager, SunGard Higher Education, 3211 Internet Blvd., Ste. 230, Frisco, TX 75034, Tel (214) 724-6081, Fax (610) 578-3733.

Documents, films, recording or reports of intangible results will not be presented by the outside consultant.

For further information, please contact Paul Davis, Director of Information Technology Services, P.O. Box 13012, Nacogdoches, TX 75962, Tel (936) 468-1110.

TRD-201102332
Damon C. Derrick
General Counsel
Stephen F. Austin State University
Filed: June 22, 2011

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Texas State University-San Marcos

Notice of Request for Proposals to Provide Elevator Consultant Services

This notice states the intent of Texas State University-San Marcos (Texas State), pursuant to the provisions of Texas Government Code, Chapter 2254, Subchapter B, to solicit proposals to enter into a consulting services contract related to Elevator Consultant.

Proposals are due at Texas State at the location specified in the Request for Proposals (RFP) on or before 3:00 p.m. Central Daylight Savings Time on Monday, July 25, 2011. Texas State will not accept late proposals. Proposals received after the submittal deadline will not be considered.

To respond, interested parties/consultants/consulting firms must contact the designated Texas State authorized representative in writing, as indicated below, to request a solicitation package in order to submit the information requested in this RFP, along with any other relevant information, in a clear and concise written format. For further information, or to request an RFP package, please contact Gloria Tobias via e-mail at gt04@txstate.edu.

Scope of Work:

Provide recommendations for elevator modernizations and renovations, and conduct reviews of plans and shop drawings associated with these renovations. The consultant will be required to be available for planning assistance for new construction or new installations by providing comprehensive traffic analysis of handling capacity and waiting intervals. He will also assist in determining the size of proposed equipment and establish design criteria or technical specifications, financial estimates, recommend special services, accessibility features, and security applications.

Objectives:

Elevator consultant is necessary to oversee the work performed by the current elevator contractor, remedy any deficiencies to ensure elevators are opening at an optimal level at all times, and coordinate and schedule annual elevator inspections.

The Anticipated Schedule of Events is as follows:

* Issuance of RFP and Posting to the Electronic State Business Daily - June 27, 2011;

* Questions Due - July 13, 2011, at 4:00 p.m. CDT;

* Official Responses to Questions Received - July 18, 2011, or as soon thereafter as practical;

* Proposals Due - July 25, 2011, at 3:00 p.m. CDT;

* Obtain Approval to Award Contract(s) - August 8, 2011, or as soon thereafter as practical;

* Contract Execution - August 9, 2011, or as soon thereafter as practical; and

* Commencement of Project Activities - September 1, 2011, or as soon thereafter as practical.

Texas State reserves the right to adjust the above schedule at its sole discretion, if determined to be in the university's best interests, as it deems fit.

Evaluation and Award Procedure:

The award for the described consulting services, if made, will be based on "best value" criteria by the process indicated in the RFP. Texas State will make the final decision regarding the award of contracts. Texas State reserves the right, if deemed in the university's best interests and at its sole discretion, to:

* award one or more contracts under this RFP;

* to accept or reject any or all proposals submitted;

* waive minor technical or process inconsistencies; or

* make no award.

A finding of fact, approved by the President of Texas State, for the need for these consultant services has been obtained.

TRD-201102197
Robert C. Moerke
Director of Contract Compliance
Texas State University-San Marcos
Filed: June 17, 2011

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 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 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)*