TEXAS REGISTER

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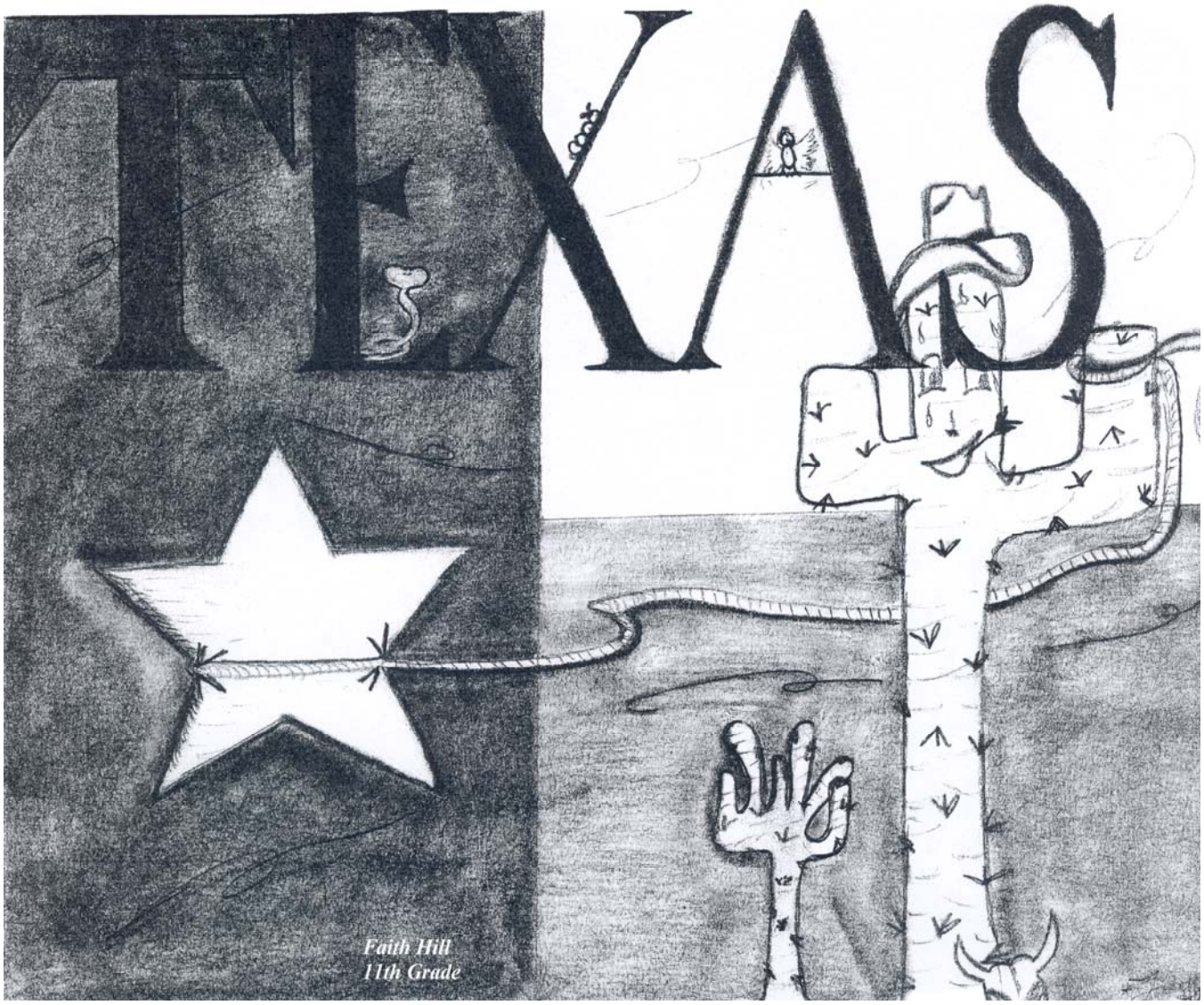

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

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IN ADDITION

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-1026-GA

Requestor:

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Taxation of pollution control property under section 11.31, Tax Code (RQ-1026-GA)

Briefs requested by January 14, 2012

RQ-1027-GA

Requestor:

The Honorable Robert Vititow

Rains County Attorney

Rains County Courthouse Annex

220 West Quitman

Post Office Box 1075

Emory, Texas 75440

Re: Whether a commissioners court, pursuant to section 775.034, Health and Safety Code, may appoint a member to the board of an emergency services district prior to January 1 of a particular year (RQ-1027-GA)

Briefs requested by January 17, 2012

RQ-1028-GA

Requestor:

The Honorable Sid Miller

Chair, Committee on Homeland Security and Public Safety

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a Type A general law municipality to enact an ordinance setting a zone around a school in which the sale and/or consumption of alcoholic beverages would be prohibited (RQ-1028-GA)

Briefs requested by January 17, 2012

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

TRD-201105770
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: December 20, 2011

♦ ♦ ♦

Opinions

Opinion No. GA-0896

Mr. Don Sloan, President

Bandera County River Authority and Groundwater District

Post Office Box 177

Bandera, Texas 78003

Re: Whether certain kinds of electronic communication among members of the board of directors of a river authority constitute a violation of the Open Meetings Act, chapter 551 of the Government Code (RQ-0977-GA)

S U M M A R Y

Electronic communications could, depending on the facts of a particular case, constitute a deliberation and a meeting for purposes of the Texas Open Meetings Act.

Opinion No. GA-0897

Tim F. Branaman, Ph.D.

Chair, Texas State Board of Examiners of Psychologists

333 Guadalupe, Suite 2-450

Austin, Texas 78701

Re: Whether the use of the term "Nationally Certified School Psychologist" by a Licensed Specialist in School Psychology is a violation of the Psychologists' Licensing Act (RQ-0947-GA)

S U M M A R Y

The Psychologists' Licensing Act does not prohibit a Licensed Specialist in School Psychology who has obtained the necessary credentials from the appropriate accrediting organization from using the term "Nationally Certified School Psychologist" as a professional descriptor. A rule by the Board of Examiners of Psychologists that would allow such use would not by virtue of that fact violate the Act.

Opinion No. GA-0898

The Honorable Jo Anne Bernal

El Paso County Attorney

500 East San Antonio, Room 503

El Paso, Texas 79901

Re: Whether a member of the El Paso County Ethics Commission who is a practicing attorney or former judge may be appointed to serve as the review officer of a preliminary screening committee (RQ-0978-GA)

S U M M A R Y

The review officer to a preliminary standing review committee under Local Government Code subsection 161.1551(b)(2) may not be a member of the El Paso County Ethics Commission.

Opinion No. GA-0899

Mr. Scott Sayers, Chair

Texas State Cemetery Committee

909 Navasota

Austin, Texas 78702

Re: Jurisdiction of the Texas State Cemetery over a state highway, the majority of which is located within the boundaries of the Cemetery (RQ-0979-GA)

S U M M A R Y

The exact parameters of the Texas State Cemetery Committee's authority over all operations of the State Cemetery are not clearly defined. It is for the Cemetery Committee to determine, in the first instance and subject to judicial review, the exact scope of its operational authority, and whether that authority necessarily includes the power to regulate bicycles on State Highway 165 within the State Cemetery.

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

TRD-201105769
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: December 20, 2011

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinions

EAO-501. The Texas Ethics Commission has been asked to consider whether a communication relating to a measure election complies with §255.003 of the Election Code. (AOR-564)

SUMMARY

For purposes of §255.003 of the Election Code, the brochure is not political advertising and, therefore, public funds may be used to distribute the brochure unless an officer or employee of the county authorizing such use of public funds knows that the brochure contains false information. The brochure may be viewed at http://www.ethics.state.tx.us/opinions/EAO_501_communication.pdf on the Texas Ethics Commission website.

EAO-502. The Texas Ethics Commission has been asked to consider whether an officeholder may use political contributions to reimburse an individual for expenses incurred due to clerical errors made by his office. (AOR-565)

SUMMARY

An officeholder may use political contributions to reimburse an individual for expenses incurred due to errors made by an officeholder's office.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201105745
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: December 19, 2011

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER B. EARLY VOTING

1 TAC §81.35

The Office of the Secretary of State, Elections Division, proposes an amendment to §81.35, which concerns procedures for voting from outer space as authorized under §106.002 of the Texas Election Code.

The change is necessary because the National Aeronautics and Space Administration (NASA) no longer supports the technology originally used to transmit ballots to and receive ballots from the international space station.

Elizabeth Winn, Interim Director of Elections, 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 amended rule.

Ms. Winn has determined also that for each year of the first five-year period the amended rule is in effect, the public benefit will be to provide voters on a space flight a greater ability to cast their votes in a timely manner. Additionally, the amendment will provide NASA with a means to update ballot transmission in keeping with their current procedures and technology.

Ms. Winn also has determined that for the first five-year period the proposed amendment is in effect, there will be no effect on small businesses or micro-businesses. There are no anticipated costs to individuals who are required to comply with the proposed amendment.

Request for Comments

Interested persons may submit written comments on the proposed rule to the Elections Division, Office of the Texas Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060. Comments may also be sent via e-mail to: *elections@sos.state.tx.us.* For comments submitted electronically, please include "Proposed Amendment of Rule §81.35" in the subject line. Comments must be received no later than 5:00 p.m. on January 30, 2012. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed rule may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

Statutory Authority: The amendment is proposed under the Texas Election Code, §106.002, which provides the Office of the Secretary of State with the authority to prescribe procedures for persons voting from space on election day by secure electronic means.

Cross-Reference to Statute: Election Code, Chapter 106 is affected by this amendment.

§81.35. Voting from Outer Space.

(a) A person who meets the eligibility requirements of a voter under the Texas Election Code, Chapter 101, but who will be on a space flight during the early-voting period and on election day, may vote under this chapter. In order to vote by this method, the voter must apply by a Federal Postcard Application ("FPCA") and meet the requisite deadlines under state law. The FPCA may be submitted by fax or other electronic means.

(b) The National Aeronautics and Space Administration ("NASA") shall submit in writing to the Secretary of State a method of transmitting and receiving a secret ballot for persons on a space flight during an election period. The Secretary of State shall approve, deny, or request further information from NASA on the proposed method of transmission.

(c) Proposed changes to an approved ballot transmission method shall be submitted in writing to the Secretary of State for approval.

[~~(b) The use of the National Aeronautics and Space Administration's electronic transmission program to send ballots to persons on a space flight is authorized.~~]

[~~(1) The ballot must be generated in the County Clerk's or Elections Administrator's Office with an embedded password.~~]

[~~(2) The ballot is electronically sent to the Johnson Space Center, and forwarded electronically to the space mission. In the event a direct link is not possible, such as with Space Station Mir, the ballot shall be forwarded to Russia or another appropriate source as determined by NASA and the Office of the Secretary of State, and then uplinked to the Space Station Mir or other space station as applicable.~~]

[~~(c) The voter then opens the ballot with the password and votes the ballot.~~]

[~~(d) The file in which the vote--without the ballot--is saved is then downlinked to Johnson Space Center. The vote is then electronically transmitted to the County Clerk's or Elections Administrator's Office. If the County Clerk's or Elections Administrator's office is not capable of receiving the vote electronically, the vote shall be electronically transmitted to the Office of the Secretary of State for forwarding to the appropriate county.~~]

[~~(e) Upon receipt by the county, the file is printed and then duplicated on a blank ballot. The original electronic file and printed file must be preserved with the regular election records. The duplicated ballot is counted on election day with the other ballots cast from the outer space voter's precinct.~~]

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105653
John Sepehri
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 463-5650

♦ ♦ ♦

1 TAC §81.60

The Office of the Secretary of State, Elections Division, proposes an amendment to §81.60, concerning voting system certification procedures. The proposed amendment would require vendors submitting voting systems to the Secretary of State for review to include information on the systems' use in other jurisdictions. The vendor would also be required to provide letters to those jurisdictions and voting systems testing laboratories authorizing release of information to the Secretary of State on the submitted system.

Elizabeth Winn, Interim Director of Elections, 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 amended rule.

Ms. Winn has determined also that for each year of the first five-year period the amended rule is in effect, the public benefit anticipated as a result of enforcing the rule will be an update of the current rule to provide more information to the Secretary of State and examiners on voting systems submitted for certification in Texas.

Ms. Winn also has determined that for the first five-year period the proposed amendment is in effect, there will be no effect on small businesses or micro-businesses. There are no anticipated costs to individuals who are required to comply with the proposed amendment.

Request for Comments

Interested persons may submit written comments on the proposed rule to the Elections Division, Office of the Texas Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060. Comments may also be sent via e-mail to: *elections@sos.state.tx.us.* For comments submitted electronically, please include "Proposed Amendment of Rule §81.60" in the subject line. Comments must be received no later than 5:00 p.m. on January 30, 2012. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed rule may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

Statutory Authority: The amendment is proposed pursuant to §31.003 of the Texas Election Code, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws, and also §122.032(b) of the Code which authorizes the Secretary to prescribe more specific requirements and standards for approval of voting systems.

Cross-Reference to Statute: No other codes or sections are affected by the amendment.

§81.60. Voting System Certification Procedures.

In addition to the procedures prescribed by the Texas Election Code, Chapter 122, compliance with the following procedures is required for certification of a voting system.

(1) The entity applying for certification must deliver seven copies of their completed application forms (Form 100, Form 101, and if applicable, Form 100 Schedule A), user operating and maintenance manuals, training material, nationally accredited voting system test laboratory reports, and a change log detailing changes from any previously certified system or component, to the Secretary of State no later than 45 days prior to examination. Six of the seven copies can be in electronic form. One copy must be in hard-copy format organized in binders with tabs and tables of contents.
Figure 1: 1 TAC §81.60(1) (No change.)
Figure 2: 1 TAC §81.60(1) (No change.)
Figure 3: 1 TAC §81.60(1) (No change.)

(2) The applicant must have the nationally accredited voting system test laboratory (VSTL) deliver a copy of all nationally qualified software/firmware and source codes for the system and/or system components requested for Texas certification, directly to the Secretary of State no later than 45 days prior to examination.

(3) The applicant must authorize the nationally accredited voting system test laboratory to deliver all the applicable executable and installation files to the National Software Reference Library (NSRL) within 30 days after receiving federal certification.

(4) The certification fee for a new election management system, tabulation device, electronic ballot marker, and other complex component of a system is $3,000 each and must be received by the Secretary of State 45 days prior to examination. The certification fee for a modification of a voting system shall be determined by the Secretary of State according to the complexity of the modification, and must be received by the Secretary of State 45 days prior to the examination.

(5) Each application shall include authorizations for release of information along with the application for certification in the form of the following set of letters:

(A) a blanket letter addressed to the Secretary of State authorizing the release of information about the system being tested from any local, state or federal official or from any VSTL that has tested their system, upon request;

(B) a copy of a specific letter sent to the VSTL and to the federal Elections Assistance Commission (EAC) or equivalent federal commission or agency which authorizes the organizations to release information about the system being tested to the Texas Secretary of State upon the Secretary of State's request; and

(C) a list, by state, of users of their voting systems, especially those similar or identical to the system being submitted and copies of letters sent to each user which authorizes them to release any information requested to the Secretary of State.

(6) [~~(5)~~] Certification examinations will be scheduled by the Secretary of State three times a year during the months of January, May, and August, unless extenuating circumstances provide otherwise.

(7) [~~(6)~~] The time and date of each examination will not be scheduled until after the entity applying for certification has delivered all required documentation and fees to the Secretary of State.

(8) [~~(7)~~] All physical examinations of voting systems will take place at the Office of the Secretary of State, Elections Division, in Austin, unless extenuating circumstances provide otherwise.

(9) [~~(8)~~] The applicant must demonstrate an installation and configuration of the software/firmware on each system and system component using the Secretary of State's copy of the software/firmware received from the nationally accredited voting system test laboratory.

(10) [~~(9)~~] The applicant shall furnish a sufficient number of sample ballots, designed from the templates provided by the Secretary of State, at least one week prior to the examination.

(11) [~~(10)~~] Examiner's must submit a written report to the Secretary of State stating his or her findings for each voting system no later than the 30th day after examination. Examiner reports shall be posted on the Secretary of State's website.

(12) [~~(11)~~] An examiner appointed by the Secretary of State will be compensated after he or she files his or her written report.

(13) [~~(12)~~] The Secretary of State must approve or disapprove the voting system(s) within 30 days of the required public hearing, unless there are extenuating circumstances.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105654
John Sepehri
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 463-5650

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §351.507

The Texas Health and Human Services Commission (HHSC) proposes new §351.507, concerning adverse licensing, listing, or registration decisions by health and human services agencies, in Chapter 351, Coordinated Planning and Delivery of Health and Human Services.

Background and Justification

The 82nd Legislature, Regular Session, 2011, enacted Senate Bill (S.B.) 78, which added Subchapter W to Chapter 531, Government Code. The subchapter governs adverse licensing, listing, or registration decisions made by those health and human services (HHS) agencies that license or regulate a specified list of entities, as provided in the statute. Each licensing or regulating HHS agency is required to maintain records regarding adverse decisions made by the agency regarding its licensees and to share those records with the other HHS agencies. Each HHS agency may consider adverse decisions made by other HHS agencies when considering an application or renewal filed with that agency by another agency's licensees. The HHSC Executive Commissioner is authorized to adopt a rule detailing what information the other HHS agencies must maintain. The HHS agencies affected by the proposed rule are: the Department of Aging and Disability Services (DADS), the Department of Family and Protective Services (DFPS), and the Department of State Health Services (DSHS).

Proposed new §351.507 tracks the language of the statute and sets out the types of information the HHS agencies are required to maintain under Subchapter W of Chapter 531, Government Code. The proposed rule permits HHS agencies that license or regulate certain specified entities to consider adverse licensing decisions made by other HHS licensing agencies when considering a license application or renewal filed with that agency by another agency's licensees. The affected licensed or regulated entities are: youth camps, home and community support services agencies, hospitals, long-term care facilities, assisted living facilities, special care facilities, intermediate care facilities, chemical dependency treatment facilities, mental hospitals or mental health facilities, child-care facilities or child-placing agencies, and adult day-care facilities.

DADS, DFPS, and DSHS will be required by the proposed new section to maintain records on their licensees and share those records with the other licensing HHS agencies. All affected HHS agencies are working together to implement the bill.

Section-by-Section Summary

Section 351.507(a) sets out the licensees to which the rule applies.

Section 351.507(b) declares that the section applies only to an agency decision that has become final after all opportunities for appeal have been exhausted or waived.

Section 351.507(c) provides that each HHS agency that regulates an applicable licensee must maintain a record of: (1) each application for a license, including a renewal license or a license that does not expire, a listing, or a registration that is denied by the agency under the law authorizing the agency to regulate the person; and (2) each license, listing, or registration that is revoked, suspended, or terminated by the agency under applicable law.

Section 351.507(d) requires that the required records must be maintained until the tenth anniversary of the date that the application is denied, or the date the license is revoked, suspended, or terminated, as applicable.

Section 351.507(e) sets out the specific items of information that the required records must contain.

Section 351.507(f) requires each HHS agency that regulates an applicable licensee to provide each month a copy of the required records to each other HHS agency that regulates an applicable licensee.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed new section is in effect, enforcing or administering the new section does not have foreseeable implications relating to costs or revenues of state or local governments. There are no anticipated economic costs to persons who are required to comply with the

proposed rule. There is no anticipated negative impact on local employment.

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 rule applies to certain state agencies and does not require businesses to alter their practices.

Public Benefit

Katie Olse, Chief of Staff, has determined that, for each year of the first five years the new section is in effect, the anticipated public benefit expected as a result of enforcing the new section is that the health and safety of people receiving services from persons licensed by HHS agencies will be better protected, as the agencies will have the authority to deny, revoke, suspend, or terminate a license based on a similar action taken by another HHS agency.

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 Frank Genco, Health and Human Services Commission, Office of Health Services, MC-4100, 4900 N. Lamar, Austin, Texas 78751-2316, or by e-mail to *frank.genco@hhsc.state.tx.us,* within 30 days after publication of this proposal in the *Texas Register.*

Legal Authority

The new section is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Section 2 of S.B. 78, which requires the Executive Commissioner of HHSC to adopt the rules necessary to implement Subchapter W, Chapter 531, Texas Government Code.

The new section affects Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§351.507. Adverse Licensing, Listing, or Registration Decisions by Health and Human Services Agencies.

(a) This section applies only to the final licensing, listing, or registration decisions of a health and human services agency as defined by §531.001(4), Government Code, with respect to a person under the law authorizing the agency to regulate the following types of persons:

(1) a youth camp licensed under Chapter 141, Health and Safety Code;

(2) a home and community support services agency licensed under Chapter 142, Health and Safety Code;

(3) a hospital licensed under Chapter 241, Health and Safety Code;

(4) an institution licensed under Chapter 242, Health and Safety Code;

(5) an assisted living facility licensed under Chapter 247, Health and Safety Code;

(6) a special care facility licensed under Chapter 248, Health and Safety Code;

(7) an intermediate care facility licensed under Chapter 252, Health and Safety Code;

(8) a chemical dependency treatment facility licensed under Chapter 464, Health and Safety Code;

(9) a mental hospital or mental health facility licensed under Chapter 577, Health and Safety Code;

(10) a child-care facility or child-placing agency licensed under or a family home listed or registered under Chapter 42, Human Resources Code; or

(11) an adult day-care facility licensed under Chapter 103, Human Resources Code.

(b) This section applies only to an agency decision that has become final after all opportunities for appeal have been exhausted or waived.

(c) Each health and human services agency that regulates a person described by subsection (a) of this section must maintain a record of:

(1) each application for a license, including a renewal license or a license that does not expire, a listing, or a registration that is denied by the agency under the law authorizing the agency to regulate the person; and

(2) each license, listing, or registration that is revoked, suspended, or terminated by the agency under the applicable law.

(d) The record of an application required by subsection (c)(1) of this section must be maintained until the tenth anniversary of the date the application is denied. The record of the license, listing, or registration required by subsection (c)(2) of this section must be maintained until the tenth anniversary of the date of the revocation, suspension, or termination.

(e) The record required under subsection (c) of this section must include:

(1) the name and address of the applicant for a license, listing, or registration that is denied as described by subsection (c)(1) of this section;

(2) the name and address of each person listed in the application for a license, listing, or registration that is denied as described by subsection (c)(1) of this section;

(3) the name of each person determined by the applicable regulatory agency to be a controlling person of an entity for which an application, license, listing, or registration is denied, revoked, suspended, or terminated as described by subsection (c) of this section;

(4) the specific type of license, listing, or registration that was denied, revoked, suspended, or terminated by the agency;

(5) the reasons for the denial, revocation, suspension, or termination; and

(6) the period the denial, revocation, suspension, or termination was effective.

(f) Each health and human services agency that regulates a person described in subsection (a) of this section each month must provide a copy of the records maintained under this section to each other health and human services agency that regulates a person described by subsection (a) of this section. The Health and Human Services Commission (HHSC) may access the records provided or maintained under this section.

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105678
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-6900

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION
SUBCHAPTER E. BANKING HOUSE AND OTHER FACILITIES

7 TAC §3.93

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §3.93, concerning deposit production offices. New §3.93 is proposed to promote parity and competitiveness of state banks with national banks.

Under federal statutes and regulations, national banks may establish facilities for the purpose of generating deposits. Such facilities, called deposit production offices (DPOs), may solicit deposits, provide information about deposit products, and assist persons in completing application forms to open a deposit account, but may not receive deposits, pay withdrawals, or make loans. Many other states also have regulatory schemes that mirror the federal scheme. As a result, some Texas-chartered banks have requested approval from the department to establish similar facilities. The Texas Finance Code does not prohibit such activities, and therefore under the parity provisions of Chapter 32, state banks may conduct deposit production activities to the extent granted under federal law.

New §3.93 is proposed in order to clarify the activities a state bank may conduct at a DPO, and to ensure proper procedures are followed in the establishment of such facilities. The new rule requires notification to the banking commissioner before establishment of a DPO, and limits permissible activities at a DPO to soliciting deposits, providing information, and assisting customers to complete forms.

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

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is increased access to depository institutions.

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 new section must be submitted no later than 5:00 p.m. on January 30, 2012. 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 new rule is proposed under Finance Code §32.201(c), which authorizes the commission to adopt rules authorizing a new form of banking facility, and under Finance Code §31.003, which authorizes the commission to adopt rules to accomplish the purpose of Subtitle A, relating to state banks.

Finance Code Chapter 32, Subchapter C is affected by the proposed new rule.

§3.93. Deposit Production Offices.

(a) Engaging in deposit production activities. A state bank may, to the extent authorized by its board of directors, engage in deposit production activities at a site other than the home office or a branch of the bank, including establishing a deposit production office (DPO) of the bank. A DPO may only solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. A DPO is not a branch within the meaning of Finance Code, so long as it does not engage the public in the business of banking as defined by Finance Code §31.002(a)(4), including making loans, receiving deposits, and paying withdrawals, drafts, or checks. All such deposit or withdrawal activity must be performed by the state bank customer in person at the home office or a branch, or by mail, electronic transfer, or similar transfer method.

(b) Notification to the banking commissioner. A state bank shall notify the banking commissioner in writing before the 31st day preceding the date of establishment, closing, or relocation of a DPO, except the banking commissioner may waive or shorten the period if the banking commissioner does not have a significant supervisory or regulatory concern regarding the bank or its DPO. The written notification for establishment of a DPO must include the physical address of the DPO, a list of the specific activities to be performed at the planned DPO, and other information which the banking commissioner may reasonably request.

(c) Compliance with other statutes. Compliance with the provisions of this section does not relieve a state bank of the obligation to comply with all other applicable statutes and regulations, including but not limited to Finance Code §§33.109, 32.009, and 32.010(b). A bank

other than a state bank must comply with Finance Code Chapter 201, Subchapter B (§§201.101 et seq.).

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-201105610
A. Kaylene Ray
General Counsel, Texas Department of Banking
Finance Commission of Texas
Proposed date of adoption: February 17, 2012
For further information, please call: (512) 475-1300

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 15. CORPORATE ACTIVITIES SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §15.2

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §15.2, concerning filing fees and cost deposits. The amended rule is proposed to establish a fee for an application to be released from a removal or prohibition order.

Finance Code §35.003 authorizes the Banking Commissioner (commissioner) to remove or prohibit from further participation in industries regulated by the department, persons who have committed certain intentional acts that harmed a financial institution or benefited the person. Senate Bill 1165 (SB 1165), 82nd Texas Legislature, 2011, added §35.0071 to the Finance Code. This new statute allows a person who is subject to such an order to apply to the commissioner to be released from the order. Section 35.0071(b) states that the application must be accompanied by any required fees. The proposed amendment to §15.2(b) adds paragraph (23), which sets out the fee that will be charged for this application. The proposed fee is $500 for processing an application for release. The purpose of the proposed fee is to partially compensate the department for the work department employees will have to undertake to evaluate the application.

Other non-substantive changes have been made throughout the rule to correct title references to other sections of the Texas Administrative Code.

Deputy Commissioner Robert Bacon, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be minimal fiscal implications for state government or for local government as a result of enforcing or administering the rule. The impact will depend on the number of applications filed and it is anticipated that no more than three applications per year would be filed. Mr. Bacon estimates that each application will cost the department $600 to process. Because the proposed fee is $500, the department will bear $100 of the cost of each application.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is recovery of approximately 80% of the cost to process applications for release from prohibition or removal orders. The charging of a fee will also deter the filing of frivolous applications.

For each year of the first five years that the rule will be in effect, there will be some economic costs to persons required to comply with the rule as proposed. This fee only affects those persons who seek to be released from a prohibition or removal order. The fee of $500 is ratable and equitable because it is estimated that it will take an analyst eight hours to process an application. The hourly rate charged by the department for its examiners is $75, which is an appropriate rate to charge for the time of corporate analysts. Eight times $75 equals $600. It is equitable to charge the applicant an amount that offsets most of this expense, yet is not so high that it would deter an applicant from making an application.

There will be no adverse economic effect on small businesses or micro-businesses. The proposed rule affects only individuals. 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 January 30, 2012. 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 §35.0071, which provides that a person who is subject to a prohibition or removal order may apply to the commissioner to be released from the order, and states that the application must be accompanied by any required fees. It is also proposed under Finance Code §11.301, which authorizes the commission to adopt banking rules as provided by Finance Code §31.003, and under Finance Code §31.003(a)(4), which authorizes the commission to adopt rules that are necessary or reasonable to recover the cost of maintaining and operating the department by imposing and collecting ratable and equitable fees for applications.

Finance Code §35.0071 is affected by the proposed amended section.

§15.2. Filing Fees and Cost Deposits.

(a) Types of fees. Subsection (b) of this section contains filing fees for specified applications and notices filed with the department, and subsection (c) of this section requires a fee for protesting an application. These fees are due at the time of filing the application or protest. Subsection (d) of this section requires an investigation fee to be paid in certain cases once an application has been accepted by the department for filing, and in other cases may require payment of investigative costs upon written request of the department. Pursuant to subsection (e) of this section, an applicant may seek waiver or reduction of required fees.

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

(1) $5,000 for an application for bank charter pursuant to Finance Code, §32.003, provided that the department will not require a filing fee for an application for a bank charter to be located in a low or moderate income area and where no other depository institution operates a branch or home office;

(2) $5,000 for an application for conversion to a state bank charter pursuant to Finance Code, §32.502, and §15.108 of this title

(relating to Conversion of a Financial Institution into a State Bank), or $2,500 for an expedited application if permissible pursuant to §15.103 of this title (relating to Expedited Filings [~~Filing~~]);

(3) $4,000 for an application to authorize a merger or share exchange (including an interstate transaction) pursuant to Finance Code, §32.302, and §15.104 of this title (relating to Application for Merger or Share Exchange), or $2,500 for an expedited application if permissible pursuant to §15.103 of this title;

(4) $2,500 for each request to authorize an additional merger if more than one affiliated merger is to occur simultaneously;

(5) $4,000 for an application to authorize a purchase of assets (including an interstate transaction) pursuant to Finance Code, §32.401, and §15.105 of this title (relating to Application for Authority to Purchase Assets of Another Financial Institution), or $2,000 for an expedited application if permissible pursuant to §15.103 of this title;

(6) $1,000 for an application to authorize the sale of substantially all assets (including an interstate transaction) pursuant to Finance Code, §32.405, and §15.106 of this title (relating to Application for Authority to Sell Assets);

(7) $1,500 for an application to establish a branch office (including an interstate transaction) pursuant to Finance Code, §32.203, and §15.42 of this title (relating to Establishment and Closing of a Branch Office), or $500 for an expedited application if permissible pursuant to §15.3 of this title (relating to Expedited Filings), provided that the department will not require a filing fee for an application for a new branch office to be located in a low or moderate income area and where no other depository institution operates a branch or home office;

(8) $1,500 for an application to relocate a branch office pursuant to §15.42(k) of this title;

(9) $500 for a subsidiary notice letter pursuant to Finance Code, §34.103, plus an amount up to an additional $3,500 if the banking commissioner notifies the applicant that additional information and analysis is required;

(10) $5,000 for an application regarding acquisition of control pursuant to Finance Code, §33.002, and §15.81 of this title (relating to Application for Acquisition or Change of Control of State Bank), or $2,500 for an expedited application if the applicant has previously been approved to control another state bank and no material changes in the applicant's circumstances have occurred since the prior approval;

(11) $200 for a notice to change the home office to an existing branch office while retaining the existing home office as a branch office pursuant to Finance Code, §32.202, and §15.41(a) of this title (relating to Written Notice or Application for Change of Home Office);

(12) $1,500 for an application to relocate the home office pursuant to Finance Code, §32.202, and §15.41(b) of this title, provided that the fee is $5,000 for an application to relocate the home office of a to-be-acquired charter without significant business activities;

(13) $500 for an application to relocate the home office a short distance of one mile or less with no abandonment of the community pursuant to Finance Code, §32.202, and §15.41(b) of this title;

(14) $3,000 for an application for a foreign bank branch or agency license pursuant to Finance Code, §204.101, and §3.41(a) of this title (relating to Applications, Notices[~~,~~] and Reports Related to [~~of a~~] Foreign Bank Branches and Agencies [~~Corporation~~]);

(15) $500 for the statement of registration of a foreign bank representative office pursuant to Finance Code, §204.201, and §3.44(b) of this title (relating to Statements [~~Statement~~] of Registration, Notices and Filings Related to Foreign Bank [~~by a~~] Representative Offices [~~Office~~]);

(16) $300 for an application to amend a bank charter (articles of association) pursuant to Finance Code, §32.101;

(17) $1,500 for an application to authorize a reverse stock split subject to the substantive provisions of §15.122 of this title (relating to Amendment of Articles to Effect a Reverse Stock Split);

(18) $500 for filing a copy of an application to acquire a bank or bank holding company pursuant to Finance Code, §202.001;

(19) $500 for filing a copy of an application to acquire a nonbank entity pursuant to Finance Code, §202.004;

(20) $100 for a request for a "no objection" letter to use a name containing a term listed in Finance Code, §31.005;

(21) $500 for an application to authorize acquisition of treasury stock pursuant to Finance Code, §34.102, and §15.121 of this title (relating to Acquisition and Retention of Shares as Treasury Stock); [~~and~~]

(22) $500 for a request to authorize an increase or reduction in capital and surplus pursuant to Finance Code, §32.103; and[~~.~~]

(23) $500 for an application for release from a final removal or prohibition order pursuant to Finance Code, §35.0071.

(c) Filing fee for protest. A person or entity filing a protest to the application of another person or entity shall pay a fee of $2,500 simultaneously with such protest filing. The purpose of the fee required under this subsection is to partially offset the department's increased cost of processing and reduce the costs incurred by the applicant resulting solely from the protest.

(d) Investigative fees and costs. An applicant for a bank charter or conversion to a state bank or limited banking association shall pay an investigation fee of $5,000 once the application has been accepted for filing. If required by the banking commissioner, an applicant under another type of application or filing listed in subsection (b) of this section shall pay the reasonable investigative costs of the department incurred in any investigation, review, or examination considered appropriate by the department, calculated as provided by §3.36(h) of this title (relating to Annual Assessments and Specialty Examination Fees). Such investigation fee or costs must be paid by the applicant upon written request of the department. Failure to timely pay the investigation fee or a bill for investigative costs constitutes grounds for denial of the submitted or accepted filing.

(e) Reduction or waiver of fees. Fees paid are nonrefundable and the banking commissioner shall charge fees on a consistent and nondiscriminatory basis. However, in the exercise of discretion, the banking commissioner may reduce, waive, or refund all or part of a filing fee, investigation fee, or bill for investigative costs if the banking commissioner concludes that:

(1) the application demonstrates that the fee creates an unreasonable hardship on the applicant; or

(2) the nature of the application will result in substantially reduced processing time compared to normal expectations for an application of that type.

(f) Severability. If any fee or cost recovery set forth in this section is finally determined by a court of competent jurisdiction to be invalid, that fee or cost recovery shall be severed from this section and the remainder of this section shall remain fully enforceable.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105611
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: February 17, 2012
For further information, please call: (512) 475-1300

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CHAPTER 25. PREPAID FUNERAL CONTRACTS
SUBCHAPTER B. REGULATION OF LICENSES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes the repeal of §25.11, concerning record keeping requirements for trust-funded prepaid funeral contracts; and the simultaneous proposal of new §25.11, concerning the same subject.

The repeal and new rule are proposed to update, modify and clarify recordkeeping requirements for sellers of trust-funded prepaid funeral contracts. Many provisions have been moved, current language is clarified or rewritten to be consistent with the requirements for insurance-funded prepaid funeral benefits, and additions have been made throughout the existing rule. Therefore it is more efficient to repeal the existing rule and replace it with a new one, rather than amend the existing rule.

Proposed new §25.11 clarifies recordkeeping requirements, lessens regulatory burdens when possible without harming the examination process, and complies with statutory changes that have occurred since §25.11 was last amended in 1999. Proposed new §25.11 adds revisions to these requirements that, to the extent possible, are similar to those that were adopted by the commission in 2010 to §25.10 (relating to recordkeeping requirements for insurance-funded contracts).

Proposed new §25.11 was sent to all trust-funded permit holders (permit holders) on October 31, 2011. The permit holders were asked to submit any comments by November 16, 2011. Only one permit holder provided comments. The department made the suggested changes.

Proposed new §25.11(a) clarifies various general requirements of trust-funded prepaid funeral contract permit holders. New subsection (a)(1) clarifies that records can be made available for examination at a location outside of Texas if approved by the Commissioner of Banking (commissioner). This is the current practice and subsection (a)(1) would clarify this in the rule. New subsection (a)(2) is proposed to clarify that additional records requested by the department during an examination will be related to the information already requested. New subsection (a)(3) is a provision that is found in the current rule and has been clarified.

Proposed new §25.11(b) is a provision that is found in the current rule. It has been expanded to cover all corporate records subject to §25.11 and to limit the records that must be maintained and produced for the department's review to those created since the last examination. Currently §25.11(c) requires the permit holder only to maintain corporate records pertaining to regulatory action or litigation that could result in the permit holder's insolvency. For the department to have an accurate picture of the status of the corporate permit holder, the examiner must be able to review all corporate documents, such as board of directors resolutions, and records of stock ownership.

Proposed new §25.11(c) clarifies the requirements for maintaining and producing for examination the general files of the permit holder.

Proposed new subsection (c)(1) specifies the financial statements that the permit holder must maintain, and clarifies that they must include a balance sheet and income statement. This is the current practice and new subsection (c)(1) would clarify this by putting it in the rule.

Proposed new subsection (c)(2) requires those permit holders that have a uniform risk rating of 3, 4 or 5, and all permit holders whose last examination was a limited scope examination to maintain a copy of the examination report acknowledgements signed by the permit holder's board of directors. This is the current practice and new subsection (c)(2) would clarify this by putting it in the rule.

Proposed new subsection (c)(3) broadens the scope of documents that must be retained relating to regulatory action and litigation activity and adds a new requirement that complaints be maintained. The requirement to maintain complaint records is necessary for the department to examine for compliance with 7 TAC §25.41 which relates to required procedures in regard to consumer complaints. In the current rule, a permit holder is only required to maintain records of regulatory activity or litigation that could result in the permit holder's insolvency. For the department to obtain an accurate picture of the permit holder's condition, it must be able to review all regulatory activity and litigation that has occurred since the last examination.

Proposed new subsection (c)(4) requires the maintenance of directives from the department upon which the permit holder relies. This proposed new subsection reduces the amount of correspondence from the department that the permit holder is currently required to maintain and makes it consistent with the rule for insurance-funded contracts.

Proposed new subsection (c)(5) requires the maintenance of all trust agreements approved by the department since the last examination and all active trust agreements, including amendments and successor agreements. This paragraph reduces the amount of information that the permit holder is required to maintain under the current rule.

Proposed new subsection (c)(6), (7), and (8) require the maintenance of all investment plans, abandoned property reports, and certain records of the trustee/depository that were created, received or filed since the last examination. These paragraphs reduce the amount of such documentation the permit holder must maintain under the current rule.

Proposed new subsection (c)(9) requires the permit holder to maintain its price list for outstanding contracts issued since the last examination. This is the current practice and new subsection (c)(9) would clarify this by including it in the rule. The examiner must be able to see the price list to verify that purchasers were charged appropriately.

Proposed new subsection (c)(10) and (11) require the permit holder to maintain a list of all funeral home providers on its out-

standing contracts, including those who are known to the permit holder to have ceased business since the last examination. These paragraphs conform to the requirements for insurance-funded permit holders. The Department currently requests these lists as part of the examination materials. Proposed new subsection (c)(10) and (11) simply include these requirements in the rule.

Proposed new §25.11(d) generally clarifies the requirements for maintaining and producing for examination the files for each of the permit holder's purchasers. It also adds some new requirements.

Proposed new subsection (d)(1) is a clarification of the current requirement that an individual file be kept for each purchaser.

Proposed new subsection (d)(2) has a new requirement that the file must contain the executed contract and any power of attorney agreements or letters of guardianship. This requirement ensures that the examiner is looking at the operative contract and can verify that the contract has been executed by the person with authority to do so.

Proposed new subsection (d)(3) clarifies the requirements and adds some new requirements regarding records of matured contracts. The introductory language reduces the length of time matured contracts must be maintained by limiting maintenance to those that matured since the last examination.

Proposed new subsection (d)(3)(A) clarifies that the fully executed withdrawal form must be maintained.

Proposed new subsection (d)(3)(B) clarifies that documentation required to substantiate the goods and services performed at time of need must be maintained.

Proposed new subsection (d)(3)(C) clarifies that an original or copy of a death certificate from the place of death must be maintained.

Proposed new subsection (d)(3)(D) is a new requirement that documentation be maintained to fully explain any differences between the preneed and at-need contract and any other changes. This information is necessary to ensure that the examiner can see that the purchaser got the benefit of his or her prepaid contract and was properly charged or refunded for any changes.

The requirement to maintain a preneed to at-need reconciliation signed by the funeral provider is proposed to be added as new subsection (d)(3)(E) to comply with provisions of Finance Code §154.161, which was added to Chapter 154 in 2009.

Proposed new subsection (d)(3)(F) is a new requirement that the permit holder maintain evidence of refund of any prepaid contract overcharges by the funeral provider to the decedent's personal representative. This requirement is necessary to allow the examiner to determine if the permit holder has complied with Finance Code §§154.1511 and 154.1551, which were added to Chapter 154 and amended, respectively, in 2009.

Proposed new subsection (d)(4) concerns documents that must be maintained for a matured contract that was serviced by a funeral provider that is neither the permit holder nor related to it by common ownership. Proposed new subsection (d)(4)(A) and (B) are requirements that exist in current §25.11. Additions to the introductory language of subsection (d)(4) and subsection (d)(4)(C) reflect current practice.

Proposed new subsection (d)(5) concerns documents that must be maintained for cancelled contracts. It reduces the length of time such documents must be maintained and clarifies requirements existing in current §25.11.

Proposed new §25.11(e) lists other records that permit holders must maintain. The subsection currently exists, with one non-substantive grammatical difference, in current §25.11.

Proposed new §25.11(f) concerns exceptions to the requirements of the rule. This provision is in current §25.11. The proposed new subsection deletes unnecessary language in subsection (f)(1) and adds new language to subsection (f)(2) that authorizes the commissioner to revoke an exception for good cause. This change is necessary to give the commissioner flexibility in regard to previously granted exceptions that are no longer warranted.

Proposed new §25.11(g) concerns relocation of records. This provision is in current §25.11. Proposed new §25.11(g) clarifies that the department must be notified, and, if necessary, an exception requested before records are moved. It also provides that the commissioner may revoke previous approval of a records location if deemed necessary. This change is necessary to give the commissioner flexibility in regard to previously granted approvals that are no longer warranted.

Proposed new §25.11(h) sets deadlines regarding file maintenance and is unchanged from its counterpart in current §25.11.

Proposed new §25.11(i) is new and requires the permit holder to provide evidence of a disaster plan if required records are maintained electronically. It is virtually identical to the requirement for insurance-funded permit holders.

Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that for the first five-year period the proposed repeal and new rule are 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 repeal and new rule as proposed are in effect, the public benefit anticipated as a result of repealing the current rule and enacting the new rule is improved regulation of prepaid funeral benefit contracts through administrative rules that conform to current law and eliminate unnecessary or obsolete regulations.

For each year of the first five years that the repeal and new 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 repeal and new section must be submitted no later than 5:00 p.m. on January 30, 2012. 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.

7 TAC §25.11

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

The repeal is proposed under Finance Code §154.051(a)(2), which authorizes the commission to adopt reasonable rules re-

lating to the keeping and inspection of records relating to the sale of prepaid funeral benefits and Finance Code §154.053, which provides that permit holders shall maintain records as required by rule of the commission.

Finance Code §154.053 is affected by the proposed repealed section.

§25.11. Record Keeping Requirements for Trust-Funded Contracts.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105612
A. Kaylene Ray
General Counsel
Texas Department of Banking
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For further information, please call: (512) 475-1300

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7 TAC §25.11

The new section is proposed under Finance Code §154.051(a)(2), which authorizes the commission to adopt reasonable rules relating to the keeping and inspection of records relating to the sale of prepaid funeral benefits and Finance Code §154.053, which provides that permit holders shall maintain records as required by rule of the commission.

Finance Code §154.053 is affected by the proposed new section.

§25.11. Recordkeeping Requirements for Trust-Funded Contracts.

(a) Application and general requirements. This section applies to a permit holder that sells or maintains trust-funded prepaid funeral benefit contracts (prepaid contracts). Unless the commissioner grants an exception as provided for in subsections (f)(2) and (g) of this section, a permit holder must maintain and produce for examination the records as specified in this section. The permit holder:

(1) must make the records available to the department for examination at its physical location in Texas or if approved by the commissioner, in another state that the permit holder has designated in written notice to the department on file at the time of the examination;

(2) is required to make all the records specified in the department's pre-examination records request available to the department at the beginning of an examination and must produce such other records that provide additional clarification of required documents as may be requested during the examination in a manner that does not impede the efficient completion of the examination; and

(3) must maintain the records either in hard-copy form or stored on microfiche or in an electronic database from which the record can be retrieved and printed in hard copy in a manner that does not impede the efficient completion of the examination.

(b) Corporate Records. All corporate records of a permit holder subject to this section and all corporate minutes created since the last examination must be maintained and made available to the department at each examination.

(c) General files. A permit holder subject to this section must maintain and produce for department examination general files regarding its prepaid funeral benefits operations. The files must contain the original or a copy of the following:

(1) unless the permit holder is restricted from selling prepaid funeral benefits, financial statements of the permit holder or the permit holder's parent or holding company including a balance sheet and income statement dated not later than the last day of the permit holder's preceding fiscal year, or the permit holder's most recent income tax return, which must also include a balance sheet;

(2) if the permit holder received a uniform risk rating of 3, 4, or 5 at the last examination or if the last examination was a limited scope examination, the examination report acknowledgements, signed by the permit holder's board of directors for the last examination report;

(3) all written complaints received since the last examination related to prepaid contracts, and all documents received or created since the last examination related to any regulatory action or evidencing litigation activity;

(4) all recordkeeping exceptions and other department or commissioner approvals or directions upon which the permit holder relies in connection with its current operations;

(5) all trust agreements approved by the department since the last examination and all trust agreements that are still active, including amendments and changes to the trust agreements and all successor trust agreements;

(6) all investment plans and reports created or received since the last examination, and all such plans and reports that apply to active trust funds;

(7) all preneed abandoned property reports filed with the department and the State Comptroller of Public Accounts since the last examination;

(8) records of the trustee/depository, reflecting at a minimum all savings account statements, certificate of deposit records, and/or trust statements, received since the last examination;

(9) a copy of all price lists for any outstanding prepaid contract that has an issue date since the last examination;

(10) if the permit holder sells through multiple locations or entities, provide a list of funeral home providers for all outstanding contracts; and

(11) a list of funeral home providers or entities that have outstanding contracts under this permit that are known to the permit holder to have ceased business since the last examination.

(d) Individual files.

(1) A permit holder subject to this section shall maintain a prepaid contract file on each purchaser. The file must either be maintained separately or be capable of retrieval separately for outstanding contracts and may be maintained either chronologically or alphabetically. Each file must contain all correspondence pertaining to the contract.

(2) Each file pertaining to an outstanding contract must contain a copy of the executed prepaid contract, any revocable and irrevocable assignments, the individual ledger, and, if applicable, all power of attorney agreements or letters of guardianship.

(3) Each file pertaining to a matured contract must be retained for the period since the last examination. The file must contain copies of all documents required for an outstanding prepaid contract. In addition, a matured contract file must contain:

(A) a fully executed and completed department withdrawal form or evidence of department withdrawal approval, and a computation of earnings withdrawal, if applicable, unless computation procedures are otherwise documented in the general file;

(B) the original or a final copy of the completed at-need contract or funeral purchase agreement, itemization of services performed and merchandise delivered, or the interment order if the prepaid contract relates only to a grave opening and closing fee, outer burial container or other related merchandise and services. The document must be signed by the decedent's personal representative and indicate the prepaid credits and discounts applied and the balance due, if any, from the family at the time of death;

(C) a copy of a Texas certified death certificate or a death certificate from the state in which death occurred;

(D) documentation to substantiate any upgrades or downgrades or discounts or credits given and to explain any differences between the prepaid and the at-need contracts;

(E) a pre-need to at-need reconciliation, which must be signed by the funeral provider, if the provider is not also the seller; and

(F) if applicable, evidence of payment to the decedent's personal representative of any refund of prepaid contract overcharges by the funeral provider.

(4) Each file pertaining to a matured-contract file for which services were provided by a funeral provider other than the permit holder or a permit holder related by common ownership, must be retained for the period since the last examination. The file must contain copies of all documents required for an outstanding prepaid contract and:

(A) a signed statement from the purchaser or purchaser's representative requesting the delivery of funds to the servicing funeral provider;

(B) evidence of payment to the servicing funeral provider; and

(C) a copy of a Texas certified death certificate or a death certificate from the state in which death occurred.

(5) Each file pertaining to a canceled prepaid contract must be retained for the period since the last examination. The file must contain copies of all documents required for an outstanding contract, a completed departmental withdrawal form or evidence of departmental withdrawal approval; and evidence of payment of the cancellation benefit.

(e) Other records. A permit holder subject to this section must maintain the following records regarding its prepaid funeral benefits operations in hard-copy form, or on microfiche or in an electronic database from which they may be reasonably retrieved in hard-copy form:

(1) an historical contract register, maintained either chronologically or by contract number, indicating:

(A) the contract number;

(B) the date of purchase;

(C) the purchaser's name;

(D) the beneficiary's name (if different from the purchaser's name);

(E) the amount of the contract; and

(F) final disposition of the contract, including notations as to whether the contract is matured or canceled, the date of withdrawal from the depository or date withdrawal requested from the depository, and the amount of funds withdrawn; or, in lieu thereof, a record separate from the register, listing matured and canceled contracts for the examination period and setting out the contract number, contract purchaser, date of withdrawal from the depository or date withdrawal was requested from the depository, and amount of the withdrawal;

(2) cash receipts records reflecting payments collected;

(3) deposit records reflecting payments deposited;

(4) individual ledgers for each contract purchaser, balanced at least quarterly to the control ledger and to the records of the trustee/depository, reflecting the:

(A) contract purchaser's name;

(B) contract number;

(C) the date of purchase;

(D) the face amount of the prepaid funeral contract;

(E) total finance charges payable under the contract, if any;

(F) total retention allowable under the contract, if any;

(G) beginning contract balance;

(H) amounts paid on the contract itemized to reflect retention, finance charges and principal paid with individual cumulative totals;

(I) earnings on deposits, if any; and

(J) total amount of the trust; and

(5) a control ledger for all purchasers, balanced at least quarterly to the principal total and contract count total of the individual ledgers and in total to the records of the trustee/depository, reflecting:

(A) the net cumulative total of outstanding contracts;

(B) deposits of payments;

(C) withdrawal of payments;

(D) net amount of payments on deposit;

(E) earnings of deposit accounts;

(F) earnings withdrawn on deposit accounts; and

(G) net amount of earnings.

(f) Exceptions.

(1) With respect to contracts sold prior to the effective date of this section, a permit holder will not violate this section if it cannot produce records required under this section which were not previously required by statute or rule.

(2) A permit holder may apply to the commissioner for an exception to the requirements of this section. An exception may be granted or revoked for good cause only by prior written direction of the commissioner.

(g) Relocation of Records. Prior to changing the location where required records are maintained or where the examination is to be performed pursuant to §154.053(a) of the Texas Finance Code, a permit holder must notify the department, specifying the new address in writing, and, if the change in location requires the granting of an exception, comply with subsection (f)(2) of this section before required records are moved to the new location. The commissioner may revoke approval of a records location if the commissioner determines that such action is necessary to effectively regulate the permit holder and examine the records.

(h) Maintenance of Files. Documents and records required to be maintained under this section must be filed within thirty days of

receipt. Cash received must be posted within 30 days of receipt, and cash withdrawn on death maturity must be posted within 30 days of the actual withdrawal.

(i) Disaster recovery plan. If required records are maintained electronically, the permit holder must provide evidence of a disaster recovery plan, including documentation to substantiate periodic testing and test results, including offsite data storage capabilities regarding all records and documentation related to prepaid contracts.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105613
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: February 17, 2012
For further information, please call: (512) 475-1300

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PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 51. CHARTER APPLICATIONS

7 TAC §§51.1, 51.2, 51.4

The Finance Commission of Texas (the "Commission") proposes amendments to §51.1, concerning the Form and Content of Application to Incorporate; Requirements for Capital Stock and Paid-in Surplus or Savings Liability and Expense Fund; Payment before Opening for Business, §51.2, concerning Use of Approved Forms, and to §51.4, concerning Publication of Notice of Charter Application in conjunction with the Commission's review of Chapter 51.

In general, the purpose of the amendments is to eliminate obsolete references to the names of the Commissioner and the Department.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Foster 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 the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced.

There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 62.

§51.1. Form and Content of Application to Incorporate; Requirements for Capital Stock and Paid-in Surplus or Savings Liability and Expense Fund; Payment before Opening for Business.

(a) When Articles of Incorporation of a new association are presented to the savings and mortgage lending [~~loan~~] commissioner for his approval, such Articles shall be accompanied by an application which conforms to the statutory requirements provided in the Texas Savings and Loan Act, §62.001, and states the proposed location of the principal office of the new association and the identity and qualifications of the proposed managing officer. There shall also be submitted with the application a facsimile of each proposed loan instrument and such additional information as may be required by the proposed bylaws of the association together with such statements, exhibits, maps, plans, photographs, and other data, sufficiently detailed and comprehensive to enable the commissioner to pass upon matters set forth in the Texas Savings and Loan Act, §62.007. Such information must show that the proposed association will have and maintain independent quarters with a ground floor location or its equivalent. The Articles of Incorporation and all statements of fact tendered to the commissioner shall be verified as required by the Texas Savings and Loan Act, §62.001.

(b) - (d) (No change.)

§51.2. Use of Approved Forms.

The commissioner shall furnish approved forms of application, and other information to aid in the filing of the application. After the application and its supporting data have been received by the commissioner, he shall make or cause to be made an investigation of the application. [~~The Savings and Loan Department hereby adopts by reference the application for charter, as amended in August 1985.~~] The application form is available from the Texas Department of Savings and Mortgage Lending [~~Savings and Loan Department~~], 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

§51.4. Publication of Notice of Charter Application.

The proposed incorporators shall publish at least 20 days before the date of the hearing, in a newspaper printed in the English language of general circulation in the county where the proposed association will have its principal office, a notice in the following form:
Figure: 7 TAC §51.4

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105633
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-1350

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CHAPTER 53. ADDITIONAL OFFICES

7 TAC §§53.3, 53.10, 53.18

The Finance Commission of Texas (the "Commission") proposes amendments to §53.3, concerning the Content of Branch Office Application; Filing of Another Application; Notice; Publication; Hearing; Decision, §53.10, concerning Designation of Supervisory Sale, and to §53.18, concerning Offices in Other States or Territories, in conjunction with the Commission's review of Chapter 53.

In general, the purpose of the amendments is to eliminate obsolete references and to the name of the Department.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Foster 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 the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced.

There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 62.

§53.3. Content of Branch Office Application; Filing of Another Application; Notice; Publication; Hearing; Decision.

(a) (No change.)

(b) Upon request, the commissioner shall furnish approved forms of the application and other information to aid in the filing of the application. After the application and its supporting data have been received by the commissioner, he shall make or cause to be made an investigation of the application. [~~The Savings and Loan Department hereby adopts by reference the application for a branch office as amended July 1987.~~]

§53.10. Designation of Supervisory Sale.

The commissioner may designate a purchase of additional offices and/or assets by an association from another association to be a supervisory purchase when:

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

(3) the Federal Home Loan Bank Board has determined, and notified the commissioner, that one or more of the grounds specified in the Home Owner's Loan Act of 1933, for appointment of a conservator or receiver, exist with respect to the selling association, or the proposed transaction is necessary to prevent the failure or possible failure of the selling association. For purposes of this section, the term "unsafe condition" shall mean that the selling association is insolvent, or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound condition to transact business in that there has been a substantial reduction of its net worth; or that the association and its directors and officers have violated any material condition of its charter or bylaws, the terms of any order issued by the commissioner or any agreement between the association and the commissioner; or that the association, its directors, or officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs of the association by the commissioner or other duly authorized personnel of the Texas [~~Savings and Loan~~] Department of Savings and Mortgage Lending; or any other conditions affecting the association which the commissioner and the board of directors of the association agree place the association in an unsafe condition.

§53.18. Offices [~~and Remote Service Units~~] in Other States or Territories.

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, an association may establish branch offices and[~~,~~] loan offices[~~, and remote service units~~] in any state or territory of the United States. Each application for permission to establish such a branch office, or loan office, [~~or remote service unit~~] shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state or territorial regulatory authority approving the office [~~or unit~~], or other evidence satisfactory to the commissioner that all state or territorial regulatory requirements had been satisfied. Each such application shall be set for hearing, if applicable, notice given, hearing held, if applicable, and decision reached in the same manner and within the time provided in this chapter for similar applications for offices [~~or units~~] in this state. The commissioner may not approve such an application unless he shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, if applicable, and his official records that all requirements of this chapter applicable to the office [~~or unit~~] have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105634
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-1350

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7 TAC §§53.11 - 53.16

(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Finance Commission of Texas (the "Commission") proposes the repeal of §53.11, concerning Remote Service Units; §53.12, concerning Authority To Establish and Use Remote Service Units; §53.13, concerning Operational Requirements for Remote Service Units; §53.14, concerning Application To Operate Remote Service Units; §53.15, concerning Notice of Remote Service Unit Application; and §53.16, concerning

Approval of Application for Remote Service Unit, in conjunction with the Commission's review of Chapter 53.

In general, the purpose of the repeal is to remove obsolete regulations and conform to current industry practice.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of administering the repeal.

Commissioner Foster also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the proposed repeal will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The repeal is proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapter 62.

§53.11. Remote Service Units.

§53.12. Authority To Establish and Use Remote Service Units.

§53.13. Operational Requirements for Remote Service Units.

§53.14. Application To Operate Remote Service Units.

§53.15. Notice of Remote Service Unit Application.

§53.16. Approval of Application for Remote Service Unit.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105648
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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CHAPTER 57. CHANGE OF OFFICE LOCATION OR NAME

7 TAC §57.4

The Finance Commission of Texas (the "Commission") proposes amendments to §57.4, concerning the Application Forms, in conjunction with the Commission's review of Chapter 57.

In general, the purpose of the amendments is to eliminate obsolete references to the name of the Department.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Foster 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 the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced.

There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, §62.011.

§57.4. Application Forms.

Upon request, the commissioner shall furnish approved forms of the application for office relocation or application for change of name. [~~The Savings and Loan Department hereby adopts by reference the application for home office relocation, application for branch office relocation, and application for change of name.~~] Copies of the applications may be obtained from the Texas [~~Savings and Loan~~] Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

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

Filed with the Office of the Secretary of State on December 16, 2011.

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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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CHAPTER 61. HEARINGS

7 TAC §61.1

The Finance Commission of Texas (the "Commission") proposes amendments to §61.1, concerning the Hearings Officer, in conjunction with the Commission's review of Chapter 61.

In general, the purpose of the amendments is to eliminate obsolete references to the name of the Department.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Foster 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 the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced.

There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 61.

§61.1. Hearings Officer.

Chapter 31 of the Texas Banking Act, Title 3, Subtitle A of the Finance Code, provides that the Finance Commission may employ a hearing officer, who for purposes of Texas Civil Statutes, Government Code, §2003.21, is an employee of the Texas [~~Savings and Loan~~] Department of Savings and Mortgage Lending, Department of Banking and the Office of the Consumer Credit Commissioner. The Finance Commission hearing officer shall conduct hearings under the provisions of the Act.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105636
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-1350

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CHAPTER 63. FEES AND CHARGES

7 TAC §63.8

The Finance Commission of Texas (the "Commission") proposes amendments to §63.8, concerning Annual Fees to do Business, in conjunction with the Commission's review of Chapter 63.

In general, the purpose of the amendments is to eliminate obsolete references to the name of the Commissioner.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Foster also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, §61.007.

§63.8. Annual Fees to do [~~To Do~~] Business.

All associations chartered under the laws of the state and all foreign associations organized under the laws of another state of the United States holding a certificate of authority to do business in this state shall pay to the savings and mortgage lending [~~loan~~] commissioner such annual fee or assessment and examination fees as are set by the Finance Commission of Texas. Annual fees and assessments shall be established based upon the total assets of the association at the close of the calendar quarter immediately preceding the effective date of the fee or assessment.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105637
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-1350

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CHAPTER 64. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, RESERVES, NET WORTH, EXAMINATIONS, CONSUMER COMPLAINTS

7 TAC §64.10

The Finance Commission of Texas (the "Commission") proposes amendments to §64.10, concerning Consumer Complaint Procedures, in conjunction with the Commission's review of Chapter 64.

In general, the purpose of the amendments is to eliminate obsolete references to the name of the Department and update the instruction location for consumer complaints.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Foster also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed amendments will be that

the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, §13.011.

§64.10. Consumer Complaint Procedures.

(a) (No change.)

(b) Notice of how to file complaints

(1) In order to let its consumers know how to file complaints, savings and loan associations must use the following notice: The (name of savings and loan association) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas [~~Savings and Loan~~] Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of savings and loan association) should contact the Texas [~~Savings and Loan~~] Department of Savings and Mortgage Lending as instructed in the Consumer Complaints section of the department's website at www.sml.texas.gov. [~~through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 475-1360, E-mail: TSLD@tsld.state.tx.us~~]

(2) - (4) (No change.)

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105638
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-1350

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CHAPTER 65. LOANS AND INVESTMENTS

7 TAC §65.21

The Finance Commission of Texas (the "Commission") proposes amendments to §65.21, concerning Investments in Securities, in conjunction with the Commission's review of Chapter 65.

In general, the purpose of the amendments is to eliminate obsolete references.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Foster also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 64.

§65.21. Investments in Securities.

(a) An association shall have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; [~~in stock or obligations of the Federal Savings and Loan Insurance Corporation (FSLIC);~~] in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC); in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the association's purposes or power; in demand, time, or savings deposits of any savings institution the deposits of which are insured by the FDIC [~~FSLIC~~]; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state; and in such other securities or obligations approved by the commissioner. No security owned by an association shall be carried on its books at more than actual cost thereof unless a different treatment is permitted by the commissioner in writing.

(b) An association investing in securities under this section shall insure that the securities are delivered to the association, or for the association's account to a custodial agent or trustee designated by the association, within three business days after paying for or becoming obligated to pay for the securities. The association may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the FDIC [~~Federal Deposit Insurance Corporation~~], any savings and loan association legally exercising trust powers and the accounts of which are insured by the FDIC [~~Federal Savings and Loan Insurance Corporation, or the United States League Trust Company~~]. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the association shall insure that it receives a custodial or trust receipt for the securities within three business days of the delivery of the securities.

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

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105639
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-1350

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CHAPTER 67. SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §§67.6, 67.8 - 67.11, 67.14, 67.17

The Finance Commission of Texas (the "Commission") proposes amendments to §67.6, concerning Provisions for Distribution of Earnings on Other Than Regular Accounts; §67.8, concerning Deposit Accounts; §67.9, concerning Provisions for Issuance of Secured or Unsecured Capital Obligations; §67.10, concerning Joint Issuance of Capital Obligations; §67.11, concerning Required Average Daily Balance of Liquid Assets; Failure To Meet Requirement; §67.14, concerning Approval of the Commissioner; and §67.17, concerning User Safety at Unmanned Teller Machines, in conjunction with the Commission's review of Chapter 67.

In general, the purpose of the amendments is to eliminate obsolete statutory references and to conform to current practice.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Foster 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 the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 65.

§67.6. Provisions for Distribution of Earnings on Other Than Regular Accounts.

Subject to the provisions of this section, the board of directors of an association may provide for the distribution or payment of earnings on other than regular accounts on the following terms. The account is represented by a certificate of savings or certificate of deposit of not more than 10 years in a form approved by the savings and mortgage lending [~~loan~~] commissioner of Texas.

§67.8. Deposit Accounts.

(a) (No change.)

(b) In connection with various types of deposit accounts the form of certificates or passbooks to be used shall be submitted to the savings and mortgage lending [~~loan~~] commissioner for approval.

(c) (No change.)

§67.9. Provisions for Issuance of Secured or Unsecured Capital Obligations.

An association may, by resolution of its board of directors and with prior approval of the savings and mortgage lending [~~loan~~] commissioner of the State of Texas, issue capital notes, debentures, bonds, or other secured or unsecured capital obligations, which may be convertible in whole or in part to shares of permanent reserve fund stock, or may be issued with warrants attached, to purchase at a future date, shares of permanent reserve fund stock of the issuing association, provided:

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

§67.10. Joint Issuance of Capital Obligations.

On the same terms and conditions as stated in §67.9 of this title (relating to Provisions for Issuance of Secured or Unsecured Capital Obligations), an association may, by resolution of its board of directors and with prior approval of the savings and mortgage lending [~~loan~~] commissioner of the State of Texas, join other associations in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations if it meets the terms and conditions of §67.9 of this title [~~(relating to Provisions for Issuance of Secured or Unsecured Capital Obligations)~~].

§67.11. Required Average Daily Balance of Liquid Assets; Failure to [~~To~~] Meet Requirement.

State-chartered associations operating without insurance of accounts with the Federal Deposit Insurance Corporation [~~Federal Savings and Loan Insurance Corporation~~] shall maintain an average daily balance of liquid assets in an amount determined by the commissioner. An association failing to meet this requirement shall be restricted to loans on one-to-four family dwellings only, and within the limitations provided elsewhere in this chapter.

§67.14. Approval of the Commissioner.

No association shall permit withdrawals in the manner authorized by §67.12 of this title (relating to Now Accounts), §67.13 of this title (relating to Checking Accounts), this section, and §67.15 of this title (relating to Noninterest-Bearing Deposit Accounts)[~~, and §67.16 of this title (relating to Overdraft Protection--Credit and Debit Cards)~~] until it shall have filed with the Texas [~~Savings and Loan~~] Department of Savings and Mortgage Lending the following:

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

§67.17. User Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this chapter that are defined in the Finance Code, §59.301, have the same meanings as defined in the Finance Code.

(b) Measurement of candle foot power. For purposes of measuring compliance with the Finance Code, §59.307, candle foot power should be determined under normal, dry weather conditions, without

complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator shall notify the landlord in writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety evaluations.

(1) The owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually.

(2) The safety evaluation shall consider at the least the factors identified in the Finance Code, §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice.

(1) New access devices. An issuer of access devices shall furnish its customer with a notice of basic safety precautions at the time the initial disclosure of terms and conditions is provided to such customer.

(2) Annual notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions on a basis no less frequently than annually.

(3) Content. The notice of basic safety precautions required by this subsection must be provided in written form which can be retained by the customer and may include recommendations or advice regarding:

(A) security at walk-up unmanned teller machines;

(B) security at drive-up unmanned teller machines;

(C) protection of code or personal identification numbers;

(D) procedures for lost or stolen access devices;

(E) reaction to suspicious circumstances;

(F) safekeeping and disposition of unmanned teller machine receipts, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine;

(G) the inadvisability of surrendering information about the customer's access device over the telephone;

(H) safeguarding and protecting of the customer's access device, such as a recommendation that the customer treat the access device as if it was cash;

(I) protection against unmanned teller machine fraud, such as a recommendation that the customer compare unmanned teller machine receipts against the customer's monthly statement; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned teller machines located in a bank vestibule. The provisions of the Finance Code, Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of compliance. The security officer of each depository shall certify compliance with the Finance Code, Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

~~[(a) Definitions. Words and terms used in this chapter that are defined in the ATM User Safety Act, §1, have the same meanings as defined in the ATM User Safety Act. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.]~~

~~[(1) Access device--A card, code, or any combination thereof, or other means of access, to a customer's account at a financial institution, that may be used by the customer to initiate a transaction at an ATM.]~~

~~[(2) ATM--A machine, sometimes referred to as an unmanned teller machine or remote service unit, other than a night depository, a telephone, or a customer convenience terminal, capable of being operated solely by a customer, by which a customer may communicate to the financial institution:]~~

~~[(A) a request to withdraw money directly from the customer's account or from the customer's account pursuant to a line of credit previously authorized by the financial institution for the customer;]~~

~~[(B) an instruction to deposit funds into the customer's account with the financial institution;]~~

~~[(C) an instruction to transfer funds between one or more accounts maintained by the customer with the financial institution but not as between the customer's account and an account maintained in the financial institution or in some other financial institution by some other customer;]~~

~~[(D) an instruction to apply funds against an indebtedness of the customer to the financial institution;]~~

~~[(E) a request for information concerning the balance of the account of the customer with the financial institution; or]~~

[(F) any other form of transaction a customer may conduct at an ATM using an access card.]

[(3) ATM User Safety Act--Texas Civil Statutes, Article 342-903d, as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528.]

[(4) Customer convenience terminal--A particular kind of unmanned teller machine, the use of which does not involve personnel of a financial institution by which:]

[(A) a customer of a financial institution can authorize and effect the electronic transfer of funds from the customer's account at the financial institution in order to obtain cash or purchase or rent or pay for goods or services or both; and]

[(B) the merchant can ascertain that the transaction has been completed and the funds have been or will be transferred to the merchant's account at the merchant's financial institution.]

[(5) Department--The Savings and Loan Department.]

[(b) Measurement of Candle foot Power. For purposes of measuring compliance with the ATM User Safety Act, §3, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or duststorm, or other similar condition.]

[(c) Leased Premises.]

[(1) Noncompliance by Landlord. Pursuant to the ATM User Safety Act, §3(c), the landlord or owner of property is required to comply with the safety procedures of the ATM User Safety Act if an access area or defined parking area for an ATM is not controlled by the owner or operator of the ATM. If an owner or operator of an ATM on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator shall notify the landlord in writing of the requirements of the ATM User Safety Act and of those provisions for which the landlord is in noncompliance.]

[(2) Enforcement. Noncompliance with safety procedures required by the ATM User Safety Act by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Act, which may be enforced by the Texas Attorney General.]

[(d) Safety evaluations.]

[(1) The owner or operator of an ATM shall evaluate the safety of each machine on a basis no less frequently than annually.]

[(2) The safety evaluation shall consider at the least the factors identified in the ATM User Safety Act, §4.]

[(3) The owner or operator of the ATM may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an ATM is not controlled by the owner or operator of the machine.]

[(e) Notice.]

[(1) Existing Accounts. No later than January 1, 1996, an issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an ATM. The notice may be included as a statement stuffer with another mailing or may be delivered personally or mailed to each customer whose mailing address is in this state and who has been issued an access device.]

[(2) New Access Devices. An issuer of access devices shall furnish its customer with a notice of basic safety precautions at the time the initial disclosure of terms and conditions is provided to such customer.]

[(3) Annual Notice. After January 1, 1996, an issuer of access devices shall furnish its customers with a notice of basic safety precautions on a basis no less frequently than annually.]

[(4) Content. The notice of basic safety precautions required by this subsection must be provided in written form which can be retained by the customer and may include recommendations or advice regarding:]

[(A) security at walk-up ATMs;]

[(B) security at drive-up ATMs;]

[(C) protection of code or personal identification numbers;]

[(D) procedures for lost or stolen cards;]

[(E) reaction to suspicious circumstances;]

[(F) safekeeping and disposition of ATM receipts, such as the inadvisability of leaving an ATM receipt near the ATM;]

[(G) the inadvisability of surrendering information about the customer's access device over the telephone;]

[(H) safeguarding and protecting of the customer's access device, such as a recommendation that the customer treat the access device as if it was cash;]

[(I) protection against ATM fraud, such as a recommendation that the customer compare ATM receipts against the customer's monthly statement; and]

[(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its ATM customers.]

[(f) Video Surveillance Equipment. Video surveillance equipment is not required to be installed at all ATMs. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular ATM site, based on the safety evaluation required under the ATM User Safety Act, §4. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.]

[(g) ATMs Located in a Savings Association Vestibule. The provisions of the ATM User Safety Act and this section are applicable to an ATM located in a savings association vestibule if there is 24 hour access to the vestibule from outside the building.]

[(h) Certification of Compliance. The security officer of each depository shall certify compliance with the ATM User Safety Act and this regulation on a basis no less frequently than annually.]

[(i) Mandatory Compliance Date. Subject to the exemption provided by ATM User Safety Act, §6, compliance with the safety requirements of the ATM User Safety Act and this section is required not later than September 1, 1996.]

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105640

Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-1350

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7 TAC §67.16

(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Finance Commission of Texas (the "Commission") proposes the repeal of §67.16, concerning Overdraft Protection, in conjunction with the Commission's review of Chapter 67.

In general, the purpose of the repeal is that the department has determined the rule is no longer necessary and causes competitive disadvantage to other depository charters.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of administering the repeal.

Commissioner Foster also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the proposed repeal will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The repeal is proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapter 65.

§67.16. Overdraft Protection.

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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Douglas B. Foster
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CHAPTER 69. REORGANIZATION, MERGER, CONSOLIDATION, ACQUISITION, AND CONVERSION

7 TAC §69.5, §69.9

The Finance Commission of Texas (the "Commission") proposes amendments to §69.5, concerning the Publication; and §69.9, concerning Designation as Supervisory Merger, in conjunction with the Commission's review of Chapter 69.

In general, the purpose of the amendments is to eliminate obsolete references to the names of the Commissioner and the Department.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Foster 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 the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 62.

§69.5. Publication.

The associations involved in a plan must publish notice at least 20 days before the date of hearing in a newspaper or newspapers of general circulation in the county or counties where said associations have offices, and file proof of such publication with the commissioner at least 10 days prior to hearing. The form of notice shall be as follows: "Notice is hereby given that application has been made to the savings and mortgage lending [~~loan~~] commissioner of Texas by (association(s)) for approval to (reorganize, merge, and/or consolidate) pursuant to §62.351 of the Texas Savings and Loan Act, Texas Civil Statutes, Article 852a. A plan of (reorganization, merger, and/or consolidation) and related documents have been filed with the commissioner. Notice is further given that a hearing on this application has been set for (date) at (time) in (place) pursuant to authority and jurisdiction granted by Texas Civil Statutes, Article 852a. The particular sections of the statute involved are §§62.011, 62.351, and Chapter 61. The particular rules involved are §69.8 and §69.9. Such rules are on file with the Secretary of State, Texas Register Division, or may be seen at the department's offices, 2601 North Lamar Boulevard, Suite 201, Austin, Texas. The nature and purpose of the hearing is to accumulate a record of pertinent information and data in support of the application and in opposition to the application, from which record the commissioner shall determine whether to grant or deny the application. The applicants assert that the plan of (reorganization, merger, and/or consolidation) meets the criteria for approval set forth in the statutory sections cited in this notice. Any

person intending to appear and to participate in the hearing on this application may do so only if written notice of such intention is filed with and received by the Commissioner at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, and by the applicant's agent named above, at least 10 days prior to the date of such hearing. Such notice shall include the docket number of the application. If a protest is filed, the hearing on the application may be continued to a later date at the same location. Issued this (date) at Austin, Travis County, Texas."

§69.9. Designation as Supervisory Merger.

(a) (No change.)

(b) For purposes of this section, unsafe condition shall mean that the association (or associations) is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the association is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its net worth; or that the association and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the commissioner, or any agreement between the association and the commissioner; or that the association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the association by the commissioner or other duly authorized personnel of the Texas Department of Savings and Mortgage Lending [~~Savings and Loan Department~~]; or any other condition affecting the association which the commissioner and the board of directors of the association agree place the association in an unsafe condition.

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

Filed with the Office of the Secretary of State on December 16, 2011.

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Douglas B. Foster
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Texas Department of Savings and Mortgage Lending
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CHAPTER 71. CHANGE OF CONTROL

7 TAC §§71.1 - 71.3, 71.6

The Finance Commission of Texas (the "Commission") proposes amendments to §71.1, concerning Introduction; §71.2, concerning Definitions; §71.3, concerning Acquisition of an Association; and §71.6, concerning Application for Approval of the Acquisition of Control of a Savings and Loan Association, in conjunction with the Commission's review of Chapter 71.

In general, the purpose of the amendments is to eliminate obsolete references to the names of the Commissioner and the Department. Further, the purpose of the amendments is to eliminate a reference to an agency that no longer exists.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Foster 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 the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 62.

§71.1. Introduction.

It having been declared and found by the legislature of the State of Texas that this state shall exercise regulatory authority over the savings and loan industry authorized to do business under the laws of the State of Texas, and as it is hereby further declared and found by the Savings and Mortgage Lending [~~Loan~~] Section of the Finance Commission of Texas and the savings and mortgage lending [~~loan~~] commissioner that the public interest and the interests of account holders are or may be adversely affected when control of an association is sought by persons who would utilize such control adversely to the interests of account holders, it is hereby declared that the policies and purposes of this regulation are to promote the public interest by requiring disclosure of pertinent information relating to approval of changes in control of a savings and loan association. Notwithstanding any other provision of this chapter, the Federal Deposit Insurance Corporation [~~Federal Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation~~] shall not be deemed subject to this chapter [~~Chapter 71~~].

§71.2. Definitions.

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

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

(4) Commissioner--The Savings and Mortgage Lending [~~Texas Savings and Loan~~] Commissioner.

(5) - (8) (No change.)

§71.3. Acquisition of an Association.

The following procedures shall be followed when a person desires to acquire control of an association.

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

(5) Amendments. If any material change occurs in the facts set forth in the application and any documents filed with the Texas [~~Savings and Loan~~] Department of Savings and Mortgage Lending, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner within three business days after the person learns of such change.

§71.6. Application for Approval of the Acquisition of Control of a Savings and Loan Association.

[~~The Savings and Loan Department adopts by reference the application for approval of the acquisition of control of a savings and loan asso-~~

~~ciation.~~] The application form is available from the Texas [~~Savings and Loan~~] Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201[~~, P.O. Box 1089~~], Austin, Texas 78705 [~~78767~~].

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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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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CHAPTER 73. SUBSIDIARY CORPORATIONS

7 TAC §73.2

The Finance Commission of Texas (the "Commission") proposes amendments to §73.2, concerning Application, in conjunction with the Commission's review of Chapter 73.

In general, the purpose of the amendments is to eliminate obsolete references to the name of the Department. Further, the purpose of the amendments is to eliminate a reference to an agency that no longer exists.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Foster also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings and loan associations required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 66.

§73.2. Application.

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

(c) The corporation will keep complete and adequate books and records in accordance with generally accepted accounting principles where there are no specific accounting guidelines set forth by the rules of the Texas [~~Savings and Loan~~] Department of Savings and Mortgage Lending or the regulations of the Federal Deposit Insurance Corporation [~~Federal Savings and Loan Insurance Corporation~~].

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 75. APPLICATIONS

The Finance Commission of Texas (the "Commission") proposes amendments to Subchapter A, §75.9, concerning Notice to Applicants; and Subchapter B, §75.26, concerning Expedited Applications, in conjunction with the Commission's review of Chapter 75.

In general, the purpose of the amendments is to eliminate obsolete references. Section 75.9 and §75.26 have been revised to remove a reference to Chapter 79, which is being repealed and readopted as Chapter 76.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Foster 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 the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings banks required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §75.9

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 92.

§75.9. Notice to Applicants.

Within 30 days of receipt of an application for any form of authorization to be granted by the commissioner pursuant to this title, and for which a filing fee is charged pursuant to Chapter 76, Subchapter F [~~79~~] of this title (relating to Fees and Charges), the commissioner shall issue a written notice to the applicant informing the applicant either that the application is complete and accepted for filing, or that the application is deficient and that specific additional information is required.

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. EXPEDITED APPLICATIONS

7 TAC §75.26

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 92.

§75.26. Expedited Applications.

(a) An eligible institution as defined in §75.25 of this title (relating to Eligible Institution) may file an expedited filing in lieu of an application required pursuant to §75.33 of this title (relating to Branch Office Applications), §75.35 of this title (relating to Mobile Facilities), §75.38 of this title (relating to Change of Home or Branch Office Location), or §75.81 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction), and simultaneously tender the required filing fee pursuant to Chapter 76, §§76.91 - 76.99 [~~79, §§79.91-79.99~~] of this title (relating to Fees and Charges).

(b) - (d) (No change.)

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

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CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §77.113

(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 Savings and Mortgage Lending or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Finance Commission of Texas (the "Commission") proposes the repeal of §77.113, concerning Overdraft Protection, in conjunction with the Commission's review of Chapter 77.

In general, the purpose of the repeal is that the department has determined the rule is no longer necessary and causes competitive disadvantage to other depository charters.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of administering the repeal.

Commissioner Foster also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the proposed repeal will be that the Department's rules will conform to current practice, will be more easily understood by savings banks required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The repeal is proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapter 95.

§77.113. Overdraft Protection.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105647
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-1350

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7 TAC §77.115

The Finance Commission of Texas (the "Commission") proposes amendments to Subchapter B, §77.115, concerning User Safety at Unmanned Teller Machines, in conjunction with the Commission's review of Chapter 77.

In general, the purpose of the amendments is to eliminate obsolete statutory references. Section 77.115 has been revised to remove references to the ATM User Safety Act.

Douglas B. Foster, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Foster also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings banks required to comply with the rules, and will be more easily enforced. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to cjones@sml.texas.gov.

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 95.

§77.115. User Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code, §59.301, have the same meanings as defined in the Finance Code.

(b) Measurement of candle foot power. For purposes of measuring compliance with the Finance Code, §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator shall notify the landlord in writing of the requirements of the Finance Code, Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code, Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code, Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety evaluations.

(1) The owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually.

(2) The safety evaluation shall consider at the least the factors identified in the Finance Code, §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice.

(1) New access devices. An issuer of access devices shall furnish its customer with a notice of basic safety precautions at the time the initial disclosure of terms and conditions is provided to such customer.

(2) Annual notice. An issuer of access devices shall furnish its customers with a notice of basic safety precautions on a basis no less frequently than annually.

(3) Content. The notice of basic safety precautions required by this subsection must be provided in written form which can be retained by the customer and may include recommendations or advice regarding:

(A) security at walk-up unmanned teller machines;

(B) security at drive-up unmanned teller machines;

(C) protection of code or personal identification numbers;

(D) procedures for lost or stolen access devices;

(E) reaction to suspicious circumstances;

(F) safekeeping and disposition of unmanned teller machine receipts, such as the inadvisability of leaving an unmanned teller machine receipt near the unmanned teller machine;

(G) the inadvisability of surrendering information about the customer's access device over the telephone;

(H) safeguarding and protecting of the customer's access device, such as a recommendation that the customer treat the access device as if it was cash;

(I) protection against unmanned teller machine fraud, such as a recommendation that the customer compare unmanned teller machine receipts against the customer's monthly statement; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned teller machines located in a bank vestibule. The provisions of the Finance Code, Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of compliance. The security officer of each depository shall certify compliance with the Finance Code, Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

~~[(a) Definitions. Words and terms used in this section that are defined in the ATM User Safety Act, §1, have the same meanings as defined in the ATM User Safety Act. The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise.]~~

~~[(1) Access device--A card, code, or any combination thereof, or other means of access, to a customer's account at a financial~~

institution, that may be used by the customer to initiate a transaction at an ATM.]

[(2) ATM--A machine, sometimes referred to as an unmanned teller machine or remote service unit, other than a night depository, a telephone, or a customer convenience terminal, capable of being operated solely by a customer, by which a customer may communicate to the financial institution:]

[(A) a request to withdraw money directly from the customer's account or from the customer's account pursuant to a line of credit previously authorized by the financial institution for the customer;]

[(B) an instruction to deposit funds into the customer's account with the financial institution;]

[(C) an instruction to transfer funds between one or more accounts maintained by the customer with the financial institution but not as between the customer's account and an account maintained in the financial institution or in some other financial institution by some other customer;]

[(D) an instruction to apply funds against an indebtedness of the customer to the financial institution;]

[(E) a request for information concerning the balance of the account of the customer with the financial institution; or]

[(F) any other form of transaction a customer may conduct at an ATM using an access card.]

[(3) ATM User Safety Act--Texas Civil Statutes, Article 342-903d, as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528.]

[(4) Customer convenience terminal--A particular kind of unmanned teller machine, the use of which does not involve personnel of a financial institution by which:]

[(A) a customer of a financial institution can authorize and effect the electronic transfer of funds from the customer's account at the financial institution in order to obtain cash or purchase or rent or pay for goods or services or both; and]

[(B) the merchant can ascertain that the transaction has been completed and the funds have been or will be transferred to the merchant's account at the merchant's financial institution.]

[(5) Department--The Texas Department of Savings and Mortgage Lending.]

[(b) Measurement of Candle foot Power. For purposes of measuring compliance with the ATM User Safety Act, §3, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or duststorm, or other similar condition.]

[(c) Leased Premises.]

[(1) Noncompliance by Landlord. Pursuant to the ATM User Safety Act, §3(c), the landlord or owner of property is required to comply with the safety procedures of the ATM User Safety Act if an access area or defined parking area for an ATM is not controlled by the owner or operator of the ATM. If an owner or operator of an ATM on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator shall notify the landlord in writing of the requirements of the ATM User Safety Act and of those provisions for which the landlord is in noncompliance.]

[(2) Enforcement. Noncompliance with safety procedures required by the ATM User Safety Act by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Act, which may be enforced by the Texas Attorney General.]

[(d) Safety evaluations.]

[(1) The owner or operator of an ATM shall evaluate the safety of each machine on a basis no less frequently than annually.]

[(2) The safety evaluation shall consider at the least the factors identified in the ATM User Safety Act, §4.]

[(3) The owner or operator of the ATM may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an ATM is not controlled by the owner or operator of the machine.]

[(e) Notice.]

[(1) Existing Accounts. No later than January 1, 1996, an issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an ATM. The notice may be included as a statement stuffer with another mailing or may be delivered personally or mailed to each customer whose mailing address is in this state and who has been issued an access device.]

[(2) New Access Devices. An issuer of access devices shall furnish its customer with a notice of basic safety precautions at the time the initial disclosure of terms and conditions is provided to such customer.]

[(3) Annual Notice. After January 1, 1996, an issuer of access devices shall furnish its customers with a notice of basic safety precautions on a basis no less frequently than annually.]

[(4) Content. The notice of basic safety precautions required by this subsection must be provided in written form which can be retained by the customer and may include recommendations or advice regarding:]

[(A) security at walk-up ATMs;]

[(B) security at drive-up ATMs;]

[(C) protection of code or personal identification numbers;]

[(D) procedures for lost or stolen cards;]

[(E) reaction to suspicious circumstances;]

[(F) safekeeping and disposition of ATM receipts, such as the inadvisability of leaving an ATM receipt near the ATM;]

[(G) the inadvisability of surrendering information about the customer's access device over the telephone;]

[(H) safeguarding and protecting of the customer's access device, such as a recommendation that the customer treat the access device as if it was cash;]

[(I) protection against ATM fraud, such as a recommendation that the customer compare ATM receipts against the customer's monthly statement; and]

[(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its ATM customers.]

[(f) Video Surveillance Equipment. Video surveillance equipment is not required to be installed at all ATMs. The owner or operator must determine whether video surveillance or unconnected video

~~surveillance equipment should be installed at a particular ATM site, based on the safety evaluation required under the ATM User Safety Act, §4. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.]~~

~~[(g) ATMs Located in a Savings Bank Vestibule. The provisions of the ATM User Safety Act and this section are applicable to an ATM located in a savings bank vestibule if there is 24-hour access to the vestibule from outside the building.]~~

~~[(h) Certification of Compliance. The security officer of each depository shall certify compliance with the ATM User Safety Act and this regulation on a basis no less frequently than annually.]~~

~~[(i) Mandatory Compliance Date. Subject to the exemption provided by ATM User Safety Act, §6, compliance with the safety requirements of the ATM User Safety Act and this section is required not later than September 1, 1996.]~~

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105646
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-1350

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 87. TAX REFUND ANTICIPATION LOANS

SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §87.102

The Finance Commission of Texas (commission) proposes amendments to §87.102, concerning filing of new application for tax refund anticipation loan facilitators.

The purpose of the amendments to §87.102 is to implement technical corrections resulting from the commission's review of Chapter 87 under Texas Government Code, §2001.039. The technical corrections relate to deleting unnecessary language and updating a statutory citation.

In subsection (a), the last sentence regarding alternative submission formats is proposed for deletion. At the time §87.102 was originally proposed in August of 2007, the agency was uncertain whether an electronic or paper application system would be used. After the rule's adoption, an online registration system was activated and has been in use every year for tax refund anticipation loan facilitators. The current last sentence of §87.102(a) states that the commissioner may approve alternative formats of electronic submission. That sentence has been made obsolete due to the continuous use of the online registration system.

In subsection (b), the reference to required "forms and filings" is more associated with the use of a paper registration system. To provide better consistency with an online system, the phrase "forms and filings" is being replaced with the term "information."

In §87.102(b)(2), the Texas Business and Commerce Code citation for the definition of assumed name has been updated to reflect its current location as reorganized by the legislature.

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 changes.

Commissioner Pettijohn 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 the changes will be that the commission's rules will reflect current agency practice, will be more easily understood by registrants, and will include an updated statutory citation.

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 businesses 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 amendments are published in the *Texas Register.* At the conclusion of the 31st day after the amendments are published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §352.003, which authorizes the commission to prescribe procedures for the registration of tax refund anticipation loan facilitators.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 352.

§87.102. Filing of New Application.

(a) New application. An application for issuance of a new tax refund anticipation loan facilitator registration must be submitted as 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.~~]

(b) Required information. The application must include the following required information [~~forms and filings~~]. All questions must be answered.

(1) Application for Registration of Tax Refund Anticipation Loan Facilitator.

(A) Each location in this state at which e-file providers authorized by the Internal Revenue Service file tax returns on behalf of borrowers for whom the facilitator acts to allow the making of a tax refund anticipation loan must be separately registered.

(B) The person responsible for the day-to-day operation of the applicant's proposed business location must be named.

(2) Assumed names. For any applicant that does business under an assumed name as that term is defined in Texas Business and

Commerce Code, §71.002 [~~§36.02(7)~~], the applicant must provide all assumed names used.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105655
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 936-7621

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.9

The Texas Department of Housing and Community Affairs proposes amendments to 10 TAC Chapter 1, §1.9, concerning Qualified Contract Policy. These amendments are necessary in light of proposed new section, 10 TAC Chapter 1, §1.25, concerning Right of First Refusal at Fair Market Value, which is proposed to provide guidance for existing properties with a Land Use Restriction Agreement (LURA) that requires an opportunity for qualified non-profits to purchase the property at fair market value.

Mr. Timothy K. Irvine, Executive Director, has determined that for each of the first five-year period the proposed amendments are in effect there will be no fiscal implication for state or local governments as a result of enforcing or administering this amended section.

Mr. Irvine has also determined that for each of the first five years the amendments are in effect the public benefit anticipated is improved opportunity for non-profits to purchase affordable housing and the preservation of existing affordable housing.

The proposed amendments will not have an adverse economic affect on small businesses or micro-businesses. The proposed amendments will not impact the local economy. The proposed amendments will not impact local employment.

Public comment on the proposed amendments will be accepted through January 20, 2012. Written comments may be submitted by email to tdhcarulecomments@tdhca.state.tx.us or by mail to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Patricia Murphy, Chief of Compliance and Asset Oversight or by fax to (512) 475-3359. All comments must be received by 5:00 p.m. January 20, 2012.

The amendments are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The proposed amendments affect 10 TAC Chapter 1, Subchapter A, §1.25, concerning Right of First Refusal at Fair Market Value.

§1.9. Qualified Contract Policy.

(a) Purpose. Pursuant to §42(h)(6) of the Internal Revenue Code, after the end of the 14th year of the compliance period, the owner of a development utilizing housing tax credits can request that the allocating agency find a buyer at the qualified contract price. If a buyer cannot [~~can not~~] be located within one (1) year, the extended use commitment will expire. This section [~~rule~~] provides the procedures for the submittal and review of the qualified contract requests.

(b) Definitions. Many of the terms used in this section are defined in the Department's Housing Tax Credit Program Qualified Allocation Plan and Rules (QAP)[~~, known as the "QAP"~~]. Those terms that are not defined in the QAP or which may have another meaning when used in this section shall have the meaning set forth in this subsection unless the context clearly indicates otherwise.

(1) Code--The Internal Revenue Code of 1986 as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of Treasury or the Internal Revenue Service.

(2) Compliance Period--With respect to a building, the period of fifteen (15) [~~15~~] taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code[~~, §42(i)(1)~~].

(3) Department--The Texas Department of Housing and Community Affairs.

(4) Extended Use Period--The period beginning with the first day of the Compliance Period and ending on the date which is fifteen (15) [~~15~~] years after the end of the Initial Affordability Period.

(5) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the owner as the minimum period for which units in the development shall be retained for low-income tenants and rent restricted, as set forth in the Land Use Restriction Agreement (LURA) [~~LURA~~].

(6) Land Use Restriction Agreement (LURA)--An agreement between the Department and the owner which is binding upon the owner's successors in interest, that maintains the affordability of a development pursuant to the requirements of Chapter 2306 of the[~~,~~] Texas Government Code, and the requirements of §42 of the Code[~~, §42~~].

(7) One Year Period (1YP)--Period commencing on the date on which the Department and the owner agree to the Qualified Contract price in writing and lasting twelve (12) calendar months.

(8) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(9) Qualified Contract Price (QC Price)--Calculated purchase price of the development as defined within §42(h)(6)(F) of the Code and as further delineated in subsection (g) of this section [~~hereof~~].

(10) Qualified Contract Request (Request)--A request containing all information and items required by the Department.

(11) Qualified Purchaser--Proposed purchaser of the development who meets all eligibility and qualification standards stated in the QAP of the year the request is received. The purchaser must also attend, or assign another individual to attend, the Department's Property Compliance Training.

(c) Eligibility. An owner may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, following the Department's determination that the owner is eligible, as hereinafter provided in subsection (f) of this section. The Initial Affordability Period starts concurrently with the credit period; therefore, beginning at placement in service or deferred until the beginning of the next tax year, if there is an election. Unless the owner has elected an Initial Affordability Period longer than the Compliance Period, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the owner shall have elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(3) Owners who received an allocation of credits on or after January 1, 2002 are not eligible to request a qualified contract.

(d) Preliminary Qualified Contract Request. An owner must file a preliminary Qualified Contract Request (Pre-request) any time after the end of the year preceding the last year of the Initial Affordability Period.

(1) In addition to determining the basic eligibility described in subsection (c) of this section, the Pre-request will be used to determine the following:

(A) the property does not have any outstanding instances of noncompliance, with the exception of the physical condition of the property;

(B) there is a right of first refusal connected to the property that has not been offered to the Department;

(C) the Compliance Period has not been extended in the LURA; and

(D) the owner has all of the necessary documentation to submit a Request.

(2) In order to assess the validity of the pre-request, the Owner must submit:

(A) Preliminary Request Form;

(B) $250 nonrefundable processing fee;

(C) copy of recorded LURA;

(D) first year's 8609s for all buildings showing Part II completed;

(E) documentation from original application regarding right of first refusal, if applicable; and

(F) local code compliance report within the last twelve (12) [~~12~~] months or HUD-certified UPCS inspection.

(3) The Pre-request will not bind the owner to submit a Request and does not start the 1YP. A review of the pre-request will be conducted by the Department within ninety (90) [~~90~~] days of receipt of all documents described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the owner stating that they are eligible to submit a Request.

(e) Right of First Refusal. If the owner elected at the time of application to provide a right of first refusal, the owner must first satisfy the right of first refusal requirements. If the owner agreed to a Right of First Refusal at Fair Market Value, the procedures in §1.25 of this chapter (relating to Right of First Refusal at Fair Market Value) must be followed. All [~~all~~] requests for right of first refusal submitted to Department, regardless of existing regulations, must adhere to this process.

(1) If at any time following the end of the Compliance Period or Initial Affordability Period, as applicable, the owner shall determine to sell the development and the owner has agreed to provide a right of first refusal to purchase the property for the minimum purchase price provided in, and in accordance with the requirements of[~~,~~] §42(i)(7)(B) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"), the right of first refusal shall be subject to the following terms.

(A) Upon the earlier to occur of:

(i) the owner's determination to sell the Development, or

(ii) the owner's request to the Department, pursuant to §42(h)(6)(H) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the owner determines that it will sell the Development at the end of the Compliance Period or Initial Affordability Period, as applicable, the Notice of Intent shall be given no later than two (2) years prior to expiration of the Compliance Period or Initial Affordability Period, as applicable. If the owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two (2) years prior to date upon which the owner intends to sell the Development. If the Development is already within two (2) years of the expiration of the Compliance Period or Initial Affordability Period, as applicable, and the owner intends to sell the Development at the end of the Compliance Period or Initial Affordability Period, as applicable, the two year period referenced in subparagraph (B) of this paragraph will begin when the owner files a Notice of Intent.

(B) During the two (2) years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) during the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for pur-

poses of the federal HOME Investment Partnerships Program at 24 CFR [~~C.F.R.~~] §92.1 (a "CHDO") and is approved by the Department,

(ii) during the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) during the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iv) If, during such two-year period, the owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (iii) [~~(i) through (iii)~~] of this subparagraph (within the period(s) appropriate to such organization), the owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) - (iii) [~~(i) through (iii)~~] of this subparagraph (within the period(s) appropriate to such organizations), the owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) the end of the Compliance Period or Initial Affordability Period, as applicable, or[~~,~~]

(ii) two (2) years from delivery of a Notice of Intent, the owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of one-hundred-twenty (120) [~~120~~] days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph unless prior approval was granted by the Department.

(E) The Department shall, at the request of the owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(2) The owner must submit evidence of the calculation of the Minimum Purchase Price with the Notice of Intent.

(3) The 1YP for the Qualified Contract process will begin eighteen (18) [~~18~~] months after the right of first refusal process has commenced if the owner and the Department have agreed to the QC Price in writing.

(f) Qualified Contract Request. An owner may file a Qualified Contract Request (Request) anytime after approval that the owner is eligible to submit a Request has been received in writing from the Department.

(1) The [~~following~~] documentation that must be submitted with a Request are outlined in subparagraphs (A) - (P) of this paragraph:

(A) a [~~A~~] completed application and certification;[~~,~~]

(B) the [~~The~~] qualified contract price calculation worksheets completed by a third party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;[~~.~~]

(C) a [~~A~~] thorough description of the Development, including all amenities;[~~.~~]

(D) a [~~A~~] description of all income, rental and other restrictions, if any, applicable to the operation of the Development;[~~.~~]

(E) a [~~A~~] current title report;[~~.~~]

(F) a [~~A~~] current appraisal consistent with 10 TAC §1.34 of this chapter (relating to Appraisal Rules and Guidelines);[~~.~~]

(G) a [~~A~~] current Phase I Environmental Site Assessment (Phase II if necessary) consistent with 10 TAC §1.35 of this chapter (relating to Environmental Site Assessment Rules and Guidelines);[~~.~~]

(H) a [~~A~~] current property condition assessment consistent with 10 TAC §1.36 of this chapter (relating to Property Condition Assessment Guidelines);[~~.~~]

(I) a [~~A~~] copy of the monthly operating statements for the Development for the most recent twelve (12) [~~12~~] consecutive months;[~~.~~]

(J) the [~~The~~] three (3) most recent consecutive annual operating statements;[~~.~~]

(K) a [~~A~~] detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);[~~.~~]

(L) a [~~A~~] current and complete rent roll for the entire property;[~~.~~]

(M) a [~~A~~] certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;[~~.~~]

(N) if [~~If~~] any portion of the land or improvements is leased, copies of the leases;[~~.~~]

(O) non-refundable [~~Non-refundable~~] processing fee in an amount equal to the lesser of $3,000.00 or one fourth of one percent of the QC Price determined by the CPA; and[~~.~~]

(P) additional [~~Additional~~] information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (i) of this section, the owner shall contract with a broker approved by the Department to market and sell the property. The fee

for this service will be paid by the seller, not to exceed 6 percent [~~6%~~] of the QC Price.

(3) Within ninety (90) [~~90~~] days of the submission of a complete Request, the Department will notify the owner in writing of the acceptance or rejection of the owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to find a Qualified Purchaser and present a Qualified Contract. The Department's rejection of the owner's QC Price calculation will be processed in accordance with subsection (h) of this section and the 1YP will commence as provided therein.

(g) Determination of Qualified Contract Price. The CPA contracted by the owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code and [~~the following~~] guidelines:[~~.~~]

(1) Distributions to the owner include any and all cash flowing to the owner, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the development;[~~.~~]

(2) All equity contributions will be adjusted based upon the lesser of the consumer price index or 5 [~~five~~] percent [~~(5%)~~] for each year, from the end of the year of the contribution to the end of year 14 or the end of the year of the request for a Qualified Contract Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month;[~~.~~]

(3) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of owner distributions, equity contributions and/or any other element of the QC Price; and[~~.~~]

(4) The QC Price calculation is not the same as the Minimum Purchase Price calculation for the right of first refusal.

(h) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the owner, the Department may engage its own CPA to perform a QC Price calculation. Cost of such service will be paid for by the owner. If an owner disagrees with the QC Price calculated by the Department, an owner may appeal in writing. A meeting will be arranged with representatives of the owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and owner have agreed to the QC Price in writing.

(i) Marketing of Property.

(1) By submitting a Request, the owner grants the Department the authority to market the development and provide development information to interested parties. Development information will consist of pictures of the development, location, amenities, number of units, age of building, etc. Owner contact information will also be provided to interested parties. The owner is responsible for providing staff to assist with site visits and inspections. Marketing of the development will continue until such time that a Qualified Contract is presented or the 1YP has expired.

(2) Notwithstanding subsection (f)(2) of this section, the Department reserves the right to contract directly with a third party in marketing the development. Cost of such service, including a broker's fee not to exceed 6 percent [~~6%~~], will be paid for by the existing owner.

(3) The Department must have continuous cooperation from the owner. Lack of cooperation will cause the process to cease and the owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the owner include but are not limited to:

(A) allowing access to the property and tenant files;

(B) keeping the Department informed of potential purchasers; and

(C) notifying the Department of any offers to purchase.

(4) A prospective purchaser must complete all exhibits required for an ownership transfer request. The Department will then assess if the prospective purchaser is a Qualified Purchaser.

(j) Presentation of a Qualified Contract.

(1) If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at the QC Price, the owner must agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase.

(2) Although the owner is obligated to sell the development for the QC Price pursuant to a Qualified Contract, the consummation of such a sale is not required for the LURA to continue to bind the development for the remainder of the extended use period. Once the Department presents a Qualified Contract to the owner, the possibility of terminating the extended use period is removed forever and the property remains bound by the provisions of the LURA.

(3) The Department will attempt to procure a QC for the acquisition of the low income portion of any project only once during the extended use period.

(4) If the transaction closes under the contract, the new owner will be required to fulfill the requirements of the LURA for the remainder of the extended use period.

(5) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three-year period commencing on the termination of the extended use period, the owner may not evict or displace tenants of low-income units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the owner should submit evidence, in the form of a signed certification and a copy of the letter to be created by the Department, that the tenants in the Development have been notified in writing that the LURA has been terminated and have been informed of their protections during the three-year time frame.

(6) Prior to the Department filing a release of the LURA, the owner must correct all instances of noncompliance with the physical condition of the property.

(k) Compliance Monitoring during Extended Use Period. For developments that continue to be bound by the LURA and remain as affordable after the end of the Compliance Period, the Department will implement modified compliance monitoring policies and procedures. Refer to the Extended Use Period Compliance Policy §60.122 of this title (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period) for more information.

(l) Waiver and Amendment of Rules.

(1) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that a waiver is appropriate to fulfill

the purposes or policies of Chapter 2306 of the[,] Texas Government Code, or for other good cause, as determined by the Board.

(2) The Department may amend this section [~~Rule~~] to comply with IRS guidance, if and when issued.

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105688
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-3916

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10 TAC §1.23

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to §1.23, concerning the State of Texas Low Income Housing Plan and Annual Report ("SLIHP"). The section adopts by reference the 2012 SLIHP.

The purpose of the SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, resource allocation plan to meet state housing needs, and reports on State Fiscal Year 2011 performance. The Department is required to submit the SLIHP annually to its Board of Directors in accordance with §2306.072 of the Texas Government Code.

Mr. Timothy Irvine, Executive Director, has determined that for the first five-year period the amended section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended section as proposed.

Mr. Irvine has also determined that for each year of the first five years the SLIHP is in effect, the public benefit anticipated will be improved communication with the public regarding the Department's programs and activities. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. The amended section will not impact local employment.

The full text of the both the draft and final 2012 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2012 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

The public comment period will be between January 9 and February 7, 2012. A public hearing will be held at 11:00 a.m., Tuesday, January 10, 2012 at the Stephen F. Austin State Office Building, Room 172, 1700 North Congress Avenue, Austin, Texas. Written comments may be submitted to Texas Department of Housing and Community Affairs, Elizabeth Yevich, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-1672.

The TDHCA Board of Directors will consider the final 2012 SLIHP at the March 2012 Board meeting. The 2012 SLIHP will become effective 20 days after being filed with the Office of the Secretary of State.

The amendment is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

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

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The Texas Department of Housing and Community Affairs (the "Department") adopts by reference the 2012 [~~2011~~] State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2012 [~~2011~~] SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2012 [~~2011~~] SLIHP by contacting the Department's Housing Resource Center at (512) 475-3800.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105674
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-3916

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10 TAC §1.25

The Texas Department of Housing and Community Affairs proposes new 10 TAC Chapter 1, §1.25 concerning Right of First Refusal at Fair Market Value. The purpose of this proposed new section is to provide guidance for existing properties with a LURA that requires an opportunity for qualified non-profits to purchase the property at fair market value.

Mr. Timothy K. Irvine, Executive Director, has determined that for each of the first five-year period the proposed new section is in effect there will be no fiscal implication for state or local governments as a result of enforcing or administering this section.

Mr. Irvine has also determined that for each of the first five years the proposed new section is in effect the public benefit anticipated is improved opportunity for non-profits to purchase affordable housing and the preservation of existing affordable housing.

The proposed new section will have no effect on small businesses or persons; no anticipated economic cost to persons who are required to comply with the proposed new section; will not impact local employment; will not have an adverse economic affect on small businesses or micro-businesses; and will not impact the local economy.

Public comment on the proposed new rule will be accepted through January 20, 2012. Written comments may be submitted by email to tdhcarulecomments@tdhca.state.tx.us or by mail to the Texas Department of Housing and Community Affairs,

P.O. Box 13941 Austin, Texas 78711-3941, ATTN: Patricia Murphy, Chief of Compliance and Asset Oversight, or by fax to (512) 475-3359. All comments must be received by 5:00 p.m. January 20, 2012.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The proposed new section affects 10 TAC Chapter 1, Subchapter A, §1.9 concerning Qualified Contract Policy.

§1.25. Right of First Refusal at Fair Market Value.

(a) Purpose and Overview. This section applies to certain Land Use Restriction Agreements (LURA) that provided an incentive for owners to offer a right of first refusal to non-profits at fair market value. The purpose of this rule is to provide administrative procedures for implementation of this requirement.

(b) General.

(1) The Department reviews and approves all ownership transfers, including transfers to a non-profit through a right of first refusal. A Texas Department of Housing and Community Affairs ("TDHCA" or "Department") property may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan (QAP). In addition, Department staff will not approve an ownership transfer to an entity that controls a property in Material Noncompliance as defined in §60.102 of this title (relating to Definitions). However, an entity that controls a property in Material Noncompliance that wishes to pursue the acquisition of a TDHCA administered property may follow the procedures outlined in §60.128 of this title (relating to Temporary Suspension of Previous Participation Reviews).

(2) If a LURA includes a right of first refusal at fair market value requirement, an owner may not request a qualified contract until the requirements outlined in this Rule have been satisfied.

(3) Satisfying the right of first refusal requirements does not terminate the LURA.

(c) Option One (Without Appraisal).

(1) The owner may market the property for sale and may sell the property to any eligible non-profit.

(2) If the owner receives an offer to purchase the property from a for-profit that the owner would like to accept, the owner may execute a sales contract, conditioned upon satisfaction of the right of first refusal requirements, and the items in subparagraphs (A) - (J) of this paragraph must be submitted to the Department:

(A) the executed sales contract, conditioned upon satisfaction of the right of first refusal requirements;

(B) a description of the property, including all amenities;

(C) a description of all income, rental and other restrictions, if any, applicable to the operation of the property;

(D) a current title report, commitment or policy;

(E) the most recent physical needs assessment conducted by a third party;

(F) a copy of the monthly operating statements for the property for the most recent twelve (12) consecutive months;

(G) the three (3) most recent consecutive annual operating statements;

(H) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(I) a current and complete rent roll for the entire property; and

(J) if any portion of the land or improvements is leased, copies of the leases.

(3) Within five (5) business days of receipt of all required documentation, the Department will list the property for sale on the Department's website (http://www.tdhca.state.tx.us) and contact non-profits to inform them of the availability of the property. The Department will notify the owner when the property has been listed.

(4) If within ninety (90) days from the date listed on the website, the Department identifies a non-profit who can match the price, terms and conditions of the for-profit offer, and the owner does not accept the offer, the right of first refusal requirement will not be satisfied.

(5) If within ninety (90) days from the date listed on the website, the Department is not able to identify an eligible non-profit buyer that can meet the price, terms and conditions of the for-profit offer, the property may be sold to the for-profit buyer. Prior to closing, the final settlement statement and final sales contract with all amendments must be submitted to the Department. If the closing price is less than the amount identified in the sales contract that was submitted in accordance with paragraph (2)(A) of this subsection or the conditions of the sale change materially, in the Department's sole determination, the procedures in paragraphs (3) and (4) of this subsection will be repeated.

(6) If the Department is not able to identify a non-profit that can meet the price, terms and conditions of the final sales contract taking into consideration all amendments, the Department will notify the owner in writing that the Right of First Refusal Requirement has been met.

(7) The sale of the property, either to a non-profit or a for-profit, does not terminate the LURA.

(d) Option Two (With Appraisal).

(1) If the owner of the property chooses to establish fair market value using an appraisal, the owner shall submit the following information:

(A) a description of the property, including all amenities;

(B) a description of all income, rental and other restrictions, if any, applicable to the operation of the property;

(C) a current title report, commitment or policy;

(D) the most recent physical needs assessment conducted by a third party;

(E) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(F) the three (3) most recent consecutive annual operating statements;

(G) a detailed set of photographs of the property, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(H) a current and complete rent roll for the entire property;

(I) if any portion of the land or improvements is leased, copies of the leases; and

(J) an appraisal of the property completed during the last three (3) months, establishing a value for the property using the income approach and taking into account the existing and continuing requirements to operate the property under the LURA and any other restrictions that may exist. For the purposes of satisfying the right of first refusal requirements, this will be considered the fair market value of the property. Notwithstanding the forgoing, if the owner accepts an offer at a lower price from a eligible non-profit or an offer consistent with paragraph (10) of this subsection, such offer will be considered fair market value.

(2) Department staff will review all materials within thirty (30) days of receipt. If after the review the Department does not agree with the fair market value proposed in the owner's appraisal, the Department may order another appraisal at the owner's expense.

(3) When all required documentation is received and the owner and the Department come to an agreement on the fair market value of the property, the ninety (90) day period will begin, as evidenced by a written communication of the agreement from the Department.

(4) The owner may offer the property for sale below, at or above the appraised value.

(5) The Department will list the property for sale on the Department's website and notify non-profits that the property is available for sale.

(6) If the property was offered for sale at or below the fair market value, and no offers are received during the ninety (90) day period, the Department will notify the owner in writing that the right of first refusal requirement has been met.

(7) Once the right of first refusal requirements have been satisfied, the owner may proceed with a request for a qualified contract or sell the property to a for-profit entity.

(8) If an offer from an eligible non-profit is received at or above the fair market value, and the owner does not accept the offer, the right of first refusal requirement will not be satisfied.

(9) If an offer from a non-profit is received at or below the lesser of the listing price or fair market value, the owner is not required to accept the offer.

(10) If the owner receives an offer to purchase the property from a for-profit that the owner would like to accept, the owner may execute a sales contract, conditioned upon satisfaction of the right of first refusal requirements. The sales contract must be submitted to the Department and the procedures in subsection (c)(3) - (6) of this section must be followed.

(11) If the property was offered for sale at greater than the fair market value and no offers were received, before the owner can request a qualified contract request, the Department will have ninety (90) days to identify an eligible non-profit to acquire the property at the fair market value. If the Department successfully identifies a non-profit willing to buy the property at or above the fair market value and the owner does not accept the offer, the right of first refusal requirements will not be satisfied.

(12) If the Department is not successful in identifying a non-profit to acquire the property at or above the fair market value, the Department will notify the owner in writing that the right of first refusal requirement has been met.

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105687
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.30

The Railroad Commission of Texas proposes amendments to §3.30, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).

The memorandum of understanding (MOU) between the TCEQ and the RRC (or Commission) was last updated substantively in August 2010. Article 2 of House Bill (HB) 2694, passed by the 82nd Texas Legislature and signed by the Governor, transferred from the TCEQ to the RRC duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, the law transfers from the TCEQ to the RRC, effective September 1, 2011, those duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. After the transfer, the RRC will be responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the RRC.

In addition, Article 2 of HB 2694 amended Texas Water Code, §27.046, transferring from the TCEQ to the RRC the responsibility of issuing to permit applicants for geologic storage of anthropogenic carbon dioxide a letter of determination stating that drilling and operating the anthropogenic carbon dioxide injection well for geologic storage or operating the geologic storage facility will not injure any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand.

HB 2694 requires the RRC to adopt rules to implement these changes in law not later than March 1, 2012.

The TCEQ's Surface Casing Program and staff transferred to the RRC effective September 1, 2011. The RRC's Surface Casing Program has been renamed the Groundwater Advisory Unit, and is now located in the William B. Travis Building, 1701 North Congress, Austin. The Commission proposes these amendments to §3.30, while the TCEQ will propose concurrent amendments to 30 TAC §7.117 (relating to Memorandum of Understanding be-

tween the Railroad Commission of Texas and the Texas Commission on Environmental Quality) to incorporate by reference the amendments to §3.30.

The Commission will propose amendments to other rules to comply with Article 2 of HB 2694 in a future proposal.

The Commission proposes to amend subsection (a)(4) and (5) and subsection (g) to revise the dates on which the agencies amended the MOU. The proposed effective date of March 1, 2012, is an estimate; the exact effective date will be specified in the adoption.

The Commission proposes to amend §3.30(e)(7)(B) to reflect the transfer from TCEQ to RRC required under HB 2694 of the duties relating to groundwater protection letters and to include the definition of underground sources of drinking water currently in TCEQ's regulations at 30 TAC §331.2 (relating to Definitions).

The Commission proposes to amend §3.30(e)(9), relating to anthropogenic carbon dioxide storage, to delete the sentence stating that interagency coordination of review and processing of a permit application for injection of carbon dioxide for geologic storage under Texas Water Code, Chapter 27, Subchapter C-1, shall include application review by and production of a letter from the TCEQ's executive director as specified under Texas Water Code, §27.046. HB 2694 amended Texas Water Code, §27.046, to replace references to the executive director of TCEQ with references to the RRC.

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no foreseeable implications relating to cost or revenues of state or local governments as a result of enforcing or administering the rule as amended. The proposed amendments update the MOU between the RRC and the TCEQ, and do not impose any new requirements on state or local governments, other than the TCEQ and the RRC. An estimated 9.0 FTEs and $931,256 in annual costs would be transferred out of the Water Resource Management Account No. 153 from the TCEQ to the RRC. The bill allows the RRC to collect fees similar to those assessed currently by the TCEQ to operate the groundwater protection recommendation program, but does not specify where such fees would be deposited. The fee revenues from expedited surface casing recommendation letters currently collected by the TCEQ and deposited to the Water Resource Management Account No. 153 would be collected instead by the RRC and deposited to the General Revenue Fund, and then appropriated to the RRC.

The proposed amendments clearly describe the division of jurisdiction between the two agencies over waste materials associated with the exploration for and the development, production, and refining of oil and gas. Additionally, the proposed amendments identify the agency with jurisdiction over new waste generating activities such as recycling and sewage. As proposed, the rule does not create a group of affected persons who were not affected previously, nor does it impose new or different requirements on affected persons. The proposed amendments clarify for the regulated community which agency has jurisdiction over and regulates specific activities. The proposal does not impose any additional requirements, but clearly delineates the regulatory authority of each agency. There is no cost of compliance to affected persons.

Ms. Savage has determined that for each year of the first five years that the amendments will be in effect the public benefit will be a better understanding of which agency to contact with questions on specific issues. There is no economic cost to persons required to comply with the proposed amendments.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses. The Commission has determined that because there is no cost of compliance for any affected person, the proposed amendments will not have an adverse economic impact on small businesses or micro-businesses. Accordingly, the Commission has not prepared either an Economic Impact Statement or a Regulatory Flexibility Analysis for this proposal.

Pursuant to Texas Government Code, §2001.022, the Commission has determined that the proposed amendments will not have an adverse impact on local employment; therefore, the Commission has not prepared a local employment impact statement.

The Commission has determined that the proposed amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis pursuant to section is not required.

The Commission reviewed the proposed amendments and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §5.05.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed amendments are not subject to the Texas Coastal Management Program.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to O&G Docket No. 20-0273712 and will be accepted until 12:00 p.m. (noon) on January 30, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site at least two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments to §3.30 under Texas Water Code, §26.131, which gives the Commission jurisdiction over pollution of surface or subsurface waters from oil and gas exploration, development, and production activities; Texas Water Code, Chapter 27, which authorizes the Commission to adopt and enforce rules relating to injection wells and, specifically, Texas Water Code, §27.033, as amended by HB 2694, which transfers to the RRC from the TCEQ the function of preparing a letter of determination, stating that drilling and

using the disposal well and injecting oil and gas waste into the subsurface stratum will not endanger the freshwater strata in that area and that the formation or stratum to be used for the disposal is not freshwater sand, to accompany an application for a permit for a disposal well; Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the Commission under Texas Natural Resources Code, §81.051; Texas Natural Resources Code, §85.201, which authorizes the Commission to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas; Texas Natural Resources Code, §85.202, which authorizes the Commission to adopt rules to prevent waste of oil and gas in producing operations; Texas Natural Resources Code, §91.101, which authorizes the Commission to adopt rules relating to the various oilfield operations, including the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste; and Texas Natural Resources Code §91.602, which authorizes the Commission to adopt and enforce rules relating to the generation, transportation, treatment, storage, and disposal of oil and gas hazardous waste.

Texas Water Code, §26.131; Chapter 27 and §27.033, as amended by HB 2694; and §§29.001 - 29.053; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602 are affected by the proposed amendments.

Statutory authority: Texas Water Code, §26.131; Chapter 27 and §27.033, as amended by HB 2694; and §§29.001 - 29.053; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Cross-reference to statute: Texas Water Code, §26.131; Chapter 27 and §27.033, as amended by HB 2694; and §§29.001 - 29.053; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Issued in Austin, Texas on December 13, 2011.

§3.30. Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).

(a) Need for agreement. Several statutes cover persons and activities where the respective jurisdictions of the RRC and the TCEQ may intersect. This rule is a statement of how the agencies implement the division of jurisdiction.

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

(4) The original MOU between the agencies adopted pursuant to House Bill 1407 (67th Legislature, 1981) became effective January 1, 1982. The MOU was revised effective December 1, 1987, May 31, 1998, and again on August 30, 2010 [~~May 31, 1998~~], to reflect legislative clarification of the Railroad Commission's jurisdiction over oil and gas wastes and the Texas Natural Resource Conservation Commission's (the combination of the Texas Water Commission, the Texas Air Control Board, and portions of the Texas Department of Health) jurisdiction over industrial and hazardous wastes.

(5) The agencies have determined that the revised MOU that became effective on August 30, 2010 [~~May 31, 1998~~], should again be revised to further clarify jurisdictional boundaries and to reflect legislative changes in agency responsibility.

(b) - (d) (No change.)

(e) Interagency activities.

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

(7) Groundwater.

(A) (No change.)

(B) Groundwater protection letters. The RRC [~~TCEQ~~] provides letters of recommendation concerning groundwater protection [~~to the RRC~~].

(i) For recommendations related to normal drilling operations, shot holes for seismic surveys, and cathodic protection wells, the RRC [~~TCEQ~~] provides geologic interpretation identifying fresh water zones, base of usable-quality water (generally less than 3,000 mg/L total dissolved solids, but may include higher levels of total dissolved solids if identified as currently being used or identified by the Texas Water Development Board as a source of water for desalination), and include protection depths recommended by the RRC. The geological interpretation may include groundwater protection based on potential hydrological connectivity to usable-quality water.

(ii) For recommendations related to injection in a non-producing zone, the RRC [~~TCEQ~~] provides geologic interpretation of the base of the underground source of drinking water [~~as defined in 30 TAC §331.2 (relating to Definitions)~~]. Underground source of drinking water is defined as an aquifer or its portions which supplies drilling water for human consumption; or in which the groundwater contains fewer than 10,000 milligrams per liter total dissolved solids; and which is not an exempted aquifer.

(8) (No change.)

(9) Anthropogenic carbon dioxide storage. In determining the proper permitting agency in regard to a particular permit application for a carbon dioxide geologic storage project, the TCEQ and the RRC will coordinate by any appropriate means to review proposed locations, geologic settings, reservoir data, and other jurisdictional criteria specified in Texas Water Code, §27.041. [~~Interagency coordination of review and processing of a permit application for injection of carbon dioxide for geologic storage under Texas Water Code, Chapter 27, Subchapter C-1, shall include application review by and production of a letter from the TCEQ's executive director as specified under Texas Water Code, §27.046.~~]

(f) (No change.)

(g) Effective date. This Memorandum of Understanding, as of its March 1, 2012 [~~August 30, 2010~~], effective date, shall supersede the prior Memorandum of Understanding among the agencies, dated August 30, 2010 [~~May 31, 1998~~].

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

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105528
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

The Public Utility Commission of Texas (commission) proposes the repeal of §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS), and new §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS). The proposed new rule would expand the repealed rule to include dispatchable distributed generation that is not registered with ERCOT as a generation resource and consequently change the name of the service to ERS. In addition, the rule would promote reliability during energy emergencies through provisions that provide ERCOT flexibility in the implementation and administration of ERS. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 39948 is assigned to this proceeding.

Mark Bryant, Senior Market Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr. Bryant has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the rule will be increased participation in and more efficient use of ERS (formerly known as EILS), resulting in improved reliability of electric service in the ERCOT region. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the rule. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the rule.

Dr. Bryant has also determined that for each year of the first five years the proposed rule 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 APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, January 31, 2012. The request for a public hearing must be received by Monday, January 30, 2012.

Comments on the proposed 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, by Monday, January 30, 2012. Sixteen copies of comments on the proposed rule are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 39948. The commission also requests comments on the following questions:

1. The current EILS rule provides for "pay as bid" settlement, which is different from other ERCOT services that typically use a market clearing price mechanism. Should the rule require ERCOT to use a particular mechanism, or should the rule leave this to ERCOT's discretion?

2. What impact, if any, does the deployment or procurement of the proposed Emergency Response Service have on scarcity pricing?

16 TAC §25.507

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

The repeal is proposed under PURA, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.151, which provides the commission with the authority to oversee ERCOT.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.151.

§25.507. Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS).

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105650
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 936-7223

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16 TAC §25.507

The new section is proposed under PURA, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.151, which provides the commission with the authority to oversee ERCOT.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.151.

§25.507. Electric Reliability Council of Texas (ERCOT) Emergency Response Service (ERS).

(a) Purpose. The purpose of this section is to promote reliability during energy emergencies through provisions that provide ERCOT flexibility in the implementation and administration of ERS.

(b) ERS procurement. ERCOT shall procure ERS, a special emergency response service that is intended to be deployed by ERCOT in an Energy Emergency Alert (EEA) event.

(1) ERCOT shall determine the ERS contract periods during which ERS resources shall be obligated to provide ERS, including any additional ERS contract periods ERCOT deems necessary due to the depletion of available ERS.

(2) ERCOT may spend a maximum of $50 million per calendar year on ERS. ERCOT may determine cost limits for each ERS contract period in order to ensure that the ERS cost cap is not exceeded. To minimize the cost of ERS, ERCOT may reject any offer that ERCOT determines to be unreasonable or outside of the parameters of an acceptable offer. ERCOT may also reject any offer placed on behalf of any ERS resource if ERCOT determines that it lacks a sufficient basis to verify whether the ERS resource complied with ERCOT-established performance standards in an EEA during the preceding ERS contract period.

(c) Definitions.

(1) ERS contract period--A period defined by ERCOT for which an ERS resource is obligated to provide ERS.

(2) ERS resource--Either dispatchable generation that is not registered with ERCOT as a generation resource, or a load or aggregation of loads contracted to provide ERS.

(3) ERS time period--Sets of hours designated by ERCOT within an ERS contract period.

(4) ERCOT--The staff of the Electric Reliability Council of Texas, Inc.

(d) Participation in ERS. In addition to requirements established by ERCOT, the following requirements shall apply for the provision of ERS:

(1) An ERS resource must be represented by a qualified scheduling entity (QSE).

(2) QSEs shall submit offers to ERCOT on behalf of their ERS resources.

(A) Offers may be submitted for one or more ERS time periods within an ERS contract period.

(B) QSEs representing ERS resources may aggregate multiple loads to reach the minimum capacity offer requirement established by ERCOT. Such aggregations shall be considered a single ERS resource for purposes of submitting offers.

(3) ERCOT shall establish qualifications for QSEs and ERS resources to participate in ERS.

(4) A resource shall not commit to provide ERS if it is separately obligated to provide response with the same capacity during any of the same hours.

(5) ERCOT shall establish performance criteria for QSEs and ERS resources.

(6) When dispatched by ERCOT, ERS resources shall deploy consistent with their obligations and shall remain deployed until recalled by ERCOT.

(7) ERCOT may deploy ERS resources as often and for any duration ERCOT deems necessary, subject to the annual expenditure cap. Except as provided in paragraph (8) of this subsection, ERS deployment shall be limited to a maximum of eight cumulative hours in an ERS contract period. However, if an instruction issued prior to reaching the eight-hour limit would cause the cumulative total ERS deployment period to exceed eight hours, each ERS resource must continue providing ERS consistent with its obligations in each ERS time period until the expiration of the instruction or until released by ERCOT, whichever comes first.

(8) Upon reaching the eight-hour deployment limit, ERCOT shall have the option to renew an ERS resource's obligation according to the same contract terms, subject to the consent of the ERS resource and its QSE. ERCOT may renew the obligation on each occasion that ERCOT reaches the eight-hour limit.

(9) ERCOT shall establish procedures for testing of ERS resources.

(e) ERS Payment and Charges.

(1) ERCOT shall make a payment to each QSE representing an ERS resource subject to modifications determined by ERCOT based on the ERS resource's availability during an ERS contract period and the ERS resource's performance in any deployment event.

(2) ERCOT shall charge each QSE a charge for ERS based upon its load ratio share during the relevant ERS time period and ERS contract period.

(3) ERCOT shall settle an ERS contract period within 80 days following the completion of the ERS contract period.

(f) Compliance. A QSE representing ERS resources is subject to administrative penalties for non-compliance, by the QSE or the ERS resources it represents, with this rule or any related ERCOT Protocols, Operating Guides, or other ERCOT standards. ERCOT shall establish criteria for reducing a QSE's payment and/or suspending a QSE from participation in ERS for failure to meet its ERS obligations, and shall also establish criteria for subsequent reinstatement. In addition, ERCOT shall establish criteria under which an ERS resource shall be suspended for non-compliance, and shall also establish criteria for subsequent reinstatement. ERCOT shall notify the commission of all instances of non-compliance with this rule or any related ERCOT Protocols, Operating Guides, or other ERCOT standards. ERCOT shall maintain records relating to the alleged non-compliance.

(g) Reporting. Prior to the start of an ERS contract period, ERCOT shall report publicly the number of megawatts (MW) procured per ERS time period, the number and type of ERS resources providing the service, and the projected total cost of the service for that ERS contract period. ERCOT shall review the effectiveness and benefits of ERS and report its findings to the commission annually by April 15 of each calendar year. The report shall contain, at a minimum, the number of MW procured in each period, the total dollar amount spent, the number and level of EEA events, and the number and duration of deployments.

(h) Implementation. ERCOT shall develop additional procedures, guides, technical requirements, protocols, and/or other standards that are consistent with this section and that ERCOT finds necessary to implement ERS, including but not limited to developing a standard form ERS Agreement and specific performance guidelines and grace periods for ERS resources.

(i) Self Provision. ERCOT shall establish procedures for self-provision of ERS by any QSE.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105651
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.69

The Texas Board of Architectural Examiners proposes amendments to §1.69, concerning Continuing Education Requirements. The amendments pertain to mandatory continuing education. The amendments to the rule would increase the number of continuing education hours necessary to annually renew an architectural certificate of registration from the currently mandated 8 continuing education program hours to 12 program hours. As amended, the rule would also specify the public health, safety and welfare topics which are to be the subject of each architect's continuing education. The amendment would allow an architect to earn up to 4 continuing education program hours through self-study. Currently, the rule allows an architect to earn a maximum of 3 hours through self-study. The amendments would allow an architect to carry forward up to 12 continuing education program hours from one year to the following year. If the agency disallows claimed credit, the amended rule would allow an architect 60 days to substantiate the claim or to earn other credit to fulfill the minimum requirements. Under the current rule, architects have 180 days to substantiate or make up disallowed credit. As amended, the rule states that an architect is subject to disciplinary action for providing false information to the board and for failing to respond to, and comply with, audit and verification requests from the agency.

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 improved services provided by design professionals who have obtained more extensive continuing education. The architects registered by the board will also have greater guidance in selecting acceptable topics to fulfill continuing education requirements. Architects will also benefit from enhancing their knowledge and skills and remaining current on developments within the profession. The amendment will also bring Texas in line with other jurisdictions and professions which generally require more than 8 hours of continuing education per year.

There will be a fiscal impact upon persons required to comply with the section, including small or micro-business. The amendments will increase each architect's continuing education requirement by 4 hours each year. However, one of the additional hours may be obtained through self-study which would carry no or negligible cost. In addition to the cost for each additional program hour, some architects will incur a cost in lost business for the additional hours spent in fulfilling the continuing education requirement. A review of Web sites, including the Web site for the American Institute of Architects, reveals that the cost for continuing education courses range from no charge up to roughly $90 per continuing education hour. Most courses are offered for roughly $30 per hour, which is the estimate used for purposes of this economic analysis. The hourly charge for the work of licensed design professionals varies greatly, depending upon the size of the firm and the nature of the work. The average cost of time lost from business operations is estimated to be $100 per hour for a total cost of $130 per architect per hour of continuing education or a total of $390 per year per architect. The agency estimates there are approximately 11,300 registered architects who would be required to fulfill additional continuing education. This approximation reflects the total number of registered architects and subtracts inactive and emeritus architects who are exempt from continuing education requirements. There are also roughly 2,500 registered architectural firms which may be adversely affected as architects at those firms fulfill the additional continuing education requirements. The agency estimates that nearly all of the registered architectural firms are small businesses and many of them are micro-businesses. In addition, many registered architects may operate as sole proprietorships which also qualify as small or micro-businesses. The agency considered alternative methods to achieve the purpose of the rule amendment. The only method that would entirely eliminate economic impact on small or micro-businesses would be to refrain from adopting the amendment. Any time spent obtaining continuing education is time which could have been devoted to earning income for the firm. It was determined that declining to propose the amendment obviously would not fulfill the purpose of the rule and would not serve the public interest. Another option which would minimize adverse economic impact upon small and micro-businesses would be to allow architects to fulfill all 4 additional hours through a self-study. But this alternative was found to fail to serve the public purpose in that self-study does not convey information as effectively as listening and interacting in a lecture, course or webinar. The Board also noted that there are affordable means to obtain continuing education through the Internet, teleconferences, and in informal classes or lectures which may be obtained outside of business hours. Obtaining continuing education through these means would minimize the economic impact on small businesses.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The rule is also proposed pursuant to §1051.356, Texas Occupations Code, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders.

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

§1.69. Continuing Education Requirements.

(a) Each Architect shall complete a minimum of 12 [~~eight (8)~~] continuing education program hours (CEPH) in topics pertinent to the public welfare, contributing to environmental and economic sustainability, promoting public health and well-being, encouraging community building and stewardship, offering aesthetic and creative experiences and enabling people and communities to function more effectively. These topics may include the following health and safety categories:

(1) legal: laws, codes, zoning, regulations, standards, life-safety, accessibility, ethics, insurance to protect owners and public.

(2) technical: surveying, structural, mechanical, electrical, communications, fire protection, controls.

(3) environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation.

(4) occupant comfort: air quality, lighting, acoustics, ergonomics.

(5) materials and methods: building systems, products, finishes, furnishings, equipment.

(6) preservations: historic, reuse, adaptation.

(7) pre-design: land use analysis, programming, site selection, site and soils analysis.

(8) design: urban planning, master planning, building design, site design, interiors, safety and security measures.

(9) Construction Documents: drawings, specifications, delivery methods.

(10) construction administration: contract, bidding, contract negotiations.

(b) Each Architect shall complete the minimum mandatory CEPH during the year immediately preceding the date the Architect renews the Architect's certificate of registration. Of the 12 minimum mandatory CEPH, each Architect shall complete a minimum of 1 CEPH in barrier-free design and at least 1 CEPH in the study of Sustainable or Energy-Efficient design [~~for each annual registration period~~]. One CEPH equals a minimum of 50 [~~fifty (50)~~] minutes of actual course time. No credit shall be awarded for introductory remarks, meals, breaks, or business/administration matters related to courses of study.

(c) [~~(1)~~] Architects shall complete a minimum of 8 [~~five (5)~~] CEPH in structured course study. [~~Structured course study shall consist of participation in educational activities presented by individuals or groups qualified by professional, practical, or academic experience to conduct courses of study, including monographs offered by the National Council of Architectural Registration Boards.~~] No credit shall be awarded for the same structured course for which the Architect has claimed credit during the preceding three (3) years except for the Texas Accessibility Academy or another similar course offered by the Texas Department of Licensing and Regulation (TDLR).

(d) [~~(2)~~] Architects may complete a maximum of 4 [~~three (3)~~] CEPH in self-directed study. [~~One (1) CEPH equals one (1) hour of self-directed study.~~] Self-directed study must utilize articles, monographs, or other study materials that the Architect has not previously utilized for self-directed study.

~~[(b) Topics for the eight (8) CEPH shall satisfy the following requirements: All CEPH shall include the study of relevant technical and professional architectural subjects pertinent to the health, safety and welfare of the public. The study of topics related to barrier-free design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH. The study of topics related to Sustainable or Energy-Efficient design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH.]~~

(e) [~~(c)~~] The Board has final authority to determine whether to award or deny credit claimed by an Architect for continuing education activities. The following types of activities may qualify to fulfill continuing education program requirements:

(1) Attendance at courses [~~or seminars~~] dealing with technical architectural subjects related to the Architect's profession, ethical business practices, or new technology [~~sponsored by colleges or universities~~];

~~[(2) Attendance at technical presentations or workshops on architectural subjects which are held in conjunction with conventions or seminars and are related to materials use and function;]~~

~~[(3) Attendance at courses or seminars related to ethical business practices or new technology and offered by colleges, universities, professional organizations, or system suppliers;]~~

(2) [~~(4)~~] Teaching architectural courses [~~or seminars~~] and time spent in preparation for such teaching:

(A) a maximum of 4 [~~three (3)~~] CEPH may be claimed per class hour spent teaching architectural courses [~~or seminars~~];

(B) an Architect may not claim credit for teaching the same course [~~or seminar~~] more than once; and

(C) College or university faculty may not claim credit for teaching.

(3) [~~(5)~~] Hours spent in professional service to the general public which draws upon the Architect's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees;

(4) [~~(6)~~] Hours spent in architectural research which is published or formally presented to the profession or public [~~during the annual registration period~~];

(5) [~~(7)~~] Hours spent in architectural self-directed study programs such as those organized, sponsored, or approved by the American Institute of Architects, the National Council of Architectural Registration Boards, or similar organizations acceptable to the Board.

(6) [~~(8)~~] College or university credit courses on [~~dealing with~~] architectural subjects or ethical business practices; each semester credit hour shall equal 1 [~~one (1)~~] CEPH; each quarter credit hour shall equal 1 [~~one (1)~~] CEPH;

(7) [~~(9)~~] One [~~(1)~~] CEPH may be claimed for attendance at 1 [~~one (1)~~] full-day session of a meeting of the Texas Board of Architectural Examiners[~~; an Architect must attend the entire full-day session in order to receive credit~~].

(f) [~~(d)~~] An Architect may be exempt from [~~the~~] continuing education requirements [~~described in this subchapter~~] for any of the following reasons:

(1) An Architect shall be exempt for his/her initial registration period[~~, which shall not exceed one year~~];

(2) An inactive or emeritus Architect [~~registrant~~] shall be exempt for any registration period during which the Architect's [~~registrant's~~] registration is in inactive or emeritus status, but all continuing education credits for each period of inactive or emeritus registration shall be completed before the Architect [~~inactive registrant's~~] registration may be returned to active status [~~unless, in lieu of completing the outstanding continuing education requirements, the inactive registrant successfully completes all sections of the current registration examination during the five (5) years immediately preceding the return to active status~~];

(3) An Architect who is not a full-time member of the Armed Forces shall be exempt for any registration period during which the Architect serves on active duty in the Armed Forces of the United States for a period of time exceeding ninety (90) consecutive days;

(4) An Architect who has an active registration in another jurisdiction that has registration requirements which are substantially

equivalent to Texas registration requirements and that has a mandatory continuing education program shall be exempt from mandatory continuing education program requirements in Texas for any registration period during which the Architect satisfies such other jurisdiction's continuing education program requirements, except with regard to the requirement in Texas that each Architect complete 1 CEPH related to Sustainable or Energy-Efficient design; or

(5) An Architect who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in [~~Section~~] §61.003, Education Code, and who in such position is engaged in teaching architecture.

(g) [~~(e)~~] When renewing his/her annual registration, each Architect shall attest [~~sign the statement on the renewal form attesting~~] to the Architect's fulfillment of the mandatory continuing education program requirements during the preceding registration period.

(1) Each Architect shall maintain a [~~A~~] detailed record of the Architect's continuing education activities [~~shall be recorded annually~~]. Each Architect shall retain proof of fulfillment of the mandatory continuing education program requirements and shall retain the annual record of continuing education activities required by this subsection for a period of 5 [~~five (5)~~] years after the end of the registration period for which credit is claimed.

(2) Upon written request, the Board may require an Architect to produce documentation to prove that the Architect has complied with the mandatory continuing education program requirements. [~~The Architect shall be required to produce the documentation in the manner prescribed in the Board's written request.~~] If acceptable documentation is not provided within 30 [~~thirty (30)~~] days of request, claimed credit may be disallowed. The Architect shall have 60 [~~one hundred and eighty (180)~~] calendar days after notification of disallowance of credit to substantiate the original claim or earn other CEPH credit to fulfill the minimum requirements. Such credit shall not be counted again for another registration period.

(3) If an Architect is registered to practice more than 1 [~~one (1)~~] of the professions regulated by the Board and the Architect completes a continuing education activity that is directly related to more than 1 [~~one (1)~~] of those [~~the~~] professions [~~regulated by the Board~~], the Architect may submit that activity for credit for all of the professions to which it [~~directly~~] relates. The Architect must maintain a separate detailed record of continuing education activities for each profession.

(4) An Architect may receive credit for up to 24 [~~sixteen (16)~~] CEPH earned during any single registration period. A maximum of 12 [~~Any~~] CEPH that is not used to satisfy the continuing education requirements for a [~~the current~~] registration period may be carried forward to satisfy the continuing education requirements for the next registration period. [~~CEPH may not be carried forward beyond the registration period immediately following the registration period during which the CEPH was earned.~~]

(h) [~~(f)~~] Providing false information to the Board, failure [~~Failure~~] to fulfill the annual continuing education program requirements, and failure to respond to, and comply with, audit and verification requests may result in disciplinary action by the Board.

[~~(g) Any Architect who is found to have reported false information regarding the Architect's continuing education activities may be subject to disciplinary action by the Board.~~]

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

Filed with the Office of the Secretary of State on December 15, 2011.

TRD-201105568
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §1.124

The Texas Board of Architectural Examiners proposes the amendment of §1.124, concerning Business Registration. The amendment imposes a duty upon each architectural firm or other architectural business entity to become registered with the board and to annually renew registration with the board. Currently, the registration requirement is imposed upon a principal acting on behalf of the firm. The amendment shifts the duty to register from the individual to the firm and provides that each firm has an annual registration renewal date, separate from the renewal date of any individual working on behalf of the firm. As amended, the rule requires registered firms and businesses to pay a registration fee and to pay a late penalty equal to 50% of the registration fee if the registration is not renewed before it expires. To renew a registration that has been expired for longer than 90 days, the rule imposes a penalty equal to 100% of the registration fee. A sole proprietorship doing business under the name of a registered architect is exempt from the registration requirement. The amendments specify that a multidisciplinary firm which practices more than one profession regulated by the board is required to pay only a single annual registration fee. The rule as amended also requires registered firms to provide the board with an email address to which all board correspondence with be sent. Sole proprietorships doing business under the name of a registered architect will continue to be exempt from registration requirements.

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 benefits expected as a result of the amended rule are as follows: revisions to the rule will allow the agency to automate its business registration process and list businesses upon the roster of the board's registrants. The public will benefit from the Board's enhanced ability to maintain an up-to-date roster of registered firms available on the board's Web site. The public will have greater ability to discern registered firms from unregistered firm in selecting a firm to render the professions regulated by the Board. The rule would likely have an adverse economic impact upon small and micro-businesses by imposing an annual registration fee upon registered firms and businesses. The Board proposes an annual registration fee of $30 for each registered firm or business. A firm which is late by 90 or fewer days would be required to pay $45 and a firm which is late by more than 90 days would be as-

sessed a 100% penalty plus the registration fee for a total fee of $60.

Economic Impact Statement and Regulatory Flexibility Analyses are required. The Board determined the cost of automation to include modification to the agency's database and Web site plus the administrative cost of adjusting to the new registration process. Based upon those costs, amortized over a period of 4 years (an estimate of the time until the database or Web site might require updating), the board determined a cost-recovery fee of $30. There are currently 2,500 registered architectural firms which would be required to pay the annual $30 registration fee. The Board considered continuing its current practice of refraining from charging for business registration as a means to minimize fiscal impact upon small or micro-businesses. However, the Board decided against that alternative. The agency's current business registration process is separate from the agency's database and requires administrative resources to continually update the business registration roster. In addition, it is not easily accessible to the public which undermines the policy for business registration. The intended effect of the rule is to make business registration as much like individual registration as possible in order to make the registration process efficient and accessible. In order to accomplish this, the agency must recover costs. The changes will require the expenditure of revenues which the fee will replace. The board decided to maintain the exemption for sole proprietorships which minimizes the fiscal impact upon small and micro-businesses.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement chapter 1051, Texas Occupations Code. The amendment is also proposed pursuant to §1051.306 and §1051.651, Texas Occupations Code, which allows the board to adopt rules requiring a firm, partnership, corporation or association that engages in the practice of architecture to register with the board and allows the board to set a fee for a board action in an amount reasonable and necessary to cover the cost of administering Chapter 1051, Texas Occupations Code.

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

§1.124. Business Registration.

(a) An [~~A Principal for an~~] architectural firm or other business entity that offers or provides architectural services in Texas must annually register information regarding the firm or business entity with the Board, including an email address to which all TBAE correspondence will be sent.

(b) An Architect or [~~a Principal of~~] an architectural firm which [~~who~~] enters into an agreement to create a business association pursuant to [~~section~~] §1.122 of this title (relating to Association) shall annually register the association with the Board, including an email address to which all TBAE correspondence will be sent.

(c) If an architectural firm, [~~a~~] business entity, or association dissolves or otherwise becomes unable to lawfully offer or provide architectural services in Texas, [~~the Architect or Principal who last registered~~] the architectural firm, business entity, or association shall so notify the Board in writing. Such notification must be postmarked or otherwise provided within 30 [~~thirty (30)~~] days of the date of dissolution or the date the architectural firm, business entity, or association became unable to lawfully offer or provide architectural services. Such an architectural firm, [~~A~~] business entity, or association may not continue to offer or provide architectural services unless it employs or contracts with an Architect to offer or provide service and updates its registration [~~another Architect or Principal files information with the Board identifying himself or herself as the Principal for the business entity or association~~] within that 30 [~~thirty (30)~~] day period.

(d) An Architect who is a sole proprietor doing business under his/her own name is [~~shall be~~] exempt from the requirements of subsections (a) - (c) of this section.

(e) Each registered architectural firm, business entity, or association shall annually renew its unexpired registration and pay a renewal fee not later than the anniversary of the date of its initial registration. Each registered architectural firm, business entity, and association shall pay a registration renewal fee to renew an expired registration in an amount equal to 1-1/2 times the normally required renewal fee if the registration has been expired for 90 days or less and in an amount equal to twice the normally required renewal fee if the registration has been expired for longer than 90 days. A firm, business entity, or association which offers or renders two or more professional disciplines regulated by the Board shall pay a single registration fee. [~~An Architect or Principal who is subject to this section shall initially register a business entity or a business association within thirty (30) days after the creation of the business entity or the business association. Thereafter the annual registration renewal of the business entity or business association shall coincide with the Architect's or Principal's renewal of architectural registration.~~]

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

Filed with the Office of the Secretary of State on December 15, 2011.

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER L. HEARINGS--CONTESTED CASES

22 TAC §1.232

The Texas Board of Architectural Examiners proposes amendments to §1.232, concerning Board Responsibilities. The amendments pertain to a schedule of penalties for violations of laws enforced by the board. The rule amendment specifies that failure of a firm or business to maintain registration may be punishable by an administrative penalty, a cease and desist order, or both. The amendment also specifies an administrative penalty, a cease and desist order, or both as possible sanctions for a firm or other business entity which offers or renders architectural services. The amendment also corrects cross-reference and deletes an obsolete sanction which may be imposed against an individual architect who fails to maintain a firm's registration as principal of the firm. Other proposed rules shift the duty to register a firm from an individual acting on behalf of the firm to the firm. The proposed amendment to the

penalty schedule conforms the rule to the other proposed rule amendment.

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 amendment is in effect the public benefits expected as a result of the amended rule are as follows: notice will be given to architectural firms and businesses that an administrative penalty may be assessed and business operations may be disrupted for failure to maintain business registration as required pursuant to substantive rule. The rule as amended creates incentives to properly maintain a business's registration. The rule as amended may create an adverse economic effect upon small and micro-businesses which violate registration laws enforced by the board. However, there is no alternative to the proposed rule which is consistent with the health, safety and welfare of the state and which accomplishes the objective of the rule which is to incentivize compliance with registration requirements. Without an adverse economic impact, an administrative penalty or other sanction does not serve its public purpose of deterring violations of the registration law.

Comments may be submitted to Cathy L. Hendricks, RID, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The rule is also adopted pursuant to §§1051.451, 1051.452 and 1051.504, Texas Occupations Code, which authorizes the board to impose administrative penalties, requires the board to adopt a penalty schedule, and allows the Board to issue cease and desist orders against persons (including corporations and businesses) which are not properly registered.

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

§1.232. Board Responsibilities.

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of the Rules and Regulations of the Board. However, if a Contested Case is not settled informally pursuant to Subchapter I, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

(b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

(c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may render a final decision with regard to the Contested Case. The proposal for decision shall include findings of fact and conclusions of law.

(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may file exceptions and briefs within 20 [~~twenty (20)~~] days after the date of service of the proposal for decision. Replies to exceptions and briefs may be filed within 15 [~~fifteen (15)~~] days after the date for the filing of exceptions and briefs. Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case.

(e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case. The Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a request for an oral hearing is granted, each party of record shall be allotted 30 [~~thirty (30)~~] minutes to make an oral presentation to the Board.

(f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and briefs are filed, upon the 10th [~~tenth (10th)~~] day following the time provided for the filing of replies to exceptions and briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an order issued by an administrative law judge only if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the legal basis for the change.

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §1.232(j)

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent.

(l) For any violation where revocation is recommended as an appropriate penalty for the violation, refusing to renew the respondent's certificate of registration also shall be an appropriate penalty for the violation.

(m) If the Board or the administrative law judge determines that an administrative penalty is the appropriate sanction for a violation,

the guidelines described in §1.177 shall be applied to determine the amount of the administrative penalty.

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

Filed with the Office of the Secretary of State on December 15, 2011.

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Cathy L. Hendricks, RID, ASID/IIDA
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Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §3.69

The Texas Board of Architectural Examiners proposes amendments to §3.69, concerning Continuing Education Requirements. The amendments pertain to mandatory continuing education. The amendments to the rule would increase the number of continuing education hours necessary to annually renew a landscape architectural certificate of registration from the currently mandated 8 continuing education program hours to 12 program hours. As amended, the rule would also specify the public health, safety and welfare topics which are to be the subject of each landscape architect's continuing education. The amendment would allow a landscape architect to earn up to 4 continuing education program hours through self-study. Currently, the rule allows a landscape architect to earn a maximum of 3 hours through self-study. The amendments would allow a landscape architect to carry forward up to 12 continuing education program hours from one year to the following year. If the agency disallows claimed credit, the amended rule would allow a landscape architect 60 days to substantiate the claim or to earn other credit to fulfill the minimum requirements. Under the current rule, landscape architects have 180 days to substantiate or make up disallowed credit. As amended, the rule states that a landscape architect is subject to disciplinary action for providing false information to the board and for failing to respond to, and comply with, audit and verification requests from the agency.

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 improved services provided by design professionals who have obtained more extensive continuing education. The landscape architects registered by the board will also have greater guidance in selecting acceptable topics to fulfill continuing education requirements. Landscape architects will also benefit from enhancing their knowledge and skills and remaining current on developments within the profession. The amendment will also bring Texas in line with other jurisdictions and professions which generally require more than 8 hours of continuing education per year.

There will be a fiscal impact upon persons required to comply with the section, including small or micro-business. The amendments will increase education requirements upon each landscape architect working for a small or micro-business each year. However, one of the additional hours may be obtained through self-study which would carry no or negligible cost. In addition to the cost for each additional program hour, some small businesses will incur a cost in lost business for the additional hours landscape architect employees spend in fulfilling the continuing education requirement. A review of Web sites reveals that the cost for continuing education courses range from no charge up to roughly $90 per continuing education hour. Most courses are offered for roughly $30 per hour, which is the estimate used for purposes of this economic analysis. The hourly charge for the work of licensed design professionals varies greatly, depending upon the size of the firm and the nature of the work. The average cost of time lost from business operations is estimated to be $100 per hour for a total cost of $130 per landscape architect per hour of continuing education or a total of $390 per landscape architect per year. The agency estimates there are approximately 1,300 registered landscape architects who would be required to fulfill additional continuing education. This approximation reflects the total number of registered landscape architects and subtracts inactive and emeritus landscape architects who are exempt from continuing education requirements. There are also roughly 225 registered landscape architectural firms which may be adversely affected as landscape architects at those firms fulfill the additional continuing education requirements. The agency estimates that nearly all of the registered landscape architectural firms are small businesses and many of them are micro-businesses. In addition, many registered landscape architects may operate as sole proprietorships which also qualify as small or micro-businesses. The agency considered alternative methods to achieve the purpose of the rule amendment. The only method that would entirely eliminate adverse economic impacts on small or micro-businesses would be to refrain from adopting the amendment in that any time spent obtaining continuing education is time which could have been devoted to earning income for the firm. This option was rejected as not serving the public interest. Declining to propose adoption of the rule obviously would not fulfill the purpose of the rule. Another option which would minimize adverse economic impact upon small and micro-business would be to allow landscape architects to fulfill all 4 additional hours through self-study. But this alternative was found to fail to serve the public purpose in that self-study alone does not convey information as effectively as participation in a lecture format where listening and interaction may occur. The Board also noted that there are affordable means to obtain continuing education through the Internet, teleconferences, and in more informal classes than a conference or a seminar. Internet and other courses may be obtained outside of business hours thus minimizing the economic impact on small businesses.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The rule is also proposed pursuant to §1051.356, Texas Occupations Code, which

requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders.

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

§3.69. Continuing Education Requirements.

(a) Each Landscape Architect shall complete a minimum of 12 [~~eight (8)~~] continuing education program hours (CEPH) in topics pertinent to the public welfare, contributing to environmental and economic sustainability, promoting public health and well-being, encouraging community building and stewardship, offering aesthetic and creative experiences and enabling people and communities to function more effectively. These topics may include the following health and safety categories:

(1) legal: laws codes, zoning, regulations, standards, life-safety, accessibility, ethics, insurance to protect owners and public.

(2) technical: surveying, grading, drainage, site layout, selection and placement of trees and plants.

(3) environmental: sustainability, natural resources, natural hazards, design of surfaces and selection and placement of trees and plants appropriate to environmental conditions.

(4) occupant comfort: air quality, water quality, lighting, acoustics, ergonomics.

(5) materials and methods: building systems, products.

(6) preservations: historic, reuse, adaptation.

(7) pre-design: land use analysis, programming, site selection, site and soils analysis.

(8) design: urban planning, master planning, site design, interiors, safety and security measures.

(9) construction documents: drawings, specifications, delivery methods.

(10) construction administration: contract, bidding, contract negotiations.

(b) Each Landscape Architect shall complete the minimum mandatory CEPH during the year immediately preceding the date the Landscape Architect renews the Landscape Architect's certificate of registration. Of the 12 minimum mandatory CEPH, each Landscape Architect shall complete a minimum of 1 CEPH in barrier-free design and at least 1 CEPH in the study of Sustainable or Energy-Efficient design [~~for each annual registration period~~]. One CEPH equals a minimum of 50 [~~fifty (50)~~] minutes of actual course time. No credit shall be awarded for introductory remarks, meals, breaks, or business/administration matters related to courses of study.

(c) [~~(1)~~] Landscape Architects shall complete a minimum of 8 [~~five (5)~~] CEPH in structured course study. [~~Structured course study shall consist of participation in educational activities presented by individuals or groups qualified by professional, practical, or academic experience to conduct courses of study, including monographs offered by the Council of Landscape Architectural Registration Boards.~~] No credit shall be awarded for the same structured course for which the Landscape Architect has claimed credit during the preceding 3 [~~three (3)~~] years except for the Texas Accessibility Academy or another similar course offered by the Texas Department of Licensing and Regulation (TDLR).

(d) [~~(2)~~] Landscape Architects may complete a maximum of 4 [~~three (3)~~] CEPH in self-directed study. [~~One (1) CEPH equals one (1) hour of self-directed study.~~] Self-directed study must utilize articles, monographs, or other study materials that the Landscape Architect has not previously utilized for self-directed study.

[~~(b) Topics for the eight (8) CEPH shall satisfy the following requirements: All CEPH shall include the study of relevant technical and professional landscape architectural subjects pertinent to the health, safety and welfare of the public. The study of topics related to barrier-free design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH. The study of topics related to Sustainable or Energy-Efficient design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH.~~]

(e) [~~(c)~~] The Board has final authority to determine whether to award or deny credit claimed by a Landscape Architect for continuing education activities. The following types of activities may qualify to fulfill continuing education program requirements:

(1) Attendance at courses [~~or seminars~~] dealing with technical landscape architectural subjects related to the Landscape Architect's profession, ethical business practices, or new technology [~~sponsored by colleges or universities~~];

[~~(2) Attendance at technical presentations or workshops on landscape architectural subjects which are held in conjunction with conventions or seminars and are related to materials use and function;~~]

[~~(3) Attendance at courses or seminars related to ethical business practices or new technology and offered by colleges, universities, professional organizations, or system suppliers;~~]

(2) [~~(4)~~] Teaching landscape architectural courses [~~or seminars~~] and time spent in preparation for such teaching:

(A) a maximum of 4 [~~three (3)~~] CEPH may be claimed per class hour spent teaching landscape architectural courses [~~or seminars~~];

(B) a Landscape Architect may not claim credit for teaching the same course [~~or seminar~~] more than once; and

(C) college or university faculty may not claim credit for teaching.

(3) [~~(5)~~] Hours spent in professional service to the general public which draws upon the Landscape Architect's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees;

(4) [~~(6)~~] Hours spent in landscape architectural research which is published or formally presented to the profession or public [~~during the annual registration period~~];

(5) [~~(7)~~] Hours spent in landscape architectural self-directed study programs such as those organized, sponsored, or approved by the American Society of Landscape Architects, the Council of Landscape Architectural Registration Boards, or similar organizations acceptable to the Board.

(6) [~~(8)~~] College or university credit courses on [~~dealing with~~] landscape architectural subjects or ethical business practices; each semester credit hour shall equal 1 [~~one (1)~~] CEPH; each quarter credit hour shall equal 1 [~~one (1)~~] CEPH;

(7) [~~(9)~~] One [~~(1)~~] CEPH may be claimed for attendance at 1 [~~one (1)~~] full-day session of a meeting of the Texas Board of Architectural Examiners[~~; a Landscape Architect must attend the entire full-day session in order to receive credit~~].

(f) [~~(d)~~] A Landscape Architect may be exempt from [~~the~~] continuing education requirements [~~described in this subchapter~~] for any of the following reasons:

(1) A Landscape Architect shall be exempt for his/her initial registration period[~~, which shall not exceed one year~~];

(2) An inactive [~~registrant~~] or emeritus Landscape Architect shall be exempt for any registration period during which the Landscape Architect [~~registrant's~~] registration is in inactive or emeritus status, but all continuing education credits for each period of inactive or emeritus registration shall be completed before the Landscape Architect's [~~inactive registrant's~~] registration may be returned to active status [~~unless, in lieu of completing the outstanding continuing education requirements, the inactive registrant successfully completes all sections of the current registration examination during the five (5) years immediately preceding the return to active status~~];

(3) A Landscape Architect who is not a full-time member of the Armed Forces shall be exempt for any registration period during which the Landscape Architect serves on active duty in the Armed Forces of the United States for a period of time exceeding ninety (90) consecutive days;

(4) A Landscape Architect who has an active registration in another jurisdiction that has registration requirements which are substantially equivalent to Texas registration requirements and that has a mandatory continuing education program shall be exempt from mandatory continuing education program requirements in Texas for any registration period during which the Landscape Architect satisfies such other jurisdiction's continuing education program requirements, except with regard to the requirement in Texas that each Landscape Architect complete 1 CEPH related to Sustainable or Energy-Efficient design; or

(5) A Landscape Architect who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in [~~Section~~] §61.003, Education Code, and who in such position is engaged in teaching landscape architecture.

(g) [~~(e)~~] When renewing his/her annual registration, each Landscape Architect shall attest [~~sign the statement on the renewal form attesting~~] to the Landscape Architect's fulfillment of the mandatory continuing education program requirements during the preceding registration period.

(1) Each Landscape Architect shall maintain a [~~A~~] detailed record of the Landscape Architect's continuing education activities [~~shall be recorded annually~~]. Each Landscape Architect shall retain proof of fulfillment of the mandatory continuing education program requirements and shall retain the annual record of continuing education activities required by this subsection for a period of 5 [~~five (5) years~~] after the end of the registration period for which credit is claimed.

(2) Upon written request, the Board may require a Landscape Architect to produce documentation to prove that the Landscape Architect has complied with the mandatory continuing education program requirements. [~~The Landscape Architect shall be required to produce the documentation in the manner prescribed in the Board's written request.~~] If acceptable documentation is not provided within 30 [~~thirty (30)~~] days of request, claimed credit may be disallowed. The Landscape Architect shall have 60 [~~one hundred and eighty (180)~~] calendar days after notification of disallowance of credit to substantiate the original claim or earn other CEPH credit to fulfill the minimum requirements. Such credit shall not be counted again for another registration period.

(3) If a Landscape Architect is registered to practice more than 1 [~~one (1)~~] of the professions regulated by the Board and the Landscape Architect completes a continuing education activity that is directly related to more than 1 [~~one (1)~~] of those [~~the~~] professions [~~regulated by the Board~~], the Landscape Architect may submit that activity for credit for all of the professions to which it [~~directly~~] relates. The Landscape Architect must maintain a separate detailed record of continuing education activities for each profession.

(4) A Landscape Architect may receive credit for up to 24 [~~sixteen (16)~~] CEPH earned during any single registration period. A maximum of 12 [~~Any~~] CEPH that is not used to satisfy the continuing education requirements for a [~~the current~~] registration period may be carried forward to satisfy the continuing education requirements for the next registration period. [~~CEPH may not be carried forward beyond the registration period immediately following the registration period during which the CEPH is earned.~~]

(h) [~~(f)~~] Providing false information to the Board, failure [~~Failure~~] to fulfill the annual continuing education program requirements, and failure to respond to, and comply with, audit and verification requests may result in disciplinary action by the Board.

[~~(g) Any Landscape Architect who is found to have reported false information regarding the Landscape Architect's continuing education activities may be subject to disciplinary action by the Board.~~]

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

Filed with the Office of the Secretary of State on December 15, 2011.

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §3.124

The Texas Board of Architectural Examiners proposes the amendment of §3.124, concerning Business Registration. The amendment imposes a duty upon each landscape architectural firm or other landscape architectural business entity to become registered with the board and to annually renew registration with the board. Currently, the registration requirement is imposed upon a principal acting on behalf of the firm. The amendment shifts the duty to register from the principal to the firm and provides that each firm has an annual registration renewal date, separate from the renewal date of any individual working on behalf of the firm. As amended, the rule requires registered firms and businesses to pay a registration fee and to pay a late penalty equal to 50% of the registration fee if the registration is not renewed before it expires. To renew a registration that has been expired for longer than 90 days, the rule imposes a penalty equal to 100% of the registration fee. A sole proprietorship doing business under the name of a registered landscape architect is exempt from the registration requirements. The amendments specify that a multidisciplinary firm which practices more than one profession regulated by the board is required to pay only a single annual registration fee. The rule as amended also requires registered firms to provide the board with an email address to which all board correspondence with be sent.

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 signif-

icant 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 benefits expected as a result of the amended rule are as follows: revisions to the rule will allow the agency to automate its business registration process and list businesses upon the roster of the board's registrants. The public will benefit from the Board's enhanced ability to maintain an up-to-date roster of registered firms available on the board's Web site. The public will have greater ability to discern registered firms from unregistered firms in selecting a provider to render the professions regulated by the Board. The rule would likely have an adverse economic impact upon small and micro-businesses by imposing an annual registration fee upon them. The Board proposes an annual registration fee of $30 for each registered firm or business. A firm which is late by 90 or fewer days would be required to pay $45 and a firm which is late by more than 90 days would be assessed a 100% penalty plus the registration fee for a total fee of $60.

Economic Impact Statement and Regulatory Flexibility Analyses are required. The Board determined the cost of automation to include modification to the agency's database and Web site plus the administrative cost of adjusting to the new registration process. Based upon those costs, amortized over a period of 4 years (an estimate of the time until the database or Web site might require updating), the board determined a cost-recovery fee of $30 per annual registration. There are currently 225 registered landscape architectural firms which would be required to pay the annual $30 registration fee. The Board considered continuing to conduct business registration without charge as a means to minimize fiscal impact upon small or micro businesses. However, the Board decided against that alternative. The agency's current business registration process is separate from the agency's database and requires administrative resources to continually update the business registration roster. In addition, the roster of firms is not easily accessible to the public which undermines the policy for maintaining it. The intended effect of the rule is to make business registration as much like individual registration as possible in order to streamline the registration process. In order to accomplish this, the agency must recover costs. The changes will require the expenditure of revenues which the fee will replace. The board decided to maintain the exemption for sole proprietorships which minimizes the fiscal impact upon small and micro-businesses.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Landscape Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The rule is also proposed pursuant to §1051.306 and §1052.054, Texas Occupations Code, which allows the board to adopt rules requiring a firm, partnership, corporation or association that engages in the practice of landscape architecture to register with the board and allows the board to set a fee for a board action in an amount reasonable and necessary to recover the administrative expense of the action.

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

§3.124. Business Registration.

(a) A [~~Principal for a~~] Landscape Architecture firm or other business entity that offers or provides landscape architectural services in Texas must annually register information regarding the firm or business entity with the Board, including an email address to which all TBAE correspondence will be sent.

(b) A Landscape Architect or [~~a Principal of~~] a Landscape Architecture firm which [~~who~~] enters into an agreement to create a business association pursuant to §3.122 shall annually register the association with the Board, including an email address to which all TBAE correspondence will be sent.

(c) If a Landscape Architecture firm, business entity, or association dissolves or otherwise becomes unable to lawfully offer or provide Landscape Architecture services in Texas, [~~the Landscape Architect or Principal who last registered~~] the Landscape Architecture firm, business entity, or association shall so notify the Board in writing. Such notification must be postmarked or otherwise provided within 30 [~~thirty (30)~~] days of the date of dissolution or the date the Landscape Architecture firm, business entity, or association became unable to lawfully offer or provide Landscape Architecture services. Such a Landscape Architecture firm, [~~A~~] business entity, or association may not continue to offer or provide Landscape Architecture services unless it employs or contracts with a Landscape Architect to offer or provide service and updates its registration [~~another Landscape Architect or Principal files information with the Board identifying himself or herself as the Principal for the business entity or association~~] within that 30 [~~thirty (30)~~] day period.

(d) A Landscape Architect who is a sole proprietor doing business under his/her own name shall be exempt from the requirements of subsections (a) - (c) of this section.

(e) Each registered Landscape Architecture firm, business entity, or association shall annually renew its unexpired registration and pay a renewal fee not later than the anniversary of the date of its initial registration. Each registered Landscape Architecture firm, business entity, and association shall pay a registration renewal fee to renew an expired registration in an amount equal to 1-1/2 times the normally required renewal fee if the registration has been expired for 90 days or less and in an amount equal to twice the normally required renewal fee if the registration has been expired for longer than 90 days. A firm, business entity, or association which offers or renders two or more professional disciplines regulated by the Board shall pay a single registration fee. [~~A Landscape Architect or Principal who is subject to this section shall initially register a business entity or a business association within thirty (30) days after the creation of the business entity or the business association. Thereafter, the annual registration renewal of the business entity or business association shall coincide with the Landscape Architect's or Principal's renewal of registration as a Landscape Architect.~~]

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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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §3.232

The Texas Board of Architectural Examiners proposes an amendment to §3.232, concerning Board Responsibilities. The amendment pertains to a schedule of penalties for violations of laws enforced by the board. The rule amendment specifies that failure of a firm or business to maintain registration may be punishable by an administrative penalty, a cease and desist order, or both. The amendment also specifies an administrative penalty, a cease and desist order, or both as possible sanctions for a firm or other business entity which offers or renders landscape architectural services. The amendment also corrects cross-reference and deletes an obsolete sanction which may be imposed against an individual landscape architect who fails to maintain a firm's registration as principal of the firm. Other proposed rules shift the duty to register a firm from an individual acting on behalf of the firm to the firm. The proposed amendment to the penalty schedule conforms the rule to the other proposed rule amendment.

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 benefits expected as a result of the amended rule are as follows: notice will be given to landscape architectural firms and businesses that an administrative penalty may be assessed and business operations may be disrupted for failure to maintain business registration as required pursuant to substantive rule. The rule as amended creates incentives to properly maintain a business's registration. The rule as amended may create an adverse economic effect upon small and micro-businesses which violate registration laws enforced by the board. However, there is no alternative to the proposed rule which is consistent with the health, safety and welfare of the state and which accomplishes the objective of the rule which is to incentivize compliance with registration requirements. Eliminating or minimizing the adverse economic impact, either through an administrative penalty or other sanction, does not serve the rules' public purpose of deterring violations of the registration law.

Comments may be submitted to Cathy L. Hendricks, RID, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The rule is also adopted pursuant to §§1051.451, 1051.452 and 1051.504, Texas Occupations Code, which authorizes the board to impose administrative penalties, requires the board to adopt a penalty schedule, and allows the Board to issue cease and desist orders against persons (including corporations and businesses) which are not properly registered. Those statutes are applicable to landscape architects through §1052.251, Texas Occupations Code.

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

§3.232. Board Responsibilities.

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of the Rules and Regulations of the Board. However, if a Contested Case is not settled informally pursuant to Subchapter I, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

(b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

(c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may render a final decision with regard to the Contested Case. The proposal for decision shall include findings of fact and conclusions of law.

(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may file exceptions and briefs within 20 [~~twenty (20)~~] days after the date of service of the proposal for decision. Replies to exceptions and briefs may be filed within 15 [~~fifteen (15)~~] days after the date for the filing of exceptions and briefs. Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case.

(e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case. The Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a request for an oral hearing is granted, each party of record shall be allotted 30 [~~thirty (30)~~] minutes to make an oral presentation to the Board.

(f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and briefs are filed, upon the 10th [~~tenth (10th)~~] day following the time provided for the filing of replies to exceptions and briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an order issued by an administrative law judge only if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the legal basis for the change.

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the

Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §3.232(j)

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent.

(l) For any violation where revocation is recommended as an appropriate penalty for the violation, refusing to renew the respondent's certificate of registration also shall be an appropriate penalty for the violation.

(m) If the Board or the administrative law judge determines that an administrative penalty is the appropriate sanction for a violation, the guidelines described in §3.177 shall be applied to determine the amount of the administrative penalty.

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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Cathy L. Hendricks, RID, ASID/IIDA
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Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §5.79

The Texas Board of Architectural Examiners proposes amendments to §5.79, concerning Continuing Education Requirements. The amendment pertains to mandatory continuing education. The amendments to the rule would increase the number of continuing education hours necessary to annually renew an interior design certificate of registration from the currently mandated 8 continuing education program hours to 12 program hours. As amended, the rule would also specify the public health, safety and welfare topics which are to be the subject of each registered interior designer's continuing education. The amendment would allow a registered interior designer to earn up to 4 continuing education program hours through self-study. Currently, the rule allows a maximum of 3 hours through self-study. The amendments would allow a registered interior designer to carry forward up to 12 continuing education program hours from one year to the following year. If the agency disallows claimed credit, the amended rule would allow a registered interior designer 60 days to substantiate the claim or to earn other credit to fulfill the minimum requirements. Under the current rule, registered interior designers have 180 days to substantiate or make up disallowed credit. The rule is amended to allow for the imposition of disciplinary action for providing false information to the board and for failing to respond to, and comply with, audit and verification requests from the agency.

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 improved services provided by design professionals who have obtained more extensive continuing education. The interior designers registered by the board will also have greater guidance in selecting acceptable topics to fulfill continuing education requirements. Registered interior designers will also benefit from enhancing their knowledge and skills and remaining current on developments within the profession. The amendment will also bring the regulation of registered interior designers in line with other professions which generally require more than 8 hours of continuing education per year.

There will be a fiscal impact upon persons required to comply with the section, including small or micro-business. The amendments will increase education requirements upon each registered interior designer working for a small or micro-business each year. However, one of the additional hours may be obtained through self-study which would carry no or negligible cost. In addition to the cost for each additional program hour, some small businesses will incur a cost in lost business for the additional hours employees spend in fulfilling the continuing education requirement. A review of Web sites reveals that the cost for continuing education courses range from no charge up to roughly $90 per continuing education hour. Most courses are offered for roughly $30 per hour, which is the estimate used for purposes of this economic analysis. The hourly charge for the work of licensed design professionals varies greatly, depending upon the size of the firm and the nature of the work. The average cost of time lost from business operations is estimated to be $100 per hour for a total cost of $130 per registered interior designer per hour of continuing education or a total of $390 per year per registrant. The agency estimates there are approximately 4,600 registered interior designers who would be required to fulfill additional continuing education. This approximation reflects the total number of registered interior designers and subtracts inactive and emeritus interior designers who are exempt from continuing education requirements. There are also roughly 550 registered interior design firms which may be adversely affected as registered interior designers at those firms fulfill the additional continuing education requirements. The agency estimates that nearly all of the registered interior design firms are small businesses and many of them are micro-businesses. In addition, many registered interior designers may operate as sole proprietorships which also qualify as small or micro-businesses. The agency considered alternative methods to achieve the purpose of the rule amendment. The only method that would entirely eliminate adverse economic impacts on small or micro-businesses would be to refrain from adopting the amendment in that any time spent obtaining continuing education is time which could have been devoted to

earning income for the firm. This option was rejected as not serving the public interest. Declining to propose adoption of the rule amendment obviously would not fulfill the purpose of the amendment. Another option which would minimize adverse economic impact upon small and micro-business would be to allow interior designers to fulfill all 4 additional hours through self-study. But this alternative was found to fail to serve the public purpose in that self-study does not convey information as effectively as participation in a lecture format where listening and interaction may occur. The Board also noted that there are affordable means to obtain continuing education through the Internet, teleconferences, and in more informal classes than a conference or a seminar. Internet and other courses may be obtained outside of business hours thus minimizing the economic impact on small businesses.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The rule is also proposed pursuant to §1051.356, Texas Occupations Code, which requires the Board to recognize, prepare, or administer continuing education programs for its certificate holders.

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

§5.79. Continuing Education Requirements.

(a) Each Registered Interior Designer shall complete a minimum of 12 [~~eight (8)~~] continuing education program hours (CEPH) in topics pertinent to the public welfare, contributing to environmental and economic sustainability, promoting public health and well-being, encouraging community building and stewardship, offering aesthetic and creative experiences and enabling people and communities to function more effectively. These topics may include the following health and safety categories:

(1) legal: laws, codes, zoning, regulations, standards, life-safety, accessibility, ethics, insurance to protect owners and public.

(2) technical: structural, mechanical, electrical, communications, fire protection, controls.

(3) environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation.

(4) occupant comfort: air quality, lighting, acoustics, ergonomics.

(5) materials and methods: building systems, products, finishes, furnishings, equipment.

(6) preservations: historic, reuse, adaptation.

(7) pre-design: programming, project analysis, survey of existing conditions, including the materials and configuration of the interior space of a project.

(8) design: interior building design, interior specifications, accessibility, safety, and security measures.

(9) Construction Documents: drawings, specifications and other materials within the definition of the term "Construction Document".

(10) construction administration: contract, bidding, and contract negotiations.

(b) Each Registered Interior Designer shall complete the minimum mandatory CEPH during the year immediately preceding the date the Registered Interior Designer renews the Registered Interior Designer's certificate of registration. Of the 12 minimum mandatory CEPH, each Registered Interior Designer shall complete a minimum of 1 CEPH in barrier-free design and at least 1 CEPH in the study of Sustainable or Energy-Efficient design [~~for each annual registration period~~]. One CEPH equals a minimum of fifty (50) minutes of actual course time. No credit shall be awarded for introductory remarks, meals, breaks, or business/administration matters related to courses of study.

(c) [~~(1)~~] Registered Interior Designers shall complete a minimum of 8 [~~five (5)~~] CEPH in structured course study. [~~Structured course study shall consist of participation in educational activities presented by individuals or groups qualified by professional, practical, or academic experience to conduct courses of study, including monographs offered by the National Council for Interior Design Qualification.~~] No credit shall be awarded for the same structured course for which the Registered Interior Designer has claimed credit during the preceding 3 [~~three (3)~~] years except for the Texas Accessibility Academy or another similar course offered by the Texas Department of Licensing and Regulation (TDLR).

(d) [~~(2)~~] Registered Interior Designers may complete a maximum of 4 [~~three (3)~~] CEPH in self-directed study. [~~One (1) CEPH equals one (1) hour of self-directed study.~~] Self-directed study must utilize articles, monographs, or other study materials that the Registered Interior Designer has not previously utilized for self directed study.

[~~(b) Topics for the eight (8) CEPH shall satisfy the following requirements: All CEPH shall include the study of relevant technical and professional Interior Design subjects pertinent to the health, safety and welfare of the public. The study of topics related to barrier-free design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH. The study of topics related to Sustainable or Energy-Efficient design must be used to satisfy the requirements for at least one (1) of the eight (8) CEPH.~~]

(e) [~~(c)~~] The Board has final authority to determine whether to award or deny credit claimed by a Registered Interior Designer for continuing education activities. The following types of activities may qualify to fulfill continuing education program requirements:

(1) Attendance at courses [~~or seminars~~] dealing with technical Interior Design subjects related to the Registered Interior Designer's profession, ethical business practices, or new technology [~~sponsored by colleges or universities~~];

[~~(2) Attendance at technical presentations or workshops on Interior Design subjects which are held in conjunction with conventions or seminars and are related to materials use and function;~~]

[~~(3)~~] [~~Attendance at courses or seminars related to ethical business practices or new technology and offered by colleges, universities, professional organizations, or system suppliers;~~]

(2) [~~(4)~~] Teaching Interior Design courses [~~or seminars~~] and time spent in preparation for such teaching:

(A) a maximum of 4 [~~three (3)~~] CEPH may be claimed per class hour spent teaching Interior Design courses [~~or seminars~~];

(B) a Registered Interior Designer may not claim credit for teaching the same course [~~or seminar~~] more than once; and

(C) college or university faculty may not claim credit for teaching.

(3) [~~(5)~~] Hours spent in professional service to the general public which draws upon the Registered Interior Designer's professional expertise, such as serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees;

(4) [~~(6)~~] Hours spent in Interior Design research which is published or formally presented to the profession or public [~~during the annual registration period~~];

(5) [~~(7)~~] Hours spent in Interior Design self-directed study programs such as those organized, sponsored, or approved by the American Society of [~~Association for~~] Interior Design, the International Interior Design Association, the National Council for Interior Design Education and Research, or similar organizations acceptable to the Board;

(6) [~~(8)~~] College or university credit courses on [~~dealing with~~] Interior Design subjects or ethical business practices; each semester credit hour shall equal 1 [~~one (1)~~] CEPH; each quarter credit hour shall equal 1 [~~one (1) CEPH~~];

(7) [~~(9)~~] One [~~(1)~~] CEPH may be claimed for attendance at one 1 [~~(1)~~] full-day session of a meeting of the Texas Board of Architectural Examiners[~~; a Registered Interior Designer must attend the entire full-day session in order to receive credit~~].

(f) [~~(d)~~] A Registered Interior Designer may be exempt from [~~the~~] continuing education requirements [~~described in this subchapter~~] for any of the following reasons:

(1) A Registered Interior Designer shall be exempt for his/her initial registration period[~~, which shall not exceed one year~~];

(2) An inactive or emeritus Registered Interior Designer [~~registrant~~] shall be exempt for any registration period during which the Registered Interior Designer's [~~registrant's~~] registration is in inactive or emeritus status, but all continuing education credits for each period of inactive or emeritus registration shall be completed before the Registered Interior Designer's [~~inactive registrant's~~] registration may be returned to active status [~~unless, in lieu of completing the outstanding continuing education requirements, the inactive registrant successfully completes all sections of the current registration examination during the [five (5) years immediately preceding the return to active status~~];

(3) A Registered Interior Designer who is not a full-time member of the Armed Forces shall be exempt for any registration period during which the Registered Interior Designer serves on active duty in the Armed Forces of the United States for a period of time exceeding 90 [~~ninety (90)~~] consecutive days;

(4) A Registered Interior Designer who has an active registration in another jurisdiction that has registration requirements which are substantially equivalent to Texas registration requirements and that has a mandatory continuing education program shall be exempt from mandatory continuing education program requirements in Texas for any registration period during which the Registered Interior Designer satisfies such other jurisdiction's continuing education program requirements, except with regard to the requirement in Texas that each Registered Interior Designer complete 1 CEPH related to Sustainable or Energy-Efficient design; or

(5) A Registered Interior Designer who is, as of September 1, 1999, a full-time faculty member or other permanent employee of an institution of higher education, as defined in [~~Section~~] §61.003, Education Code, and who in such position is engaged in teaching Interior Design.

(g) [~~(e)~~] When renewing his/her annual registration, each Registered Interior Designer shall attest [~~sign the statement on the renewal form attesting~~] to the Registered Interior Designer's fulfillment of the mandatory continuing education program requirements during the preceding registration period.

(1) Each Registered Interior Designer shall maintain a [~~A~~] detailed record of the Registered Interior Designer's continuing education activities [~~shall be recorded annually~~]. Each Registered Interior Designer shall retain proof of fulfillment of the mandatory continuing education program requirements and shall retain the annual record of continuing education activities required by this subsection for a period of 5 [~~five (5)~~] years after the end of the registration period for which credit is claimed.

(2) Upon written request, the Board may require a Registered Interior Designer to produce documentation to prove that the Registered Interior Designer has complied with the mandatory continuing education program requirements. [~~The Registered Interior Designer shall be required to produce the documentation in the manner prescribed in the Board's written request.~~] If acceptable documentation is not provided within 30 [~~thirty (30)~~] days of request, claimed credit may be disallowed. The Registered Interior Designer shall have 60 [~~one hundred and eighty (180)~~] calendar days after notification of disallowance of credit to substantiate the original claim or earn other CEPH credit to fulfill the minimum requirements. Such credit shall not be counted again for another registration period.

(3) If a Registered Interior Designer is registered to practice more than one [~~(1)~~] of the professions regulated by the Board and the Registered Interior Designer completes a continuing education activity that is directly related to more than 1 [~~one (1)~~] of those [~~the~~] professions [~~regulated by the Board~~], the Registered Interior Designer may submit that activity for credit for all of the professions to which it [~~directly~~] relates. The Registered Interior Designer must maintain a separate detailed record of continuing education activities for each profession.

(4) A Registered Interior Designer may receive credit for up to 24 [~~sixteen (16)~~] CEPH earned during any single registration period. A maximum of 12 [~~Any~~] CEPH that is not used to satisfy the continuing education requirements for a [~~the current~~] registration period may be carried forward to satisfy the continuing education requirements for the next registration period. [~~CEPH may not be carried forward beyond the registration period immediately following the registration period during which the CEPH was earned.~~]

(h) [~~(f)~~] Providing false information to the Board, failure [~~Failure~~] to fulfill the annual continuing education program requirements, and failure to respond to, and comply with, audit and verification requests may result in disciplinary action by the Board.

[~~(g) Any Registered Interior Designer who is found to have reported false information regarding the Registered Interior Designer's continuing education activities may be subject to disciplinary action by the Board.~~]

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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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §5.134

The Texas Board of Architectural Examiners proposes the amendment of §5.134, concerning Business Registration. The amendment imposes a duty upon each firm or other business entity which offers or renders the services of a registered interior designer to become registered with the board and to annually renew registration with the board. Currently, the registration requirement is imposed upon a principal acting on behalf of the firm. The amendment shifts the duty to maintain registration to the firm and provides that each firm has an annual registration renewal date, separate from the renewal date of any individual working on behalf of the firm. As amended, the rule requires registered firms and businesses to pay a registration fee and to pay a late penalty equal to 50% of the registration fee if the registration is not renewed before it expires. To renew a registration that has been expired for longer than 90 days, the rule imposes a penalty equal to 100% of the registration fee. The amendments specify that a multidisciplinary firm which practices more than one profession regulated by the board is required to pay only a single annual registration fee. The rule as amended also requires registered firms to provide the board with an email address to which all board correspondence with be sent.

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 benefits expected as a result of the amended rule are as follows: revisions to the rule will allow the agency to automate its business registration process and list businesses upon the roster of the board's registrants. The public will benefit from the Board's enhanced ability to maintain an up-to-date roster of registered firms available on the board's Web site. The public will have greater ability to discern registered firms from unregistered firms in selecting a firm to render the professions regulated by the Board. The rule would likely have an adverse economic impact upon small and micro-businesses by imposing an annual registration fee upon registered firms and businesses. The Board proposes an annual registration fee of $30 for each registered firm or business. A firm which is late by 90 or fewer days would be required to pay $45 and a firm which is late by more than 90 days would be assessed a 100% penalty plus the registration fee for a total fee of $60.

Economic Impact Statement and Regulatory Flexibility Analyses are required. The Board determined the cost of automation to include modification to the agency's database and Web site plus the administrative cost of adjusting to the new registration process. Based upon those costs, amortized over a period of 4 years (an estimate of the time until the database or Web site might require updating), the board determined a cost-recovery fee of $30 per registered firm. There are currently 550 registered interior design firms which would be required to pay the annual $30 registration fee. The rule would continue an exemption upon sole practitioners practicing under the name of a registered interior designer. The Board considered continuing to refrain from charging for business registration as a means to minimize fiscal impact upon small or micro businesses. However, the Board decided against that alternative. The agency's current business registration process is separate from the agency's database and requires administrative resources to continually update the business registration roster. In addition, the current, stand-alone business database is not easily accessible to the public which undermines the policy for maintaining a roster of registered firms and businesses. The intended effect of the rule is to make business registration as much like individual registration as possible in order to make the business registration process more efficient and accessible. It is not reasonably feasible to operate the business registration process in a manner that fulfills the objective of the rule without recovering the cost of registration. The changes will require the expenditure of revenues which the fee will replace. The board decided to maintain the exemption for sole proprietorships which minimizes the fiscal impact upon small and micro-businesses.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The rule is also proposed pursuant to §1051.306 and §1053.032, Texas Occupations Code, which allows the board to adopt rules requiring a firm, partnership, corporation or association which offers or renders the services of a registered interior designer to register with the board and allows the board to set a fee for a board action in an amount reasonable and necessary to recover administrative expenses.

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

§5.134. Business Registration.

(a) An [~~A Principal for an~~] Interior Design firm or other business entity that uses the title "registered interior designer" to describe itself or which offers or renders the services described as those of a Registered Interior Designer must annually register information regarding the firm or business entity with the Board, including an email address to which all correspondence from the Board will be sent.

(b) A Registered Interior Designer or [~~a Principal of~~] a Registered Interior Design firm which [~~who~~] enters into an agreement to create a business association pursuant to §5.132 of this title (relating to Association) shall annually register the association with the Board, including an email address to which all correspondence from the Board will be sent.

(c) If a Registered Interior Design firm, business entity, or association dissolves or otherwise becomes unable to lawfully use the title "registered interior designer" to describe itself, [~~the Registered Interior Designer or Principal who last registered~~] the Registered Interior Design firm, business entity, or association shall so notify the Board in writing. Such notification must be postmarked or otherwise provided within 30 [~~thirty (30)~~] days of the date of dissolution or the date the Registered Interior Design firm, business entity, or association became unable to lawfully use the title "registered interior designer[~~.~~]" and to offer or render the services described as those of a Registered Interior Designer. A business entity or association may not continue to use the title "registered interior designer" or offer or render the services of a Registered Interior Designer unless it employs or contracts with a Registered Interior Designer and updates its registration [~~another Reg-~~

istered Interior Designer or Principal files information with the Board identifying himself or herself as the Principal for the business entity or association] within that 30 [thirty (30)] day period.

(d) A Registered Interior Designer who is a sole proprietor doing business under his/her own name is [shall be] exempt from the requirements of subsections (a) - (c) of this section.

(e) Each Registered Interior Design firm, business entity, or association shall annually renew its unexpired registration and pay a renewal fee not later than the anniversary of the date of its initial registration. Each Registered Interior Design firm, business entity, and association shall pay a registration renewal fee to renew an expired registration in an amount equal to 1-1/2 times the normally required renewal fee if registration has been expired for 90 days or less and in an amount equal to twice the normally required renewal fee if the registration has been expired for longer than 90 days. A firm, business entity, or association which offers or renders two or more professional disciplines regulated by the Board shall pay a single registration fee. [A Registered Interior Designer or Principal who is subject to this section shall initially register a business entity or a business association within thirty (30) days after creation of the business entity or the business association. Thereafter, the annual registration renewal of the business entity or business association shall coincide with the Registered Interior Designer's or Principal's renewal of registration as a Registered Interior Designer.]

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

Filed with the Office of the Secretary of State on December 15, 2011.

TRD-201105575
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 305-9040

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SUBCHAPTER J. TABLE OF EQUIVALENTS FOR EDUCATION AND EXPERIENCE IN INTERIOR DESIGN

22 TAC §5.201

The Texas Board of Architectural Examiners proposes the amendment of §5.201, concerning Description of Approved Education for Registration by Examination. The amendment pertains to the approved education and experience required to obtain registration as an interior designer by examination. The amendment repeals provisions that described approved education and experience for certain grandfather classes. The provisions are obsolete because alternative grandfathering standards applicable by cross-reference to §5.31 were repealed by previously adopted rule amendments and because the deadlines for some grandfather classes to apply for registration has passed.

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 benefits expected as a result of the amended rule are that confusion will be avoided or eliminated as candidates for licensure do not attempt to obtain education and experience pursuant to provisions that no longer exist in the rules. The proposed rule amendment does not cause an adverse economic impact upon small or micro-business. Therefore no economic impact statement and flexibility analysis is required.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1053.155, Texas Occupations Code, which provide the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code, and which provide the board to adopt rules establishing standards for education and experience for eligibility to take the interior design registration examination.

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

§5.201. Description of Approved Education for Registration by Examination.

(a) Pursuant to §5.31 of this title (relating to Registration by Examination), an Applicant must successfully demonstrate that he/she has approved Interior Design education and experience in accordance with the following table. An Applicant for Interior Design registration by examination who enrolls in an Interior Design educational program after September 1, 2006, must graduate from a program described in ID-1:

Figure: 22 TAC §5.201(a)

(b) An Applicant may not earn credit in more than one of categories ID-1 through ID-4 [ID-6].

[(c) In order to earn credit in category ID-5 or ID-6, an Applicant must complete all requirements described in that category, including the experiential requirements, and apply for registration by examination on or before August 31, 2010.]

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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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §5.242

The Texas Board of Architectural Examiners proposes an amendment to §5.242, concerning Board Responsibilities. The

amendment pertains to a schedule of penalties for violations of laws enforced by the board. The rule amendment specifies that failure of a firm or business to maintain registration may be punishable by an administrative penalty, a cease and desist order, or both. The amendment also specifies an administrative penalty, a cease and desist order, or both as possible sanctions for a firm or other business entity which unlawfully represents itself as a registered interior designer firm. The amendment also corrects cross-reference and deletes an obsolete sanction which may be imposed against an individual registered interior designer who fails to maintain a firm's registration as principal of the firm. Other proposed rules shift the duty to register a firm from an individual acting on behalf of the firm to the firm. The proposed amendment to the penalty schedule conforms the rule to the other proposed rule amendment.

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 benefits expected as a result of the amended rule are as follows: notice will be given to registered interior design firms and businesses that an administrative penalty may be assessed and business operations may be disrupted for failure to maintain business registration as required pursuant to substantive rule. The rule as amended creates incentives to properly maintain a business's registration. The rule as amended may create an adverse economic effect upon small and micro-businesses which violate registration laws enforced by the board. However, there is no alternative to the proposed rule which is consistent with the health, safety and welfare of the state and which accomplishes the objective of the rule which is to incentivize compliance with registration requirements. Eliminating or minimizing the adverse economic impact, either through an administrative penalty or other sanction, does not serve the rules' public purpose of deterring violations of the registration law.

Comments may be submitted to Cathy L. Hendricks, RID, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The rule is also adopted pursuant to §§1051.451, 1051.452 and 1051.504, Texas Occupations Code, which authorizes the board to impose administrative penalties, requires the board to adopt a penalty schedule, and allows the Board to issue cease and desist orders against persons (including corporations and businesses) which are not properly registered. Those statutes are applicable to registered interior designers through §1053.251, Texas Occupations Code.

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

§5.242. Board Responsibilities.

(a) The Board shall investigate Contested Case matters and attempt to resolve Contested Cases informally as provided in Subchapter I of the Rules and Regulations of the Board. However, if a Contested Case is not settled informally pursuant to Subchapter I, it shall be referred to SOAH for a formal hearing to determine whether there has been a violation of any of the statutory provisions or rules enforced by the Board.

(b) A formal hearing shall be conducted in accordance with the Rules of Procedure of SOAH.

(c) After a formal hearing of a Contested Case, the SOAH administrative law judge who conducted the formal hearing shall prepare a proposal for decision and submit it to the Board so that the Board may render a final decision with regard to the Contested Case. The proposal for decision shall include findings of fact and conclusions of law.

(d) Any party of record in a Contested Case who is adversely affected by the proposal for decision may file exceptions and briefs within 20 [~~twenty (20)~~] days after the date of service of the proposal for decision. Replies to exceptions and briefs may be filed within 15 [~~fifteen (15)~~] days after the date for the filing of exceptions and briefs. Exceptions, briefs, and replies shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case.

(e) Any party of record in a Contested Case may request an oral hearing before the Board. A request for an oral hearing shall be filed with the Board and copies shall be served on the administrative law judge and on all other parties in the same manner as for serving other documents in a Contested Case. The Board, in its sole discretion, shall determine whether to grant or deny a request for an oral hearing. If a request for an oral hearing is granted, each party of record shall be allotted 30 [~~thirty (30)~~] minutes to make an oral presentation to the Board.

(f) Upon the expiration of the time provided for the filing of exceptions and briefs or, if exceptions and briefs are filed, upon the 10th [~~tenth (10th)~~] day following the time provided for the filing of replies to exceptions and briefs, the Board may render a decision to finally resolve a Contested Case. The Board may change a finding of fact or conclusion of law made by an administrative law judge or may vacate or modify an order issued by an administrative law judge only if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(g) If the Board makes a change to a finding of fact or conclusion of law or vacates or modifies an order pursuant to subsection (f) of this section, the Board must state in writing the specific reason and the legal basis for the change.

(h) The Board shall issue a written order regarding the Board's decision to finally resolve a Contested Case that is not settled informally. The written order shall include findings of fact and conclusions of law that are based on the official record of the Contested Case. The written order may adopt by reference the findings of fact and conclusions of law made by an administrative law judge and included in the proposal for decision submitted to the Board.

(i) Motions for rehearing and appeals may be filed and judicial review of final decisions of the Board may be sought pursuant to the Administrative Procedure Act. The party who appeals a final decision in a Contested Case shall be responsible for the cost of the preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following

guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §5.242(j)

(k) The penalty for a violation of any of the statutory provisions or rules enforced by the Board may vary from the penalty recommended in subsection (j) of this section if justified by the circumstances of the matter or the disciplinary history of the respondent.

(l) For any violation where revocation is recommended as an appropriate penalty for the violation, refusing to renew the respondent's certificate of registration also shall be an appropriate penalty for the violation.

(m) If the Board or the administrative law judge determines that an administrative penalty is the appropriate sanction for a violation, the guidelines described in §5.187 of this title (relating to Administrative Penalty Schedule) shall be applied to determine the amount of the administrative penalty.

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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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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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 pertains to fees charged for business registration and annual renewal of business registration. The amendments would create a fee of $30 for the annual registration of a business to offer or render professional services regulated by the board. The amendment would impose a fee of $45 for the renewal of business registration that is late by 90 or fewer days and a fee of $60 for renewal of business registration that is more than 90 days late. The amendments provide that a business is not required to pay a separate business registration renewal fee for each profession it practices. A firm that practices two or more regulated professions is required to pay only one annual fee. The amendments conform the fee schedule to proposed amendments made to the substantive rules which require the registration and renewal of registration of businesses, firms, and associations which offer or render architecture, landscape architecture, or registered interior design services.

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 benefits expected as a result of the amended rule are as follows: the rule will provide notice to businesses, firms and associations that there is a charge for annual renewal of business registration. The fee will allow the agency to recapture the costs it currently incurs to operate the business registration program. Proposed revisions to the rule will also allow the agency to automate its business registration process and list businesses upon the roster of the board's registrants. The public will benefit from the Board's enhanced ability to maintain an up-to-date roster of registered firms available on its Web site. The public will have greater ability to discern registered firms from unregistered firms in selecting a firm to render the professions regulated by the Board. The rule would likely have an adverse economic impact upon small and micro-businesses by imposing an annual registration fee upon registered firms and businesses. An Economic Impact Statement and Regulatory Flexibility Analyses are required.

The Board determined the cost of automation to include modification to the agency's database and Web site plus the administrative cost of adjusting to the new registration process. Based upon those costs, amortized over a period of 4 years (an estimate of the time until the database or Web site might require updating), the board determined a cost-recovery fee of $30 per registered firm is reasonable and necessary to administer the program. There are currently 2550 registered businesses which would be required to pay the annual $30 registration fee. The rule would continue an exemption upon sole practitioners practicing under the name of a registrant. The Board considered continuing to refrain from charging for business registration as a means to minimize fiscal impact upon small or micro businesses. However, the Board decided against that alternative. The agency's current business registration process is separate from the agency's database listing individual registrants. Lack of coordination and automation requires administrative resources to continually update the business registration roster. In addition, the current, stand-alone business database is not easily accessible to the public which undermines the policy for maintaining a roster of registered firms and businesses. The intended effect of the rule is to make business registration as much like individual registration as possible in order to make the business registration process more efficient and accessible. It is not reasonably feasible to operate the business registration process in a manner that fulfills the objective of the business registration rules without recovering the cost of registration. The changes will require the expenditure of revenues which the fee will replace. The board decided to maintain the current exemption for sole proprietorships which minimizes the fiscal impact upon small and micro-businesses. In addition the board opted against collecting a separate fee for each regulated profession offered or rendered by registered firm or business in order to minimize the fiscal impact upon small and micro-businesses.

Comments may be submitted to Cathy L. Hendricks, RID, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code. The rule is also adopted pursuant to §§1051.651, 1052.054, and 1053.052, Texas Occupations Code, which grants to the board the authority to assess fees in an amount reasonable and necessary to cover administrative costs.

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

§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.

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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-9040

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.16

The Texas Real Estate Commission proposes amendments to 22 TAC §535.16, concerning Listings; Net Listings. The amendments are proposed to be consistent with the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In part, Senate Bill 747 amends Texas Occupations Code, §1101.002 to add to the list of activities that are considered real estate brokerage which requires licensure as a real estate broker or salesperson a new item regarding broker price opinions.

The amendments to §535.16 clarify that a real estate licensee must provide a broker price opinion rather than opinion of market value when negotiating a listing or offering to purchase the property for the licensee's own account as a result of contact made while acting as a real estate agent.

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

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

§535.16. Listings; Net Listings.

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

(c) A real estate licensee is obligated to provide a broker price opinion or comparative market analysis on [~~advise a property owner as to the licensee's opinion of the market value of~~] a property when negotiating a listing or offering to purchase the property for the licensee's own account as a result of contact made while acting as a real estate agent.

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-201105536
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 936-3092

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.56

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.56, concerning Education and Experience Requirements for a Broker License. Under current §535.56, the commission has waived the education and experience required for a broker license for a broker who was licensed as a broker in the preceding two years and otherwise meets the requirements of the subsection. The proposed rule would conform subsection (h) by deleting a sentence which implies that a person previously licensed as a salesperson may become a broker under the waiver.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated economic cost to persons who are required to comply with the proposed section, other than the costs of obtaining copies of the forms which would be available at no charge through the TREC's web site and application filing fee.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistent provisions in §535.56.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

§535.56. Education and Experience Requirements for a Broker License.

(a) - (g) (No change.)

(h) Notwithstanding §1101.451(f) of the Act and subsections (a) - (f) of this section, the commission may waive education and experience required for a real estate broker license if the applicant satisfies each of the following conditions.

(1) (No change.)

(2) The applicant has completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license. [~~If the applicant was previously licensed as a Texas real estate salesperson, the applicant satisfies all current education requirements for an original broker license.~~]

(3) (No change.)

(i) - (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 December 13, 2011.

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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §§535.71, 535.72, 535.75

The Texas Real Estate Commission (commission) proposes amendments to 22 TAC §535.71, concerning Approval of Providers, Courses and Instructors; and §535.72, concerning Presentation of Courses, Advertising and Records; and new 22 TAC §535.75, concerning Education Curriculum Standards Committee. The amendments and new section are proposed in part to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, Senate Bill 747 amends Texas Occupations Code, §1101.458 to require a broker who sponsors a salesperson and a licensee who supervise another licensee to take a 6 hour broker responsibility course to renew a license.

The amendments to §535.71 and §535.72 provide the method by which the commission will create and approve the broker responsibility course, which will be the same way it handles the 3 hour legal update and 3 hour ethics courses required under §1101.455, and provides conforming changes for consistency.

New §535.75 creates the Education Curriculum Standards Committee whose mission is to regularly review and revise curriculum standards, course content requirements and instructor certification.

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

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new section are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of

Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

§535.71. Approval of Providers, Courses, and Instructors.

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

(k) Non-elective [~~Required legal update and ethics~~] courses. The commission shall approve bi-annually a legal update course and a legal ethics course required by §1101.455(e) of the Act, and a broker responsibility course required by §1101.458(a) of the Act which shall be conducted through providers by instructors certified by the commission under this subchapter. The subject matter, [~~and~~] course materials, and final examination for the courses shall be created for and approved by the commission. The legal update and legal ethics courses expire on December 31 of each odd-numbered year; the broker responsibility course expires on December 31 of each even-numbered year; and shall be replaced with new courses approved by the commission. A provider may not offer a new course until an instructor of the course obtains recertification by attending a new instructor training program. Providers must acquire the commission-developed course materials and utilize such materials to conduct the non-elective [~~required legal~~] courses. The non-elective [~~required legal~~] courses must be conducted as prescribed by the rules in this subchapter and the course materials developed for the commission.

(l) Modification of the non-elective [~~required legal~~] courses. Providers and instructors may modify a non-elective [~~required legal~~] course only to provide additional information on the same or similar topics covered in the course or to create distance learning courses that are substantially similar to the live courses developed for the commission. To the extent that a non-elective [~~required legal~~] course is modified or integrated into a longer course for which additional elective credit is requested, the commission shall grant elective and non-elective [~~legal~~] credit for the combined course.

(m) Instructor certification. Only instructors certified by the commission may teach the non-elective [~~required legal~~] courses or develop distance learning courses for the presentation of non-elective [~~required legal~~] courses. An instructor must obtain prior commission approval under subsection (n) of this section prior to attending an instructor training program. The commission shall issue a written certification to an instructor to teach the applicable non-elective [~~required legal~~] course(s) upon the instructor's satisfactory completion of a training program to teach the non-elective [~~required legal~~] course(s) that is acceptable to the commission. Satisfactory completion of the training program for each of the non-elective courses may include passing a final course examination approved by the commission. An instructor may obtain certification to teach either one or all non-elective [~~both required legal~~] courses. A certified [~~legal~~] course instructor may teach the non-elective [~~required legal~~] courses for any approved provider after the instructor has attended an instructor training program. A certified [~~legal~~] course instructor may not independently conduct a non-elective [~~required legal~~] course unless the instructor has also obtained approval as a provider. An instructor must obtain written certification from the commission prior to teaching the non-elective [~~required legal~~] courses and prior to representing to any provider or other party that he or she is certified or may be a certified [~~as a legal~~] course instructor. An instructor's certification to teach a required legal course expires on December 31 of every odd-numbered year. An instructor's certification to teach the broker responsibility course expires on December 31 of every even-numbered year. An instructor may obtain recertification by attending a new instructor training program.

(n) Standards for approval of instructors of non-elective [~~required legal~~] courses. Prior to attending an instructor training course, a person must obtain commission approval to be an instructor using Instructor Application - Core, Legal Update, [~~and~~] Ethics and Broker Responsibility Course, approved by the commission.

(1) To be approved as an instructor of a required legal update or ethics course, a person must possess the following qualifications:

(A) [~~(1)~~] a college degree in the subject area of Real Estate, or five years of professional experience in the subject areas of Principles of Real Estate, Law of Agency, and Law of Contracts; and

(B) [~~(2)~~] three years experience in teaching or training; or

(C) [~~(3)~~] the equivalent of subparagraphs (A) and (B) of this paragraph [~~paragraphs (1) and (2) of this subsection~~] as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(2) To be approved as an instructor of a broker responsibility course, a person must possess the following qualifications:

(A) a college degree in the subject area of Real Estate, or five years of professional experience in the subject areas of Principles of Real Estate, Law of Agency, Law of Contracts, and Real Estate Brokerage; and

(B) three years experience in teaching or training; or

(C) the equivalent of subparagraphs (A) and (B) of this paragraph as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(o) - (q) (No change.)

(r) Legal update, [~~and~~] legal ethics course and broker responsibility course application. A provider must submit a MCE Course Application Supplement and receive written acknowledgment from the commission prior to offering a non-elective [~~required legal update or required legal ethics~~] course.

(s) (No change.)

(t) Acceptable combined courses. An elective credit course offered by a provider to satisfy all or part of the [~~nine~~] hours of other than legal topics required by §1101.455 of the Act may be offered with a non-elective [~~the required legal update course or required legal ethics~~] course.

(u) Non-elective [~~Required legal~~] courses for real estate related courses. Non-elective [~~MCE legal update and legal ethics~~] courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §1101.356 and §1101.358, of the Act.

(v) Correspondence courses for elective credit. An MCE provider may register an MCE elective course by correspondence with the commission if the course is subject to the following conditions:

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

(3) the course does not include a request for non-elective [~~required legal~~] course credit.

(w) Alternative delivery method courses for elective credit. An MCE provider may register an MCE elective course by alternative delivery method with the commission if the course is subject to the following conditions:

(1) (No change.)

(2) the course does not include a request for non-elective [~~required legal~~] course credit; and

(3) (No change.)

(x) Correspondence courses for required non-elective [~~legal~~] credit. The commission may approve a provider to offer a non-elective [~~an MCE required legal ethics~~] course by correspondence subject to the following conditions:

(1) (No change.)

(2) the content of the course must satisfy the requirements of §1101.455 or §1101.458 of the Act and this section and must be substantially similar to the non-elective [~~legal~~] courses disseminated and updated by the commission [~~Commission~~];

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

(y) Each non-elective [~~required legal~~] course offered by correspondence must contain the following:

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

(z) Alternative delivery method courses for non-elective [~~required legal~~] credit. The commission may accept non-elective [~~required legal~~] courses offered by alternative delivery method subject to the following conditions.

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

(aa) (No change.)

(bb) Supervised Video Instruction for non-elective [~~required legal~~] course credit. A provider may register a course under subsection (r) of this section to be taught by supervised video instruction if the provider:

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

(cc) An applicant must submit an MCE Course Application Supplement to seek approval to offer an MCE distance learning non-elective [~~required legal~~] course and receive written acknowledgment from the commission prior to offering the course.

(dd) - (ff) (No change.)

§535.72. Presentation of Courses, Advertising, and Records.

(a) (No change.)

(b) Partial credit.

(1) (No change.)

(2) Partial credit may not be granted for any course that contains as part of its curriculum all or part of the non-elective [~~six legal~~] hours of mandatory continuing education required by §1101.455 and §1101.458 of the Act.

(c) - (f) (No change.)

(g) Course materials. Providers must furnish students with copies, for students' permanent use, of any material which is the basis for a significant portion of the course. Providers offering any of the non-elective [~~required legal~~] courses must provide the students with the materials identified as student course materials for the non-elective [~~required legal~~] courses. The course materials provided to the students may be in printed form or electronic media such as a CD-ROM or diskette that the student may access through commonly available software such as common word-processing programs and slide presentation programs. Ample space must be provided on handouts for note taking or completion of any written exercises. If a provider charges fees for supplies, materials, or books needed in course work, the fees must be itemized in a written statement provided to each student by the provider before the student registers for the course.

(h) - (k) (No change.)

(l) Course administration. Providers of MCE courses are responsible to the commission for the conduct and administration of each course presentation, the punctuality of classroom sessions, verification of student attendance, and instructor performance. Providers shall ensure that the non-elective [~~required legal~~] courses are administered by instructors in substantially the same manner as disseminated and updated by the commission. During the presentation of a course, providers may not promote the sale of goods or services.

(m) Updates. If the commission determines that it is in the public interest to update the non-elective [~~required legal~~] courses about changes in the law, the commission may require the provider to furnish each student with a copy of the information. The commission also may require the provider to ensure that the provider's instructors include the material in the presentation of the course. The commission shall furnish the provider with a copy of the information and notify the provider that the commission requires compliance with this subsection in a non-elective [~~required legal~~] course or any elective course combined with a non-elective [~~legal~~] course offered after the provider's receipt of the notice.

(n) - (p) (No change.)

§535.75. Education Curriculum Standards Committee.

(a) The function of the Education Curriculum Standards Committee (the committee) is to regularly review and revise curriculum standards, course content requirements and instructor certification requirements for core and MCE courses.

(b) The committee consists of 12 members appointed by the commission as follows:

(1) Six members who have been engaged in the practice of real estate for at least five years before the member's appointment and who are actively engaged in that practice;

(2) Three members who are real estate instructors or owners of real estate schools accredited by the commission that provide core or continuing education;

(3) Three members who represent the public, who are not accredited, approved, registered, certified, or licensed by the Texas Real Estate Commission.

(c) The commission may appoint a non-voting member from the commission.

(d) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(e) Members of the committee serve two-year terms, expiring on February 1 of each even-numbered year. A member may serve up to three consecutive terms on the committee, and may be reappointed after a break in service of at least two years. A member whose term has expired holds office until the member's successor is appointed. If a vacancy occurs during a member's term, the commission shall appoint a person to fill the unexpired term.

(f) At a regular meeting in May of each year, the committee shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(g) The commission may remove a committee member if the member:

(1) does not have the qualifications required by subsection (b)(1) of this section;

(2) cannot discharge the member's duties for a substantial part of the member's term;

(3) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during each calendar year, unless the absence is excused by majority vote of the committee; or

(4) violates Chapter 1101 or Chapter 1102.

(h) If the administrator of the commission has knowledge that a potential ground for removal exists, the administrator shall notify the presiding officer of the commission that the potential ground exists.

(i) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(j) The committee may meet at the call of a majority of its members. The committee shall meet at the call of the commission.

(k) A quorum of the committee consists of seven members.

(l) The committee shall conduct its meetings in substantial compliance with Robert's Rules of Order.

(m) The secretary of the committee, or in the secretary's absence, a member designated by the chairman, shall prepare written minutes of each meeting and submit the minutes to the committee for approval and for filing with the commission.

(n) The committee shall submit semiannual reports to the commission on or before March 1 and September 1 of each year detailing the performance of the committee. The commission may require the report to be submitted on a form approved by the commission for that purpose. The committee may submit its written recommendations concerning the licensing and regulation of real estate inspectors to the commission at any time the committee deems appropriate. If the commission submits a rule to the committee for development, the chairman of the committee or the chairman's designate shall report to the commission after each meeting at which the proposed rule is discussed on the committee's consideration of the rule.

(o) The committee is automatically abolished on September 1, 2020 unless the commission subsequently establishes a different date.

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

Filed with the Office of the Secretary of State on December 15, 2011.

TRD-201105567
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 936-3092

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SUBCHAPTER H. RECOVERY FUND

22 TAC §535.82

The Texas Real Estate Commission (TREC) proposes new 22 TAC §535.82, concerning Proration of Payments from the Recovery Trust Account. Under Subchapter M of Chapter 1101, Occupations Code, the commission administers the Real Estate Recovery Trust Account. The new rule clarifies provisions of Subchapter M, regarding proration of claims in the event of multiple claims that exceed the payment limitations of $50,000 per transaction and $100,000 per licensee.

Loretta R. DeHay, General Counsel, has determined that, for each year of the first five years that the rule is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule as proposed, nor is there any anticipated impact on local or state employment.

Ms. DeHay has also 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 clarity in the process of prorating claims and an emphasis on paying actual damages first, consistent with §1102.610(c), Texas Occupations Code, and the consumer protection objectives of Chapter 1101. There is no anticipated economic cost to persons required to comply with the rule. There is no anticipated impact on small businesses, micro-businesses, or local or state employment as a result of implementing the rule.

Comments on the proposed rule may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or at loretta.dehay@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rule is proposed under §1101.151, Texas Occupations Code, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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

§535.82. Proration of Payments from the Recovery Trust Account.

In the event of multiple valid pending claims against a licensee or certificate holder in excess of the limitations in §1101.610 of the Act, the claims shall be prorated as follows:

(1) Actual damages shall be allocated first. If the total of the eligible actual damages of all claims exceeds the maximum that may be paid from the Recovery Trust Account, the actual damages shall be prorated, and no interest, attorney fees, or court costs shall be paid.

(2) If, after allocating the actual damages as provided by paragraph (1) of this section, the limitations in §1101.610 of the Act are not reached, interest on actual damages (pre-judgment and post-judgment) shall be allocated second. If the total of the interest on eligible actual damages of all claims exceeds the amount remaining to be paid from the Recovery Trust Account, the interest on eligible actual damages shall be prorated, and no other interest, attorney fees, or court costs shall be paid.

(3) If, after allocating the actual damages and interest thereon as provided by paragraphs (1) and (2) of this section, the limitations in §1101.610 of the Act are not reached, other interest, attorney fees, and court costs shall be allocated third. If the total of the other interest, attorney fees, and court costs of all claims exceeds the amount remaining to be paid from the Recovery Trust Account, the other interest, attorney fees, and court costs shall be prorated.

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

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105540
Devon V. Bijansky
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 936-3092

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.221

The Texas Real Estate Commission (TREC) proposes an amendment to 22 TAC §535.221, concerning Advertisements. The amendments change the requirement that inspectors immediately notify the Commission of the inspector's use of an assumed name in the inspection business, instead allowing 30 days for such notice.

Devon V. Bijansky, Deputy General Counsel, has determined that, for each year of the first five years that the amendment is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendment as proposed, nor is there any anticipated impact on local or state employment.

Ms. Bijansky has also determined that, for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing the amendment will be clarity and consistency with other license types regulated by the agency. There is no anticipated economic cost to persons required to comply with the amendment. There is no anticipated impact on small businesses, micro-businesses, or local or state employment as a result of implementing the amendment.

Comments on the proposed rule may be submitted to Devon V. Bijansky, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or at devon.bijansky@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendment is proposed under §1101.151, Texas Occupations Code, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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

§535.221. Advertisements.

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

(c) A licensed professional inspector, real estate inspector or apprentice inspector shall [~~immediately~~] notify the commission in writing within 30 days after the inspector starts or stops using a name in business other than the name in which the inspector is licensed [~~of the licensee's use of an assumed name in the inspection business~~].

(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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Devon V. Bijansky
Deputy General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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22 TAC §535.240

The Texas Real Estate Commission (TREC) proposes new 22 TAC §535.240, concerning Proration of Payments from the Real Estate Inspection Recovery Fund. The new rule clarifies provisions of §1102.359, Texas Occupations Code, regarding proration of claims in the event of multiple claims that exceed the payment limitations of $12,500 per transaction and $30,000 per inspector.

Devon V. Bijansky, Deputy General Counsel, has determined that, for each year of the first five years that the rule is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule as proposed, nor is there any anticipated impact on local or state employment.

Ms. Bijansky has also 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 clarity in the process of prorating claims and an emphasis on paying actual damages first, consistent with §1102.359(d), Texas Occupations Code, and the consumer protection objectives of Chapter 1102. There is no anticipated economic cost to persons required to comply with the rule. There is no anticipated impact on small businesses, micro-businesses, or local or state employment as a result of implementing the rule.

Comments on the proposed rule may be submitted to Devon V. Bijansky, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or at devon.bijansky@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rule is proposed under §1101.151, Texas Occupations Code, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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

§535.240. Proration of Payments from the Real Estate Inspection Recovery Fund.

In the event of multiple valid pending claims against a licensee or certificate holder in excess of the limitations in §1102.359, Texas Occupations Code, the claims shall be prorated as follows:

(1) Actual damages shall be allocated first. If the total of the eligible actual damages of all claims exceeds the maximum that may be paid from the Real Estate Inspection Recovery Fund, the actual damages shall be prorated, and no interest, attorney fees, or court costs shall be paid.

(2) If, after allocating the actual damages as provided by paragraph (1) of this section, the limitations in §1102.359, Texas Occupations Code are not reached, interest on actual damages (pre-judgment and post-judgment) shall be allocated second. If the total of the interest on eligible actual damages of all claims exceeds the amount remaining to be paid from the Real Estate Inspection Recovery Fund, the interest on eligible actual damages shall be prorated, and no other interest, attorney fees, or court costs shall be paid.

(3) If, after allocating the actual damages and interest thereon as provided by paragraphs (1) and (2) of this section, the limitations in §1102.359, Texas Occupations Code are not reached, other interest, attorney fees, and court costs shall be allocated third. If the total of the other interest, attorney fees, and court costs of all claims exceeds the amount remaining to be paid from the Real Estate Inspection Recovery Fund, the other interest, attorney fees, and court costs shall be prorated.

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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Devon V. Bijansky
Deputy General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §§535.400, 535.403 - 535.405

The Texas Real Estate Commission (TREC or commission) proposes amendments to 22 TAC §535.400, concerning Registration of Easement or Right-of-Way Agents; and §535.403, concerning Renewal of Registration; new 22 TAC §535.404, concerning Fees; and §535.405, concerning Employee of Owner or Purchaser. The amendments and new §535.404 would increase the registration fee from $80 for a one-year registration to $200 for a two-year registration; and the renewal fee $160 ($80 per year) to $200 for a two-year registration. New §535.405 is proposed to clarify that an employee of an owner or purchaser of an easement or right-of-way is not required to be registered under the Act.

The justification for the fee increases is to generate sufficient revenue to fund operations of the agency and to comply with requirements of Senate Bill 1000, 82nd Texas Legislature, Regular Session (2011).

Senate Bill 1000 makes the Texas Real Estate Commission self-directed and semi-independent. The bill removes the agency from the legislative budgeting process, and requires the commission to adopt and approve an annual budget. The bill requires that the commission collect sufficient fees to fund operations to carry out its function and to fund the budget. In relevant part, the bill also requires the agency to remit $750,000 to the general revenue fund not later than August 31 of each fiscal year, to remit a non-refundable retainer to the State Auditor of $10,000 per fiscal year, a nonrefundable retainer to the Attorney General of $75,000 per fiscal year, and a non-refundable retainer to the State Office of Administrative Hearings of $75,000 per fiscal year. TREC will be required to reimburse each agency for all costs incurred in excess of the retainers for providing services to the commission. In addition, the bill requires the agency to pay rent in a reasonable amount to be determined by the Texas Facilities Commission with aggregate rent payments to be not less than $550,000 per fiscal year for state fiscal years ending August 31, 2012 and August 31, 2013; and not less than $425,000 per fiscal year for each year ending August 31, 2014, August 31, 2015, and August 31, 2016.

Karen Alexander, Staff Services Director, has determined that for the first five-year period new §535.404 is in effect there will be fiscal implications for the state, but not to units of local government as a result of enforcing or administering the section. Approximately 333 applicants and 115 renewal applicants would be required to pay the increased fees in the remaining months of FY 2012 with estimated revenue of $44,560. For FY 2013 and FY 2015, approximately 800 applicants and 750 renewal applicants would be required to pay the increased fees. The total estimated revenue per year would be $126,000. For FY 2014 and FY 2016, the estimated revenue per year would be $107,000. There will be no fiscal implications for the state or units of local government as a result of enforcing the amendments to §535.400 and §535.403 or new §535.405.

Ms. Alexander has determined that there is no anticipated impact on local or state employment as a result of implementing the proposal. However, there is an anticipated impact on small businesses and micro-businesses. Approximately 1747 easement and right-of-way agents are registered with the commission in Texas. It is estimated that nearly all of these registrants are small businesses and many of them are micro-businesses. The projected economic impact of this proposal on these small businesses will be negative due to the increased application and renewal fees. Under §2006.002, Texas Government Code, an agency is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety and environmental and economic welfare of the state. TREC has developed this proposal in accordance with a legislative mandate to cover all costs of operation under Senate Bill 1000, 82nd Legislature, Regular Session (2011).

Consequently, any variance from the legislative mandate would not be consistent with the health, safety, and environmental and economic welfare of the state, and no alternative regulatory methods have been considered.

Ms. Alexander also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the amendments and new sections is that the agency will raise sufficient revenue to fund costs of agency operations and required payments to the General Revenue Fund and other state agencies under Senate Bill 1000, 82nd Legislature, Regular Session (2011).

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new sections are proposed under Texas Occupations Code, §1101.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1101.

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

§535.400. Registration of Easement or Right-of-Way Agents.

(a) An individual desiring to be registered by the commission as an easement or right-of-way agent must file an application on form ERW 1-3 approved by the commission. If the applicant is a business, the applicant must file form ERW 2-3. All applicants must submit the required [~~a~~] fee [~~of $80~~]. The commission will not accept an application which has been submitted without the correct filing fees or which has been submitted in pencil. A person also may apply for registration by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. If the person is an individual, the person must provide the commission with the person's photograph and signature prior to issuance of a registration certificate. The person may provide the photograph prior to the submission of an electronic application. If the applicant does not complete the application process as required by this subsection, the commission shall terminate the application.

(b) - (e) (No change.)

§535.403. Renewal of Registration.

(a) The commission shall establish a time period for renewal of each registration, which shall end with the expiration date of the current registration. Each registrant has the responsibility to apply for renewal of a registration by making proper application as specified by this section. Applications must be made on the current renewal application form approved by the commission accompanied by the required [~~an annual~~] fee [~~of $80~~]. Failure to receive a registration renewal application form from the commission does not relieve a registrant of the obligation to obtain the appropriate form and to apply for renewal to maintain registration. A registrant also may renew an unexpired registration by accessing the commission's Internet web site, entering the required information on the renewal application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Failure to provide information requested by the commission in connection with a renewal application is grounds for disciplinary action under the Act, §1101.653. A registrant who fails timely to pay a renewal fee must apply for and receive a new registration in order to act as an easement or right-of-way agent.

(b) - (d) (No change.)

§535.404. Fees.

The commission shall charge and collect a fee of $200 for the application or renewal of a registration for a two-year period.

§535.405. Employee of Owner or Purchaser.

(a) An easement or right of way registration is not required for an individual employed by an owner or purchaser for the purpose of selling, buying, leasing or transferring an easement or right-of-way for the owner. A person is considered to be an owner if it holds an interest in or wishes to acquire an easement or right-of-way or has an equitable title or right acquired by contract with the record title holder.

(b) An easement or right of way agent employed by an owner means a person employed and directly compensated by an owner. An independent contractor is not an employee.

(c) Withholding income taxes and Federal Insurance Contributions Act (F.I.C.A.) taxes from wages paid another person is considered evidence of employment.

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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.43

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.43, concerning Standard Contract Form TREC No. 36-6, Addendum for Property Subject to Mandatory Membership in a Property Owners Association. The amendments to §537.43 adopt by reference Standard Contract Form TREC No. 36-7.

Paragraph A.1 is revised, paragraph A.2 is new to acknowledge recent statutory revisions which permit a buyer to obtain a resale certificate directly from a property owner's association, and paragraph A.3 is revised. Paragraph C is revised to replace "resulting from" to "associated with" to track recent statutory changes to Chapter 207, Property Code. Under new paragraph E, seller authorizes the association to release subdivision information and an updated resale certificate if required by the buyer, the title company, or any broker to the sale.

Amendments to the form change the main telephone number and website address for TREC located in the box at the bottom of the forms.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated economic cost to persons who are required to comply with the proposed section, other than the costs of obtaining copies of the form, which would be available at no charge through the TREC's web site

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be the availability of current standard contract forms that, among other things, conform to new or recently revised statutory requirements.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

§537.43. Standard Contract Form TREC No. 36-7 [6].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-7 [6] approved by the Texas Real Estate Commission in 2012 [2010] for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov [www.trec.state.tx.us].

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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Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS AND OTHER REQUIREMENTS

28 TAC §7.402

The Texas Department of Insurance (Department) proposes amendments to §7.402, concerning risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs).

The proposed amendments to §7.402 are necessary to implement and update the risk-based capital and surplus requirements for year-end 2011 for property and casualty insurers, including county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f); life insurance companies, including limited purpose subsidiary life insurance companies and stipulated premium insurance companies; HMOs and insurers filing the National Association of Insurance Commissioners (NAIC) Health blank; and fraternal benefit societies, by (i) adopting the 2011 NAIC risk-based capital formulas and instructions to be used for year-end 2011; and (ii) specifying the filing requirements for 2011 risk-based capital reports and supplemental reports and forms. The proposed amendments to §7.402 are necessary to require domestic and foreign fraternal benefit societies to file an electronic version of the 2011 fraternal risk-based capital report and any supplemental forms and reports with the NAIC and to subject fraternal benefit societies to a trend test. The proposed amendments to §7.402 also are necessary to implement changes enacted by the 82nd Legislature, Regular Session, in House Bill (HB) 3161, effective June 17, 2011, by adding limited purpose subsidiary life insurance companies to the list of defined "carriers" that must comply with the section. Insurers and HMOs subject to §7.402 are referred to collectively in this proposal as "carriers."

The proposed amendments to §7.402 are necessary to regulate risk-based capital and surplus requirements for carriers. The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholder surplus after taking into account the underwriting, financial, and investment risks of a carrier. The updated NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations in consideration of its size and risk exposure. The proposed amendments are necessary to adopt by reference the 2011 NAIC risk-based capital formulas to be used for year-end 2011. These formulas include the 2011 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2011 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, the 2011 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2011 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. Specifically, the proposed amendments to §7.402(d), in paragraphs (1) - (4), replace the date "2009" with "2011," and delete paragraphs (5) - (8). Additionally, the proposed amendments to §7.402(e) are necessary to specify the 2011 risk-based capital reporting requirements: (i) by deleting the phrase "except fraternal benefit societies, stipulated premium companies doing business only in Texas, and county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f)," and replacing the phrase "2009 and the 2010" with the word "2011" from paragraph (1); and (ii) deleting paragraphs (2), (3), and (4). These proposed changes clarify that fraternal benefit societies, stipulated premium companies, and county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) are required to file electronic versions of the 2011 RBC reports and any supplemental RBC forms and reports with the NAIC in accordance with and by the due dates specified in the RBC instructions. By March 1, 2011, stipulated premium companies doing business only in Texas and county mutual insurance companies were required, for the first time, to file electronic versions of the 2010 RBC reports with the NAIC. By March 1, 2012, fraternal benefit societies will be required, for the first time, to file electronic versions of the 2011 RBC reports with the NAIC.

Additionally, the proposed amendments to §7.402 expand the risk-based capital requirements for domestic and foreign fraternal benefit societies. Under the amendments to §7.402(b), (d), (e), and (g), as proposed, domestic and foreign fraternal benefit societies will be subject to the section's risk-based capital requirements for fraternal benefit societies and, for the first time, will be required to file an electronic version of the 2011 risk-based capital report and any supplemental forms and reports with the

NAIC in accordance with and by the due date specified in the RBC instructions. Specifically, the proposed amendments to §7.402(b): (i) revise paragraph (1) to delete the sentence "Fraternal benefit societies are subject to their own separate risk-based capital instructions as provided in subsection (d)(2) of this section."; and (ii) add a new paragraph (4) to specify that "This section does apply to domestic and foreign benefit societies." The proposed amendment to §7.402(d)(2) adopts by reference the 2011 risk-based capital formulas and instructions adopted by the NAIC this year for fraternal benefit societies. Additionally, the proposed amendments to §7.402 add new subsection (g)(8) which imposes new substantive trend test requirements for fraternal benefit societies for year-end 2011, and each calendar year thereafter. New subsection (g)(8), as proposed, subjects a fraternal benefit society to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. In that case, and if the result of the trend test as determined by the formula is "YES," the fraternal benefit society will be subject to the company action level requirements and will need to file additional reporting with the Department as a result of the trend test. This new requirement is necessary because it will allow for early identification of a fraternal benefit society that is likely to reach a company action level in the following year. By triggering a company action level sooner, a fraternal benefit society can plan better for its capital needs and the Department will receive information related to its solvency regulatory duties which is necessary to protect the interests of the public.

The proposed amendments to §7.402 also are necessary to implement HB 3161. HB 3161 added a new Subchapter I to Chapter 841 of the Insurance Code to authorize the establishment of domestic limited purpose subsidiary life insurance companies to enable those companies to support excess reserves for certain life insurance policies. New Insurance Code §841.410(b) and (c) require a limited purpose subsidiary life insurance company to comply with the risk-based capital requirements adopted by the Commissioner by rule, and to maintain risk-based capital in an amount that is at least equal to 300 percent of the authorized control level of risk-based capital adopted by the Commissioner. New §841.414(c) requires a limited purpose subsidiary life insurance company annually to file with the Commissioner a report of the limited purpose subsidiary life insurance company's risk-based capital level as of the end of the preceding calendar year containing the information required by the risk-based capital instructions adopted by the Commissioner. Under the amendments to §7.402(b), (d), and (e), as proposed, each limited purpose subsidiary life insurance company will be subject to the section's risk-based capital requirements for life insurers and will be required to file an electronic version of the 2011 risk-based capital report and any supplemental forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions. Under the amendments to §7.402(b), (d), and (e), as proposed, a limited purpose subsidiary life insurance company also will be subject to a trend test under §7.402(g)(5) if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 250 percent. In that case, and if a limited purpose subsidiary life insurance company trends below 190 percent of total adjusted capital to authorized control level risk-based capital, it will be subject to the company action level requirements and will need to file additional reporting with the Department as a result of the trend test. This new requirement is necessary because it will allow for early identification of a limited purpose subsidiary life insurance company that is likely to reach a company action level in the following year. By triggering a company action level sooner, a limited purpose subsidiary life insurance company can plan better for its capital needs and the Department will receive information related to its solvency regulatory duties which is necessary to protect the interests of the public.

Copies of the documents proposed in §7.402 for adoption by reference are available for inspection in Financial Analysis, Financial Regulation Division, Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas 78701.

FISCAL NOTE. Mr. Danny Saenz, Deputy Commissioner, Financial Regulation Division, has determined that, for each year of the first five years the proposed amended section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The amended section will have no effect on local employment or local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that for each year of the first five years the proposed amended section is in effect, the anticipated public benefit will be that the Department will be able to more effectively utilize existing resources in the review of the operations and financial condition of carriers, to more efficiently monitor solvency of the carriers subject to the proposal, and to implement the most current risk-based capital requirements. The amended section will enable the Department to administer appropriate and proactive regulatory actions to protect the interests of the public against carriers whose financial condition may potentially be hazardous. The risk-based capital requirements are methods of ensuring carrier solvency for the benefit of policyholders and others conducting business with insurers. The risk-based capital requirement ensures that a carrier has an appropriate level of policyholders' surplus after taking into account the underwriting, financial, and investment risks of a carrier. The NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations considering its size and risk exposure. The new minimum capital and surplus requirements similarly require carriers to maintain minimum amounts of net assets to safely operate and pay policyholder claims.

With the exception of amended subsection (e), as proposed, and new subsection (g)(8) related to fraternal benefit societies, the proposed amendments to §7.402 contain the same substantive risk-based capital and surplus requirements of existing §7.402 for year-end 2010 but the compliance with the requirements will be based on the use of the 2011 NAIC risk-based capital formulas. Therefore, carriers previously subject to the rule will incur the same types of costs for year-end 2011 to comply with these requirements that were incurred for year-end 2010. The Department does not anticipate that any new, incremental costs will be incurred by carriers that were previously subject to §7.402 as a result of the proposed amendments.

However, because the scope of proposed §7.402(b) is expanded to also include fraternal benefit societies and limited purpose subsidiary life insurance companies, all of the costs for these specific carriers to now comply with the rule are set out below.

Section 7.402.

The Department has determined that the requirements of §7.402, which are proposed to be expanded to apply to limited purpose subsidiary life insurance companies and to fraternal

benefit societies, contain two separate sets of requirements that must be analyzed in order to determine costs to carriers required to comply with the proposal. The two sets of requirements that may result in costs to carriers relate to (i) §7.402(b), (d), and (e) concerning risk-based capital reports; and (ii) §7.402(g)(1) - (7), and proposed new (8), concerning additional reporting requirements.

Section 7.402(b), (d), and (e) concern, respectively, the scope of §7.402, the adoption of the risk-based capital formulas by reference, and the filing requirements for the subject carriers. Section 7.402(b), (d), and (e) require, regardless of size, certain property and casualty insurers; certain life insurance companies, including but not limited to, stipulated premium insurance companies and limited purpose subsidiary life insurance companies; fraternal benefit societies; and HMOs and insurers filing the National Association of Insurance Commissioners (NAIC) Health blank (the term "carriers" refers to all of these entities) to complete a risk-based capital report and reflect the results of that report in their financial statements filed with the Department. Section 7.402 does not apply to certain types of specified insurers and certain specified insurers with limited operations. Specifically, §7.402(b)(1) provides that §7.402 does not apply to any insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that is $10,000 or less. Further, the scope indicated in §7.402(b)(1) does not include certain carriers regulated by the Department, such as a statewide mutual assessment association, a local mutual aid association, a mutual burial association and an exempt association.

Certain carriers that have business subject to §7.402(d)(1) are also required to perform risk-based capital calculations pursuant to the 2011 life risk-based capital C-3 Phase II instructions. This requirement relates to certain unique types of annuity business that is generally written only by large carriers. The C-3 Phase II calculations are considered a more appropriate measure of the capital requirement for the interest rate risks and market risks associated with this type of annuity business, by requiring carriers to evaluate how various guarantees react to changes in equity markets and interest rates. The less than 10 large domestic carriers expected to be affected by the 2011 life risk-based capital C-3 Phase II instructions will incur ongoing annual actuarial and computer personnel costs to perform the C-3 Phase II calculations. The Department estimates that these actuarial personnel costs will range from $25 per hour to approximately $300 per hour. Computer personnel costs are estimated to range from $25 per hour to approximately $150 per hour. The annual costs for each of these few large domestic carriers in Texas are estimated to range from one-half of one percent to one percent of the annual costs of administering each of the carrier's business affected by the C-3 Phase II requirements. The Department anticipates that such annual costs per carrier are believed to be similar for each foreign carrier in Texas with business subject to these requirements. The Department's estimations are based upon discussions with industry representatives familiar with resources and costs needed for these computations. Discussions with industry representatives involved several of the large domestic carriers in Texas estimated to have over half of the domestic carrier variable annuity business in Texas as measured on the basis of accumulation value for this business. Also, regardless of size, carriers specified in §7.402(b) that fail to maintain capital and surplus in accordance with the specified levels in §7.402(g)(1), (2), (5), (6), (7), and proposed new (8) are required to prepare and implement a comprehensive financial plan under §7.402(g)(1), (2), (5), (6), (7), and proposed new (8).

Any carrier specified in §7.402(b) is required to comply with the requirements in §7.402(d) and (e) to prepare a risk-based capital report and reflect the results of the report in the carrier's financial statements filed with the Department. These costs will vary from carrier to carrier based on various factors, which include the size and type of the carrier, the character of its investments, the kinds and nature of the risks insured, the type of software used by the carrier to complete its annual statement, and employee compensation expenses. Under §7.402, each carrier subject to §7.402(b), (d), and (e), regardless of size, is required to acquire NAIC risk-based capital software at a cost of approximately $650 per entity for each carrier. The labor cost to transfer the information from a carrier's records to the applicable report will vary depending on the size of the carrier and the character of its investments; the transfer by larger carriers and carriers with more complex investments will generally take longer. If a carrier uses the annual statement software that conforms to NAIC specifications provided by authorized vendors to prepare its annual report, and if that software is linked to the risk-based capital formula software, the Department estimates that the information can be transferred and the formula completed in four hours or less. If the annual statement software is not linked to the risk-based capital formula, the Department estimates that a carrier will be able to transfer the information from its records to the risk-based formula in eight to 16 hours. The Department's estimations are based upon discussions with industry representatives who are responsible for maintaining accounting records for carriers. It is anticipated that a carrier, regardless of size, will utilize an employee who is familiar with the accounting records of the carrier and accounting practices in general. The Department estimates that the compensation for this employee will range from approximately $20 to $40 an hour. After the completion of the transfer of information, the resulting risk-based capital report will likely be reviewed by an officer of the carrier who is responsible for the preparation of the financial reports of the carrier. The Department estimates that such officers are compensated at a range from approximately $40 per hour to approximately $100 per hour, or more. The Department also estimates that large carriers generally will compensate these officers at the higher end of the salary range. Therefore, based on the Department's experience, the cost of review of the risk-based capital report for small carriers will typically be less than the cost for large carriers.

Section 7.402(g)(1), (2), (5), (6), (7), and proposed new (8) concern reporting requirements for certain carriers and certain remedial actions the Commissioner is authorized or required to take based upon a carrier's specific risk-based capital calculations. A few carriers (estimated to be less than one percent of the total carriers doing business in Texas) may need to prepare and file additional reporting with the Department at the company action level, as provided in §7.402(g)(1), (2), (5), (6), (7), and proposed new (8). The costs of this reporting will vary by company size and complexity, as well as the amount of risk that each company assumes, but will generally involve an employee who is familiar with the accounting records of the carrier and is compensated at an estimated rate from $20 to $40 per hour. Assistance from actuarial staff may be required, and actuarial personnel costs is estimated to range from $25 per hour to approximately $300 per hour. The additional reporting requirements typically will involve the chief financial officer or other similar officer responsible for preparing the financial reports; such officers are generally compensated at hourly rates that may range from $40 per hour to

approximately $300 per hour. The Department also estimates that large carriers generally will compensate these officers at the higher end of the salary range. Therefore, based on the Department's experience, the costs of preparation and filing of the additional reporting to the Department at the company action level are estimated to be relatively less for small and micro business carriers compared to large business carriers. Company action level reporting and its associated costs are intended to stave off other, higher costs that impacted carriers will likely incur absent their timely action to address the underlying concerns. Company action level reporting enables the Department to administer appropriate and proactive regulatory actions in order to protect the interests of the public against carriers whose financial condition may potentially be hazardous.

The Department does not anticipate any new, incremental costs as a result of the adoption of the 2011 risk-based capital formulas to require a level of capital that is significantly different from the capital requirements for 2010. A relatively large percentage of carriers have been required by the Department to comply with the risk-based capital requirements for several years. For fraternal benefit societies and limited purpose subsidiary life insurance companies now required to comply with additional 2011 filing and other risk-based capital requirements due to the proposed expansion of the scope of §7.402, the costs associated with compliance will be that same as that for other carriers as set out herein. However, the function of the risk-based capital formula is to protect policyholders from the effects of insolvency, which may require some carriers to increase their capital and/or surplus, or otherwise reduce the amount of risk that the carriers assume to ensure they have an adequate amount of capital. To the extent any carrier must increase its capital and/or surplus or as a result of the risk-based capital requirements, that cost is the amount of capital and/or surplus or other action required and is a result of the statutory requirements in the Insurance Code Chapter 404 and §§441.001, 441.005, 441.051, 441.052, 822.210, 822.211, 841.205, 841.206, 841.410(b) and (c), 841.414(c), 843.404, 884.206, 885.401, 982.105, and 982.106. Moreover, as limited purpose subsidiary life insurance companies and fraternal benefit societies were not previously subject to some or all of the filing and other risk-based capital requirements, the Department anticipates that these specific carriers will be more likely to be required to increase their capital and/or surplus or take other action as a result of the application of the proposed amendments when compared to carriers that were previously subject to risk-based capital requirements. To the extent that additional capital and/or surplus or other action may be required, the exact cost of compliance will vary significantly between carriers based upon a number of factors, which include: (1) the amount of capital and/or surplus currently maintained by the carrier; (2) the amount of capital and/or surplus required based upon the application of the risk-based capital requirements under the proposed new section; (3) the size and complexity of the carrier; and (4) the amount and complexity of the underwriting, financial, and investment risks that are assumed by the carrier.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. The Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

As required by the Government Code §2006.002(c), the Department has determined that the proposed amendments to §7.402, with the exception of amended subsection (e), as proposed, and new subsection (g)(8), related to fraternal benefit societies, contain the same requirements also applicable to the risk-based capital and surplus requirements for year-end 2010 but now using the 2011 risk-based capital formulas. Therefore, the same types of costs that were incurred for year-end 2010 to comply with these requirements will also be incurred for year-end 2011. The Department does not anticipate any new, incremental costs as a result of the proposed amendments for carriers that are subject to the existing requirements of §7.402. As previously detailed, however, the scope of the proposed new requirements in §7.402 for 2011 has been expanded to include domestic and foreign fraternal benefit societies and limited purpose subsidiary life insurance companies and, therefore, the Department provides the following analysis of the economic impact on the domestic and foreign fraternal benefit societies and limited purpose subsidiary life insurance companies that must now comply with §7.402.

Section 7.402.

The Department has determined that §7.402 contains two separate sets of requirements which will now apply to all carriers, unless they are expressly exempted, including domestic and foreign fraternal benefit societies and limited purpose subsidiary life insurance companies that are also small and micro business carriers. The two sets of requirements that may result in costs to carriers relate to (1) §7.402(b), (d), and (e); and (2) §7.402(g)(1), (2), (5), (6), (7), and proposed new (8). As previously stated in the Public Benefit/Cost Note part of this proposal, all of the requirements in the existing §7.402 continue to apply, but the compliance with the requirements will be based on the use of the 2011 risk-based capital formulas and instructions for domestic and foreign fraternal benefit societies and limited purpose subsidiary life insurance companies. Therefore, the same types of costs that were incurred by small and micro business carriers for year-end 2010 to comply with these requirements would be incurred by domestic and foreign fraternal benefit societies and limited purpose subsidiary life insurance companies for year-end 2011.

Section 7.402(b), (d), and (e) require carriers specified in §7.402(b), regardless of size, to complete a risk-based capital report and reflect the results of that report in their financial statements filed with the Department. Separate and apart from any requirements of the Government Code §2006.002(c), §7.402(b)(1) excludes certain insurers from compliance with the §7.402 requirements. These insurers are more likely to be small or micro business carriers because of the insurers' types or methods of operation. Under §7.402(b)(1), the risk-based capital requirements in §7.402 do not apply to any insurance company that writes or assumes a life insurance or annuity

contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that is $10,000 or less. Further, under §7.402(b)(1), certain insurers are excluded entirely from compliance with the §7.402 requirements. These include statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations. Section 7.402(d) and (e) require carriers specified in §7.402(b), regardless of size, to maintain capital and surplus in accordance with the specified levels. The failure to do so triggers the requirements in §7.402(g) that the carrier prepare and implement a comprehensive financial plan. Certain carriers that have annuity business subject to §7.402(d)(1) are required to perform risk-based capital calculations pursuant to the proposed 2011 life risk-based capital C-3 Phase II instructions. The C-3 Phase II requirement relates to certain unique types of annuity business that are generally written only by large carriers. As required by the Government Code §2006.002(c), the Department has determined that §7.402(d)(1) will not have an adverse economic effect on any small or micro businesses, including the domestic and foreign fraternal benefit societies and limited purpose subsidiary life insurance companies added to the list of carriers subject to §7.402. The Department does not anticipate that any small or micro business carriers will have business subject to §7.402(d)(1). Therefore no small or micro business will be required to perform risk-based capital calculations pursuant to the 2011 life risk-based capital C-3 Phase II instructions.

As required by the Government Code §2006.002(c), the Department has determined that approximately 50 to 100 of the carriers specified in §7.402(b), including, but not limited to, domestic and foreign fraternal benefit societies and limited purpose subsidiary life insurance companies, are small or micro-business carriers that will be required to comply with the requirements in §7.402(d) and (e) to prepare a risk-based capital report and reflect the results of the report in the carrier's financial statements filed with the Department. These small or micro business carriers will incur routine costs associated with completing the risk-based capital report and reflecting the results in their financial statements filed with the Department. Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 50 to 100 small or micro business carriers. These routine costs of compliance will vary between large business carriers and small or micro-business carriers based upon the carrier's type and size and other factors, including the character of the carrier's investments, the kinds and nature of the risks insured, the type of software used by the carrier to complete its annual statement, and employee compensation expenses. The Department's cost analysis and resulting estimated routine costs for carriers in the Public Benefit/Cost Note portion of this proposal are equally applicable to small and micro-businesses. As indicated in the Public Benefit/Cost Note analysis, these routine costs will be less for small or micro business carriers. This is primarily because small or micro business carriers will incur less labor costs in transferring information from their records to the risk-based capital reports due to their smaller and less complex investment portfolios than large business carriers. Also, small or micro business carriers may compensate officers who review risk-based capital reports at a lower salary than large business carriers.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this amendment, i.e., completing the risk-based capital report and reflecting the results in the carrier's financial statements filed with the Department, will not have an adverse economic effect on small or micro businesses, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule.

§7.402(g)(1), (2), (5), (6), (7), and proposed new (8). As required by the Government Code §2006.002(c), the Department has determined that the costs to comply with §7.402(g)(1), (2), (5), (6), (7), and proposed new (8) may have an adverse economic effect on an estimated one or two small or micro-business carriers (i.e., all carriers subject to §7.402 including domestic and foreign fraternal benefit societies and limited purpose subsidiary life insurance companies). Such costs will only be incurred by these relatively few small or micro-business carriers because of the failure of the individual carrier to maintain capital and surplus in accordance with the levels required in §7.402(g)(1), (2), (5), (6), (7), and proposed new (8). This failure will trigger the requirement in §7.402(g)(1), (2), (5), (6), (7), and proposed new (8) that the carrier prepare and implement a comprehensive financial plan. This plan will be necessary to identify the conditions that contribute to the carrier's financial condition. The plan must contain proposals to correct areas of substantial regulatory concern and projections of the carrier's financial condition, both with and without the proposed corrections, including plans to restore its capital and surplus to acceptable levels. The total cost of compliance with §7.402(g)(1), (2), (5), (6), (7), and proposed new (8) for preparing and implementing comprehensive financial plans will depend on the size and type of the small or micro-business carrier and several other factors. The other factors will vary by company size and complexity, as well as the amount of risk that each company assumes. The Department's cost analysis and resulting estimated costs for carriers who will be required to prepare and implement a comprehensive financial plan in the Public Benefit/Cost Note portion of this proposal are equally applicable to small or micro-businesses. As indicated in the Public Benefit/Cost Note analysis, these costs will be less for small or micro-business carriers, primarily because small or micro business carriers will incur less labor costs in transferring information from their records to the risk-based capital reports due to their smaller and less complex investment portfolios than large business carriers and because small or micro business carriers may compensate officers that review risk-based capital reports at a lower salary than large business carriers. The function of the risk-based capital formulas in §7.402(d) is to protect policyholders, enrollees, and carriers from the effects of carrier insolvency. Therefore, carriers, regardless of size, that are required to submit comprehensive financial plans may also be required to increase their capital. To the extent any carrier must increase its capital as a result of the risk-based capital requirements, that cost is the amount of capital required and is a result of the statutory requirements in the Insurance Code Chapter 404 and §§441.001, 441.005, 441.051, 441.052, 822.210, 822.211, 841.205, 841.206, 841.410(b) and (c), 841.414(c), 843.404, 884.206. 885.401, 982.105, and 982.106. These statutes authorize or require the Commissioner to order carriers that are operating in a potentially hazardous manner to take action to remedy such hazardous condition, which may

include the requirement that the carriers increase their capital and surplus and take other remedial action.

In accordance with the Government Code §2006.002(c-1), the Department has determined that even though §7.402(g)(1), (2), (5), (6), (7), and proposed new (8) may have an adverse economic effect on small or micro-businesses that are required to comply with these proposed requirements, the Department is not required to prepare a regulatory flexibility analysis as required in §2006.002(c)(2) of the Government Code. Section 2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis ". . . consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

Section 7.402(g)(1), (2), (5), (6), (7), and proposed new (8) are authorized by the following Insurance Code statutes: Chapter 404 and §§441.001, 441.005, 441.051, 441.052, 822.210, 822.211, 841.205, 841.410(b) and (c), 841.414(c), 843.404, 884.206, 885.401, 982.105, and 982.106. The primary purpose of Chapter 404 and §§441.001, 441.005, 441.051, 441.052, 822.210, 822.211, 841.205, 841.410(b) and (c), 841.414(c), 843.404, 884.206, 885.401, 982.105, and 982.106 is to require a carrier to maintain capital and surplus in amounts that exceed the minimum amounts required by statute because of (i) the nature and kind of risks the carrier underwrites or reinsures; (ii) the premium volume of risks the carrier underwrites or reinsures; (iii) the composition, quality, duration, or liquidity of the carrier's investments; (iv) fluctuations in the market value of securities the carrier holds; or (v) the adequacy of the carrier's reserves. These statutes further require that a rule adopted by the Commissioner be designed to ensure the financial solvency of a carrier for the protection of policyholders, enrollees, creditors, or the general public from the harmful effects of carrier insolvency. Additionally, the primary purpose of Chapters 404 and 441 is to protect insureds, enrollees or creditors, and the public against an insurer or HMO becoming insolvent, delinquent, or in a condition that renders the continuance of its business hazardous to its insureds, enrollees or creditors, or to the public. Chapter 404 permits the Commissioner to take various actions against an insurer upon a finding of impairment or hazardous condition, including a requirement that the capital and surplus of an insurer be increased. Section 441.001(g) provides that for the reasons stated in §441.001, the substance and procedures relating to insurer delinquencies and insolvencies in Insurance Code Chapter 441 are the public policy of the State of Texas and are necessary to the public welfare. Section 441.001(a) states that insurer delinquencies destroy public confidence in the state's ability to regulate insurers and an insurer delinquency affects other insurers by creating a lack of public confidence in insurance and insurers. Section 441.001(b) states that placing an insurer in receivership often destroys or diminishes, or is likely to destroy or diminish, the value of the insurer's assets. Further, the purpose of Insurance Code §§441.051, 822.211, and 841.206 is to prohibit the impairment of a carrier's minimum required capital or surplus, and these statutes require that the Commissioner take action to remedy the impairment. Sections 441.051, 822.211, and 841.206 further provide that the failure of a carrier to maintain its required capital or surplus at levels required by the Commissioner by rule is considered a prohibited impairment.

The purpose of §7.402(g)(1), (2), (5), (6), (7), and proposed new (8) is to protect the economic welfare of (i) carriers; (ii) consumers that purchase insurance policies, annuities and other contracts issued by property and casualty insurers; life insurance companies, including, but not limited to stipulated premium insurance companies and limited purpose subsidiary life insurance companies; health insurance companies; fraternal benefit societies; and HMOs and insurers filing the NAIC Health blank; (iii) other persons and entities that would be adversely affected by a carrier insolvency against the risk that a carrier may become insolvent and unable to pay its insureds' claims and other obligations as they become due; and (iv) the public and the state of Texas generally.

The requirements in §7.402(g) that carriers maintain capital and surplus at acceptable levels or prepare a comprehensive financial plan to restore their capital and surplus to acceptable levels are consistent with and necessary to implement the legislative intent of Chapter 404 and §§441.001, 441.005, 441.051, 441.052, 822.210, 822.211, 841.205, 841.410(b) and (c), 841.414(c), 843.404, 884.206, 885.401, 982.105, and 982.106 of the Insurance Code. This intent is to ensure the financial solvency of a carrier, regardless of size, for the protection of the economic interests of all policyholders and not just the economic interests of those policyholders insured by large carriers.

Therefore, the Department has determined, in accordance with §2006.002(c-1) of the Government Code, that because the purpose of §7.402(g)(1), (2), (5), (6), (7), and proposed new (8) and the authorizing statutes of the Insurance Code is to protect carrier and consumer economic interests and the state's economic welfare, there are no additional regulatory alternatives to the required comprehensive financial plans and increased capital required as a result of the risk-based capital requirements that will sufficiently protect the economic interests of carriers and consumers and the economic welfare of the state.

TAKINGS IMPACT ASSESSMENT. The Department 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.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 30, 2012, to Sara Waitt, Acting General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Danny Saenz, Deputy Commissioner, Financial Regulation Division, Mail Code 305-2A, P. O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code Chapters 404 and 441 and §§822.210, 822.211, 841.205, 841.410(b) and (c), 841.414(c), 843.404, 884.054, 884.206, 885.401, 982.105, 982.106, and 36.001. Chapter 404 addresses the duties of the Department when an insurer's solvency is impaired. Section 404.004 provides that the Commissioner's authority to increase any capital and surplus requirements prevails over the general provisions of the Insurance Code relating to specific companies, and §404.005 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies and insolvencies. Under §441.005, the Commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441. Section 441.051 specifies "the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency" and includes certain statutorily specified conditions, including if an insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Section 822.210 authorizes the Commissioner to adopt rules or guidelines to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 822.211 specifies the actions the Commissioner may take if an insurance company does not comply with the capital and surplus requirements of Chapter 822. Section 841.205 authorizes the Commissioner to adopt rules or guidelines to require an insurer that writes life or annuity contracts or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or a combination of these policies, in an amount that exceeds $10,000 to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 841.410(b) and (c) require a limited purpose subsidiary life insurance company to comply with the risk-based capital requirements adopted by the Commissioner by rule, and maintain risk-based capital in an amount that is at least equal to 300 percent of the authorized control level of risk-based capital adopted by the Commissioner. Section 841.414(c) requires a limited purpose subsidiary life insurance company annually to file with the Commissioner a report of the limited purpose subsidiary life insurance company's risk-based capital level as of the end of the preceding calendar year containing the information required by the risk-based capital instructions adopted by the Commissioner. Section 843.404 authorizes the Commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of health maintenance organizations for the protection of enrollees. Section 884.054 specifies the capital stock and surplus requirements for stipulated premium insurance companies. Section 884.206 authorizes the Commissioner to adopt rules to require an insurer that writes or assumes life insurance, annuity contracts or accident and health insurance for a risk to one person in an amount that exceeds $10,000 to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the Commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the Department to use the annual report in determining a society's financial solvency. Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other than life, health, or accident insurance companies. Section 36.001 authorizes the Commissioner to 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.

CROSS REFERENCE TO STATUTES. The following statutes are affected by this proposal: Insurance Code Chapters 404 and 441 and §§822.210, 822.211, 841.205, 841.410(b) and (c), 841.414(c), 843.404, 884.054, 884.206, 885.401, 982.105, and 982.106.

§7.402. Risk-Based Capital and Surplus Requirements for Insurers and HMOs.

(a) (No change.)

(b) Scope.

(1) Life companies. This section applies to any insurer authorized to do business in Texas as an insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that exceeds $10,000 including: capital stock companies, mutual life companies, limited purpose subsidiary life insurance companies, and stipulated premium insurance companies. [~~Fraternal benefit societies are subject to their own separate risk-based capital instructions as provided in subsection (d)(2) of this section.~~]

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

(4) Fraternal benefit societies. This section applies to all domestic and foreign fraternal benefit societies.

(c) (No change.)

(d) Adoption of RBC formula by reference. The commissioner adopts by reference the following, which are available for inspection in the Financial Analysis Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas:

(1) The 2011 [~~2009~~] NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(2) The 2011 [~~2009~~] NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(3) The 2011 [~~2009~~] NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(4) The 2011 [~~2009~~] NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

~~[(5) The 2010 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.]~~

~~[(6) The 2010 NAIC Fraternal Benefit Societies Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.]~~

[(7) The 2010 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.]

[(8) The 2010 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.]

(e) Filing requirements.

[(1)] All companies subject to this section[, except fraternal benefit societies, stipulated premium companies doing business only in Texas, and county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f),] are required to file electronic versions of the 2011 [2009 and the 2010] RBC reports and any supplemental RBC forms and reports with the NAIC in accordance with and by the due dates specified in the RBC instructions.

[(2) Fraternal benefit societies shall prepare, maintain, and file a paper copy of the 2009 RBC report and any supplemental RBC forms and reports with the department whenever requested by the department. Fraternal benefit societies shall prepare and maintain a paper copy of the 2010 RBC report and any supplemental RBC forms and reports by March 1, 2011, and make the reports and forms available for review whenever requested by the department. The 2009 and 2010 RBC reports and any supplemental RBC forms and reports shall be completed in accordance with the respective calendar-year RBC instructions.]

[(3) Stipulated premium insurance companies only doing business in Texas are not required to file the 2009 RBC report, but shall file an electronic version of the 2010 RBC report and any supplemental RBC forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions.]

[(4) County mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) are not required to file the 2009 RBC report but shall file an electronic version of the 2010 RBC report and any supplemental RBC forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions.]

(f) (No change.)

(g) Actions of commissioner. The level of risk-based capital is calculated and reported annually. Depending on the results computed by the risk-based capital formula, the commissioner of insurance may take a number of remedial actions, as considered necessary. The ratio result of the total adjusted capital to authorized control level risk-based capital requires the following actions related to an insurer within the specified ranges:

(1) - (7) (No change.)

(8) A fraternal benefit society subject to this section is subject to a trend test described in the RBC formula, if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 250 percent. Any fraternal benefit society that trends below 190 percent of total adjusted capital to authorized control level risk-based capital triggers the company action level.

(h) - (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 December 16, 2011.

TRD-201105665
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 463-6327

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

CHAPTER 133. GENERAL MEDICAL PROVISIONS

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §§133.2, 133.240, 133.250, 133.270, and 133.305 concerning medical billing and processing and the dispute of medical bills. These amendments are necessary to: (1) harmonize these rules with other Division rules and procedures, Chapter 504, Labor Code, and certain provisions of Chapters 1305 and 4201, Insurance Code; (2) clarify the Division's requirements for explanations of benefits submitted in paper format; and (3) make other changes necessary to clarify the implementation and application of these sections. The Division proposes these amendments in conjunction with its proposed amendments to 28 TAC §134.600 (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care) published elsewhere in this issue of the *Texas Register.*

On December 16, 2011, the Division withdrew its proposed amendments to §§133.2, 133.240, 133.250, 133.270, and 133.305, which were published in the July 29, 2011, issue of the *Texas Register* (36 TexReg 4774). The Division determined this withdrawal was necessary because the primary purpose of those proposed amendments was to harmonize those sections with the amendments to 28 TAC §§19.2001 - 19.2017 and 19.2019 - 19.2021 (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) (Subchapter U) proposed by the Department in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4255). On December 2, 2011, however, the Department withdrew these proposed amendments to Subchapter U and announced that it would be issuing new informal draft rules on the same topic in early 2012. In light of this withdrawal and announcement, the majority of the Division's proposed amendments to §§133.2, 133.240, 133.250, 133.270, and 133.305 became premature and could not be adopted. The Division, therefore, intends to propose informal draft rules relating to utilization review of workers' compensation health care services that will harmonize with the Department's proposed informal draft rules relating to utilization review after the Department has informally proposed those rules.

Additionally, the Division reproposes the amendments to §§133.2, 133.240, 133.250, 133.270, and 133.305 that do not relate to the Department's proposed amendments to Subchapter U. As stated above, these proposed amendments are necessary to: (1) harmonize these rules with other Division rules and procedures, Chapter 504, Labor Code, and certain other provisions of Chapters 1305 and 4201, Insurance Code; (2) clarify the Division's requirements for explanations of benefits submitted in paper format; and (3) make other changes

necessary to clarify the implementation and application of these sections. Furthermore, the Division emphasizes that most of these proposed amendments were previously proposed on July 29, 2011 before being withdrawn.

The Division has added amendments to this proposal that were not previously proposed in the Division's withdrawn amendments. Most of these changes have been proposed in response to public comments the Division received on its withdrawn proposal. Others were necessary to comply with other statutory or Division rule changes. Primarily, the Division has: (1) extended the time for an insurance carrier to take final action on a request for reconsideration from 21 days to 30 days and shortened the time period for a health care provider to request reconsideration from 11 months from the date of service to 10 months to conform with this change; (2) extended the time required before a health care provider may resubmit a request for reconsideration from 26 days after the insurance carrier either received the original request or took final action on the request to 35 days after these actions, as applicable; (3) clarified that all utilization review agents and registered insurance carriers who perform utilization review under these proposed sections must have written policies that evidence compliance with Labor Code §504.055, regarding expedited provision of medical benefits for first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment; (4) clarified that when an insurance carrier remits payment to a pharmacy processing agent, the pharmacy processing agent's reimbursement from the insurance carrier shall be made in accordance with §134.503 of this title (relating to Pharmacy Fee Guideline); and (5) amended §133.305(c) to harmonize with Labor Code §408.0281 and §504.053. These changes and all other proposed substantive changes are detailed below.

Lastly, these proposed amendments make non-substantive changes to these sections to conform to current nomenclature, reformatting, consistency, clarity, and to correct typographical and/or grammatical errors.

Proposed Amended §133.2. The proposed amendment to §133.2(1) defines "agent" as a "person with whom a system participant utilizes or contracts with for the purpose of providing claims service or fulfilling medical bill processing obligations under Labor Code, Title 5 and rules. The system participant who utilizes or contracts with the agent may also be responsible for the administrative violations of that agent." This definition is necessary to correspond with the definition of "agent" in 28 TAC §180.1 of this title (relating to Definitions) and to harmonize the definitions of "health care provider agent" and "insurance carrier agent" that are proposed as deleted from this section. This amendment also clarifies that "[t]his definition does not apply to 'agent' as used in the term 'pharmacy processing agent.'" This amendment is necessary because "pharmacy processing agent" is a statutorily defined term under Labor Code §413.0111.

Proposed Amended §133.240. The proposed amendment to §133.240(b) clarifies that for pharmaceutical services provided to any injured employee, the insurance carrier shall not deny reimbursement based on medical necessity for pharmaceutical services preauthorized or agreed to under Chapter 134, Subchapter F of this title. The clarification harmonizes §133.240 with the Division's amendments to Chapter 134, Subchapter F of this title (relating to Pharmaceutical Benefits). Specifically, it clarifies that pharmaceutical services provided to injured employees, through either network or non-network workers' compensation coverage, cannot be denied based on medical necessity if those services were preauthorized or agreed to under §134.510(c) - (d) of this title (relating to Transition to the Use of the Closed Formulary for Claims with Dates of Injury Prior to September 1, 2011).

The proposed amendment to §133.240(e) requires insurance carriers to send an explanation of benefits in "accordance with the elements required by §133.500 and §133.501 of this title (relating to Electronic Formats for Electronic Medical Bill Processing and Electronic Medical Bill Processing, respectively) if the insurance carrier submits the explanation of benefits in the form of an electronic remittance. The insurance carrier shall send an explanation of benefits in accordance with subsection (f) of this section if the insurance carrier submits the explanation of benefits in paper form." This amendment is necessary to harmonize subsection (e) with §133.500 and 133.501, and with new subsection (f) that prescribes the required elements for explanations of benefits submitted in paper form by an insurance carrier.

Proposed amendments to §133.240(e)(1) clarifies to which health care provider insurance carriers must send an explanation of benefits. Specifically, the proposed amendment to §133.240(e)(1) clarifies that in all cases insurance carriers shall provide an explanation of benefits to the health care provider who submitted the bill. This amendment is necessary to clarify the existing reporting requirement of §133.240(e)(1).

The proposed amendment to §133.240(e)(2)(B)(iv) clarifies that §133.240(e)(2)(B)(iv) applies when the doctor is performing a designated doctor examination under Labor Code §408.0041 not simply 28 TAC §130.6 of this title (relating to Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings). This amendment is necessary because it updates this provision to reflect the variety of examinations, other than maximum medical improvement and impairment rating examinations, that a designated doctor may perform under Labor Code §408.0041.

The proposed amendment to §133.240(e)(3) provides that insurance carriers must send an explanation of benefits to "the prescribing doctor when payment is denied for pharmaceutical services because of any reason relating to the compensability of, liability for, extent of, or relatedness to the compensable injury, or for reasons relating to the reasonableness or medical necessity of the pharmaceutical services." This amendment is necessary to harmonize proposed §133.240(e) with §134.502(f) of this title (relating to Pharmaceutical Services), which contains the same requirement.

The proposed amendment to §133.240(f) lists the required elements of an explanation of benefits sent by an insurance carrier under §133.240(e), §133.250 of this title (relating to Reconsideration for Payment of Medical Bills) and §133.260 of this title (relating to Refunds). These amendments primarily incorporate the elements of the Division's current form DWC-062, and, therefore, provide increased clarity for insurance carriers who must comply with these requirements. Additionally, these proposed amendments also add new requirements to these explanations of benefits. Specifically, proposed amended subsection (f) now requires insurance carriers to include the name of the certified workers' compensation health care network through which the care was provided (if applicable) and the name of any pharmacy informal or voluntary network through which payment was made (if applicable). Proposed amended subsection (f) also requires insurance carriers to include only the last four digits of an injured employee's social security number. Finally, proposed amended subsection (f) permits insurance carriers to use a health care

provider's national provider identifier instead of the health care provider federal tax ID number if the health care provider's federal tax ID number is the same as the health care provider's social security number. These new elements are necessary to ensure injured employee and health care provider confidentiality and to provide full disclosure of all network affiliations related to the claim.

The proposed amendment to §133.240(g) provides that when an insurance carrier pays a health care provider for health care for which the Division has not established a maximum allowable reimbursement, the insurance carrier shall explain and document the method it used to calculate the payment in accordance with §134.503 of this title (relating to Pharmacy Fee Guideline), if applicable. This amendment is necessary to harmonize this proposed rule with the Division's recently adopted Pharmacy Fee Guideline, which has a separate requirement for determining fair and reasonable reimbursement in the absence of specified fee than the analogous requirement for other health care services under §134.1 of this title (relating to Medical Reimbursement).

The proposed amendment to §133.240(n) provides when an insurance carrier remits payment to a pharmacy processing agent, "the pharmacy processing agent's reimbursement from the insurance carrier shall be made in accordance with §134.503 of this title (relating to Pharmacy Fee Guideline)." This amendment is necessary to clarify that though a pharmacy's reimbursement when an insurance carrier remits payment to a pharmacy processing agent shall be made in accordance with the terms of its contract with the pharmacy processing agent, the insurance carrier's reimbursement to the pharmacy processing agent must be made in accordance with the Division's recently adopted Pharmacy Fee Guideline.

Lastly, the proposed amendment to §133.240(p) provides that "[for] the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title. Additionally, all utilization review agents or registered insurance carriers who perform utilization review under this section must have written policies that evidence compliance with Labor Code §504.055, regarding expedited provision of medical benefits for first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment." This amendment is necessary to clarify the application of the Insurance Code and Department rules to utilization review under this section and to clarify the application of Labor Code §504.055 to all utilization review agents who review the health care services provided to first responders who have suffered serious bodily injuries under this section.

Proposed Amended §133.250. The proposed amendment to §133.250(b) provides that health care providers must "submit the request for reconsideration no later than 10 months from the date of service." This proposed amendment reduces the time period for health care providers to file a request for reconsideration from 11 months to 10 months. This amendment is necessary to ensure that health care providers who take the maximum amount of time to submit a denied bill for reconsideration still have opportunity to timely file a request for dispute resolution under §133.307(c) of this title (relating to MDR of Fee Disputes) if an insurance carrier also takes the maximum amount of time to take final action on the request for reconsideration. Previously, when an insurance carrier was limited to 21 days to review a request for reconsideration, the 11 months from the date of service deadline to submit a request for reconsideration was sufficient to ensure that a health care provider whose request is denied could still file a request for dispute resolution within one year of the date of service. Because the Division is also proposing to extend the time an insurance carrier has to review a request for reconsideration under this section to 30 days, however, the 11 month deadline is no longer sufficient for this purpose and is, therefore, proposed to be reduced to 10 months from the date of service.

The proposed amendments to §133.250(f) provide that an insurance carrier shall provide an explanation of benefits that meets the requirements of §133.240(e) - (f) of this title (relating to Medical Bill Payments and Denials) for all items in a reconsideration request. This amendment is necessary to correspond with the amendments made to §133.240(e) - (f). The proposed amendments to §133.250(f) also extend the time an insurance carrier has to take final action on a request for reconsideration from 21 days to 30 days. This proposed amendment is necessary to harmonize this requirement with the parallel requirement for network claims under Insurance Code §1305.354, which provides insurance carriers the same amount of time to respond to a request for reconsideration. This requirement also corresponds with Insurance Code §4201.359, which provides that a utilization review agent's procedures must provide that it will respond to an appeal of an adverse determination "as soon as practicable but not later than the 30th day after receiving a request for reconsideration."

The proposed amendment to §133.250(g) extends the time required before a health care provider may resubmit a request for reconsideration. The proposed amendment extends the time period from 26 days after the insurance carrier received the original request or took final action on the request to 35 days after the insurance carrier received the request or took final action on the request. This amendment is necessary to harmonize this requirement with the Division's proposed amendment to §133.250(f), which extended the time an insurance carrier has to take final action on a request for reconsideration from 21 days to 30 days.

Lastly, the proposed amendment to §133.250(i) provides that "[for] the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title. Additionally, all utilization review agents and registered insurance carriers who perform utilization review under this section must have written policies that evidence compliance with Labor Code §504.055, regarding expedited provision of medical benefits for first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment." This amendment is necessary to clarify the application of the Insurance Code and Department rules to utilization review under this section and to clarify the application of Labor Code §504.055 to all utilization review agents and registered insurance carriers who review the health care services provided to first responders who have suffered serious bodily injuries under this section.

Proposed amended §133.270. The proposed amendment to §133.270(f) provides that an injured employee may request reconsideration of a denied medical bill in accordance with "the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills)." This amendment updates this citation

to correspond with other changes the Division has made to Subchapter D of Chapter 133.

The proposed amendment to §133.270(g) provides that insurance carriers shall submit injured employee medical billing and payment data to the Division in accordance with Chapter 134, Subchapter I of this title (relating to Medical Bill Reporting). This amendment is necessary to update the reference in this section to match the Division's current applicable sections regarding medical bill reporting.

Proposed amended §133.305. Proposed amended §133.305(a) defines "first responder" and "serious bodily injury" as those terms are defined by Labor Code §504.055(a) and §1.07, Penal Code respectively. The Division has added these definitions in anticipation of future rulemaking regarding medical dispute resolution.

The Division also proposes two amendments to §133.305(c). First, proposed amended §133.305(c)(3) provides that the Division may assess an administrative fee against an insurance carrier if the Division requests and the insurance carrier fails to provide the Division with the required health care provider notice under Labor Code §408.0281. This amendment is necessary to harmonize §133.305(c) with the requirements of Labor Code §408.0281. Additionally, proposed amended §133.305(c)(4) provides the Division will not assess an administrative fee against an insurance carrier for a reduced or denied payment based on a contract that indicates the direction or management of health care through a health care provider arrangement authorized under Labor Code §504.053(b)(2). This amendment is necessary to recognize the authority of political subdivisions to contract with health care providers under Labor Code §504.053(b)(2).

Mr. Matthew Zurek, Executive Deputy Commissioner of Health Care Management and System Monitoring, has determined that for each year of the first five years the proposed rules will be in effect there will be minimal fiscal implications to state or local government as a result of enforcing or administering the proposed sections. There also will be no measurable effect on local employment or the local economy as a result of the proposed rules.

There will be no fiscal implication to local governments as a result of enforcing or administering the proposed amendments.

Local government and state government as a covered entity will be impacted in the same manner as persons required to comply with the proposed amendments as described later in the preamble.

Mr. Zurek has determined that for each year of the first five years the sections are in effect, the public benefit as a result of the proposed amendments will be the updating of Division rules to comply or harmonize with provisions of Chapters 1305 and 4201, Insurance Code. These amendments will result in a clearer, more consistent regulatory framework and, therefore, in better and more efficient compliance by system participants with these new requirements.

Additionally, these amendments will provide increased clarification of current Division policies regarding its requirements for the submission of paper format explanations of benefits and will harmonize these rules with the Division's recently adopted amendments to Chapter 134, Subchapter F of this title (relating to Pharmaceutical Benefits). This increased clarity and harmonizing should result in better and more efficient compliance.

Furthermore, Mr. Zurek has determined that the new elements required to be included in an explanation of benefits under §133.240(f) may result in automation costs to insurance carriers who use such processes to produce their explanations of benefits. Based on $34.93 as the average hourly wage for a computer programmer working in an insurance related industry in Texas (for more information see the Texas Workforce Commission OES Report available at: http://www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5242&occcode=15-1021&compare=2), Mr. Zurek estimates that these requirements will take approximately 15 to 30 hours to implement and that, therefore, insurance carriers will incur a cost of $523.95 to $1,047.90 in order to comply with these requirements.

As required by the Government Code §2006.002(c), the Division has determined that the proposal may have an adverse economic effect on the small and micro-businesses that may be required to comply with the proposed amendments to these sections, because the Division estimates that 30 insurance carriers required to comply with this proposal may qualify as small or micro-businesses for the purposes of Government §2006.001. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, however, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. Small and micro-business insurance carriers, therefore, will, as a result of these proposed amendments, be subject to the cost of automation required by the new elements for explanations of benefits required under §133.240(f).

Because of these costs, the Division did consider as a regulatory alternative possibly exempting small or micro-business insurance carriers from some or all of the new proposed required elements of explanations of benefits under §133.240(f). Ultimately, the Division determined, however, that this alternative was not acceptable. It would inhibit health care providers' ability to request reconsideration of the denied health care service(s), because the health care provider would fail to receive necessary information on the explanation of benefits when a service is denied. These exemptions or alternatives would, therefore, potentially limit injured employees' access to all medically necessary and appropriate health care.

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 January 30, 2012. Comments may be submitted via the internet through the Division's internet website at www.tdi.texas.gov/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, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

Any request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. CST by the

close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

SUBCHAPTER A. GENERAL RULES FOR MEDICAL BILLING AND PROCESSING

28 TAC §133.2

The amended section is proposed under the Labor Code §408.027 and under the general authority of §402.00128 and §402.061. Labor Code §408.027, concerning payment of health care provider, provides that the Commissioner shall adopt rules as necessary to implement §408.027.

Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

The following statute is affected by this proposal: §133.2 - Labor Code §408.027.

§133.2. Definitions.

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

(1) Agent--A person with whom a system participant utilizes or contracts with for the purpose of providing claims service or fulfilling medical bill processing obligations under Labor Code, Title 5 and rules. The system participant who utilizes or contracts with the agent may also be responsible for the administrative violations of that agent. This definition does not apply to "agent" as used in the term "pharmacy processing agent."

(2) [~~(1)~~] Bill review--Review of any aspect of a medical bill, including retrospective review, in accordance with the Labor Code, the Insurance Code, Division or Department rules, and the appropriate fee and treatment guidelines.

(3) [~~(2)~~] Complete medical bill--A medical bill that contains all required fields as set forth in the billing instructions for the appropriate form specified in §133.10 of this chapter (relating to Required Billing Forms/Formats), or as specified for electronic medical bills in §133.500 of this chapter (relating to Electronic Formats for Electronic Medical Bill Processing).

(4) [~~(3)~~] Emergency--Either a medical or mental health emergency as follows:

(A) a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

(i) placing the patient's health or bodily functions in serious jeopardy, or

(ii) serious dysfunction of any body organ or part;

(B) a mental health emergency is a condition that could reasonably be expected to present danger to the person experiencing the mental health condition or another person.

(5) [~~(4)~~] Final action on a medical bill--

(A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or

(B) denying a charge on the medical bill.

[~~(5) Health care provider agent--A person or entity that the health care provider contracts with or utilizes for the purpose of fulfilling the health care provider's obligations for medical bill processing under the Labor Code or Division rules.~~]

[~~(6) Insurance carrier agent--A person or entity that the insurance carrier contracts with or utilizes for the purpose of providing claims services, including fulfilling the insurance carrier's obligations for medical bill processing under the Labor Code, the Insurance Code, Division or Department rules.~~]

(6) [~~(7)~~] Pharmacy processing agent--A person or entity that contracts with a pharmacy in accordance with Labor Code §413.0111, establishing an agent or assignee relationship, to process claims and act on behalf of the pharmacy under the terms and conditions of a contract related to services being billed. Such contracts may permit the agent or assignee to submit billings, request reconsideration, receive reimbursement, and seek medical dispute resolution for the pharmacy services billed.

(7) [~~(8)~~] Retrospective review--The process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.

(8) [~~(9)~~] In this chapter, the following terms have the meanings assigned by Labor Code §413.0115:

(A) Voluntary networks; and

(B) Informal networks.

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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Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER

28 TAC §§133.240, 133.250, 133.270

The amended sections are proposed under the Labor Code §§408.027, 413.031, 504.055 and Insurance Code §§1305.354, 4201.054 and 4201.359 and under the general authority of §402.00128 and §402.061. In relevant part, Labor Code §408.027, concerning payment of health care provider, provides that the Commissioner shall adopt rules as necessary to implement §408.027. Labor Code §413.031 provides that the commissioner by rule shall specify the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement. Labor Code §504.055 provides, in relevant part, that insurance carriers and political subdivisions shall accelerate and give priority to an injured first responder's claim for medical benefits. Insurance Code §1305.354 provides that a utilization review agent's procedures for review of reconsideration of an adverse determination must include written notification to the requesting party of the determination of the request for reconsideration as soon as

practicable, but not later than the 30th day after the utilization review agent received the request. Insurance Code §4201.054 provides that the requirements of Chapter 4201 apply to utilization review of a health care services provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code. Insurance Code §4201.359 provides that a utilization review agent's procedures for review of reconsideration of an adverse determination must include written notification of determination of the appeal to the requesting party as soon as practicable, but not later than the 30th day after the utilization review agent received the request.

Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

The following statutes are affected by this proposal: §133.240 - Labor Code §§408.027, 504.055; §133.250 - Labor Code §§408.027, 504.055, Insurance Code §§1305.354, 4201.054, 4201.359; and §133.270 - Labor Code §413.031.

§133.240. Medical Payment and Denials.

(a) An insurance carrier shall take final action after conducting bill review on a complete medical bill, or determine to audit the medical bill in accordance with §133.230 of this chapter (relating to Insurance Carrier Audit of a Medical Bill), not later than the 45th day after the date the insurance carrier received a complete medical bill. An insurance carrier's deadline to make or deny payment on a bill is not extended as a result of a pending request for additional documentation.

(b) For health care provided to injured employees not subject to a workers' compensation health care network established under Insurance Code Chapter 1305, the insurance carrier shall not deny reimbursement based on medical necessity for health care preauthorized or voluntarily certified under Chapter 134 of this title (relating to Benefits--Guidelines for Medical Services, Charges, and Payments). For pharmaceutical services provided to any injured employee, the insurance carrier shall not deny reimbursement based on medical necessity for pharmaceutical services preauthorized or agreed to under Chapter 134, Subchapter F of this title (relating to Pharmaceutical Benefits).

(c) The insurance carrier shall not change a billing code on a medical bill or reimburse health care at another billing code's value.

(d) The insurance carrier may request additional documentation, in accordance with §133.210 of this chapter (relating to Medical Documentation), not later than the 45th day after receipt of the medical bill to clarify the health care provider's charges.

(e) The insurance carrier shall send the explanation of benefits in accordance with the elements required by §133.500 and §133.501 of this title (relating to Electronic Formats for Electronic Medical Bill Processing and Electronic Medical Bill Processing, respectively) if the insurance carrier submits the explanation of benefits in the form of an electronic remittance. The insurance carrier shall send an explanation of benefits in accordance with subsection (f) of this section if the insurance carrier submits the explanation of benefits in paper form [~~the form and manner prescribed by the Division and indicate any interest amount paid, and the number of days on which interest was calculated~~]. The explanation of benefits shall be sent to:

(1) the health care provider who submitted the medical bill when the insurance carrier makes payment or denies payment on a medical bill; and

(2) the injured employee when payment is denied because the health care was:

(A) determined to be unreasonable and/or unnecessary;

(B) provided by a health care provider other than:

(i) the treating doctor selected in accordance with Labor Code §408.022; [~~of the Texas Labor Code,~~]

(ii) a health care provider that the treating doctor has chosen as a consulting or referral health care provider;[~~,~~]

(iii) a doctor performing a required medical examination in accordance with §126.5 of this title (relating to Entitlement and Procedure for Requesting Required Medical Examinations) and §126.6 of this title (relating to [~~Order for~~] Required Medical Examination);[~~, or~~]

(iv) a doctor performing a designated doctor examination in accordance with Labor Code §408.0041 [~~§130.6 of this title (relating to Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings)~~]; or

(C) unrelated to the compensable injury, in accordance with §124.2 of this title (relating to Carrier Reporting and Notification Requirements).

(3) the prescribing doctor when payment is denied for pharmaceutical services because of any reason relating to the compensability of, liability for, extent of, or relatedness to the compensable injury, or for reasons relating to the reasonableness or medical necessity of the pharmaceutical services.

(f) The paper form of an explanation of benefits under subsection (e) of this section, §133.250 of this title (relating to Reconsideration for Payment of Medical Bills), or §133.260 of this title (relating to Refunds) shall include the following elements:

(1) division claim number, if known;

(2) insurance carrier claim number;

(3) injured employee's name;

(4) last four digits of injured employee's social security number;

(5) date of injury;

(6) health care provider's name and address;

(7) health care provider's federal tax ID or national provider identifier if the health care provider's federal tax ID is the same as the health care provider's social security number;

(8) patient control number if included on the submitted medical bill;

(9) insurance carrier's name and address;

(10) insurance carrier control number;

(11) date of bill review/refund request;

(12) diagnosis code(s);

(13) name and address of company performing bill review;

(14) name and telephone number of bill review contact;

(15) workers' compensation health care network name (if applicable);

(16) pharmacy informal or voluntary network name (if applicable);

(17) health care service information for each billed health care service, to include:

(A) date of service;

(B) the CPT, HCPCS, NDC, or other applicable product or service code;

(C) CPT, HCPCS, NDC, or other applicable product or service code description;

(D) amount charged;

(E) unit(s) of service;

(F) amount paid;

(G) adjustment reason code that conforms to the standards described in §133.500 and §133.501 of this title if total amount paid does not equal total amount charged;

(H) explanation of the reason for reduction/denial if the adjustment reason code was included under subparagraph (G) of this paragraph and if applicable;

(18) a statement that contains the following text: "Health care providers shall not bill any unpaid amounts to the injured employee or the employer, or make any attempt to collect the unpaid amount from the injured employee or the employer unless the injury is finally adjudicated not to be compensable, or the insurance carrier is relieved of the liability under Labor Code §408.024. However, pursuant to §133.250 of this title, the health care provider may file an appeal with the insurance carrier if the health care provider disagrees with the insurance carrier's determination";

(19) if the insurance carrier is requesting a refund, the refund amount being requested and an explanation of why the refund is being requested; and

(20) if the insurance carrier is paying interest in accordance with §134.130 of this title (relating to Interest for Late Payment on Medical Bills and Refunds), the interest amount paid through use of an unspecified product or service code and the number of days on which interest was calculated by using a unit per day.

(g) [~~(f)~~] When the insurance carrier pays a health care provider for health care for which the division [~~Division~~] has not established a maximum allowable reimbursement, the insurance carrier shall explain and document the method it used to calculate the payment in accordance with §134.1 of this title (relating to Medical Reimbursement) or §134.503 of this title (relating to Pharmacy Fee Guideline).

(h) [~~(g)~~] An insurance carrier shall have filed, or shall concurrently file, the applicable notice required by Labor Code §409.021, and §124.2 and §124.3 of this title (relating to Investigation of an Injury and Notice of Denial/Dispute) if the insurance carrier reduces or denies payment for health care provided based solely on the insurance carrier's belief that:

(1) the injury is not compensable;

(2) the insurance carrier is not liable for the injury due to lack of insurance coverage; or

(3) the condition for which the health care was provided was not related to the compensable injury.

(i) [~~(h)~~] If dissatisfied with the insurance carrier's final action, the health care provider may request reconsideration of the bill in accordance with §133.250 of this title [~~chapter (relating to Reconsideration for Payment of Medical Bills)~~].

(j) [~~(i)~~] If dissatisfied with the reconsideration outcome, the health care provider may request medical dispute resolution in accordance with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills) [~~§133.305 of this chapter (relating to Medical Dispute Resolution - General)~~].

(k) [~~(j)~~] Health care providers, injured employees, employers, attorneys, and other participants in the system shall not resubmit medical bills to insurance carriers after the insurance carrier has taken final action on a complete medical bill and provided an explanation of benefits except as provided in §133.250 and Chapter 133, Subchapter D [~~§133.305~~] of this title [~~chapter~~].

(l) [~~(k)~~] All payments of medical bills that an insurance carrier makes on or after the 60th day after the date the insurance carrier originally received the complete medical bill shall include interest calculated in accordance with §134.130 of this title without any action taken by the division [~~Division~~]. The interest payment shall be paid at the same time as the medical bill payment.

(m) [~~(l)~~] When an insurance carrier remits payment to a health care provider agent, the agent shall remit to the health care provider the full amount that the insurance carrier reimburses.

(n) [~~(m)~~] When an insurance carrier remits payment to a pharmacy processing agent, the pharmacy processing agent's reimbursement from the insurance carrier shall be made in accordance with §134.503 of this title. The [~~the~~] pharmacy's reimbursement shall be made in accordance with the terms of its contract with the pharmacy processing agent.

(o) [~~(n)~~] An insurance carrier commits an administrative violation if the insurance carrier fails to pay, reduce, deny, or notify the health care provider of the intent to audit a medical bill in accordance with Labor Code §408.027 and division [~~Division~~] rules.

(p) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title. Additionally, all utilization review agents and registered insurance carriers who perform utilization review under this section must have written policies that evidence compliance with Labor Code §504.055, regarding expedited provision of medical benefits for first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment.

§133.250. Reconsideration for Payment of Medical Bills.

(a) If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill, the health care provider may request that the insurance carrier reconsider its action.

(b) The health care provider shall submit the request for reconsideration no later than 10 [~~eleven~~] months from the date of service.

(c) A health care provider shall not submit a request for reconsideration until:

(1) the insurance carrier has taken final action on a medical bill; or

(2) the health care provider has not received an explanation of benefits within 50 days from submitting the medical bill to the insurance carrier.

(d) The request for reconsideration shall:

(1) reference the original bill and include the same billing codes, date(s) of service, and dollar amounts as the original bill;

(2) include a copy of the original explanation of benefits, if received, or documentation that a request for an explanation of benefits was submitted to the insurance carrier;

(3) include any necessary and related documentation not submitted with the original medical bill to support the health care provider's position; and

(4) include a bill-specific, substantive explanation in accordance with §133.3 of this title [~~chapter~~] (relating to Communication Between Health Care Providers and Insurance Carriers) that provides a rational basis to modify the previous denial or payment.

(e) An insurance carrier shall review all reconsideration requests for completeness in accordance with subsection (d) of this section and may return an incomplete reconsideration request no later than seven days from the date of receipt. A health care provider may complete and resubmit its request to the insurance carrier.

(f) The insurance carrier shall take final action on a reconsideration request within 30 [~~21~~] days of receiving the request for reconsideration. The insurance carrier shall provide an explanation of benefits that meets the requirements of §133.240(e) - (f) of this title (relating to Medical Payments and Denials) for all items included in a reconsideration request in the form and format prescribed by the division [~~Division~~].

(g) A health care provider shall not resubmit a request for reconsideration earlier than 35 [~~26~~] days from the date the insurance carrier received the original request for reconsideration or after the insurance carrier has taken final action on the reconsideration request.

(h) If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill after reconsideration, the health care provider may request medical dispute resolution in accordance with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills) [~~§133.305 of this chapter (relating to Medical Dispute Resolution - General)~~].

(i) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with, or a utilization review agent that is certified by, the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title. Additionally, all utilization review agents and registered insurance carriers who perform utilization review under this section must have written policies that evidence compliance with Labor Code §504.055, regarding expedited provision of medical benefits for first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment.

§133.270. Injured Employee Reimbursement for Health Care Paid.

(a) An injured employee may request reimbursement from the insurance carrier when the injured employee has paid for health care provided for a compensable injury, unless the injured employee is liable for payment as specified in:

(1) Insurance Code §1305.451, or

(2) Section 134.504 [~~§134.504~~] of this title (relating to Pharmaceutical Expenses Incurred by the Injured Employee).

(b) The injured employee's request for reimbursement shall be legible and shall include documentation or evidence (such as itemized receipts) of the amount the injured employee paid the health care provider.

(c) The insurance carrier shall pay or deny the request for reimbursement within 45 days of the request. Reimbursement shall be made in accordance with §134.1 of this title (relating to Medical Reimbursement).

(d) The injured employee may seek reimbursement for any payment made above the division [~~Division~~] fee guideline or contract amount from the health care provider who received the overpayment.

(e) Within 45 days of a request, the health care provider shall reimburse the injured employee the amount paid above the applicable division [~~Division~~] fee guideline or contract amount.

(f) The injured employee may request, but is not required to request, reconsideration prior to requesting medical dispute resolution in accordance with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills) [~~§133.305 of this chapter (relating to Medical Dispute Resolution - General)~~].

(g) The insurance carrier shall submit injured employee medical billing and payment data to the division [~~Division~~] in accordance with Chapter 134, Subchapter I of this title (relating to Medical Bill Reporting) [~~§134.802 of this title (relating to Insurance Carrier Medical Electronic Data Interchange to the Division)~~].

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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Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §133.305

The amended section is proposed under Labor Code §504.055 and under the general authority of §402.00128 and §402.061. Section 504.055 defines "first responder" and "serious bodily injury." Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

The following statute is affected by this proposal: §133.305 - Labor Code §504.055.

§133.305. MDR--General.

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

(1) Adverse determination--A determination by a utilization review agent that the health care services furnished or proposed to be furnished to a patient are not medically necessary, as defined in Insurance Code §4201.002.

(2) First responder--As defined in Labor Code §504.055(a).

(3) [~~(2)~~] Life-threatening--A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted, as defined in Insurance Code §4201.002.

(4) [~~(3)~~] Medical dispute resolution (MDR)--A process for resolution of one or more of the following disputes:

(A) a medical fee dispute; or

(B) a medical necessity dispute, which may be:

(i) a preauthorization or concurrent medical necessity dispute; or

(ii) a retrospective medical necessity dispute.

(5) [~~(4)~~] Medical fee dispute--A dispute that involves an amount of payment for non-network health care rendered to an injured employee [~~(employee)~~] that has been determined to be medically necessary and appropriate for treatment of that injured employee's compensable injury. The dispute is resolved by the division [~~Division of Workers' Compensation (Division)~~] pursuant to division [~~Division~~] rules, including §133.307 of this title [~~subchapter~~] (relating to MDR of Fee Disputes). The following types of disputes can be a medical fee dispute:

(A) a health care provider [~~(provider)~~], or a qualified pharmacy processing agent as described in Labor Code §413.0111, dispute of an insurance carrier [~~(carrier)~~] reduction or denial of a medical bill;

(B) an injured employee dispute of reduction or denial of a refund request for health care charges paid by the injured employee; and

(C) a health care provider dispute regarding the results of a division [~~Division~~] or insurance carrier audit or review which requires the health care provider to refund an amount for health care services previously paid by the insurance carrier.

(6) [~~(5)~~] Network health care--Health care delivered or arranged by a certified workers' compensation health care network, including authorized out-of-network care, as defined in Insurance Code Chapter 1305 and related rules.

(7) [~~(6)~~] Non-network health care--Health care not delivered or arranged by a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 and related rules. "Non-network health care" includes health care delivered pursuant to Labor Code §413.011(d-1) and §413.0115.

(8) [~~(7)~~] Preauthorization or concurrent medical necessity dispute--A dispute that involves a review of adverse determination of network or non-network health care requiring preauthorization or concurrent review. The dispute is reviewed by an independent review organization (IRO) pursuant to the Insurance Code, the Labor Code and related rules, including §133.308 of this title [~~(subchapter)~~] (relating to MDR by Independent Review Organizations).

(9) [~~(8)~~] Requestor--The party that timely files a request for medical dispute resolution with the division [~~Division~~]; the party seeking relief in medical dispute resolution.

(10) [~~(9)~~] Respondent--The party against whom relief is sought.

(11) [~~(10)~~] Retrospective medical necessity dispute--A dispute that involves a review of the medical necessity of health care already provided. The dispute is reviewed by an IRO pursuant to the Insurance Code, Labor Code and related rules, including §133.308 of this title [~~subchapter~~].

(12) Serious bodily injury--As defined by §1.07, Penal Code.

(b) Dispute Sequence. If a dispute regarding compensability, extent of injury, liability, or medical necessity exists for the same service for which there is a medical fee dispute, the disputes regarding compensability, extent of injury, liability, or medical necessity shall be resolved prior to the submission of a medical fee dispute for the same services in accordance with Labor Code §413.031 and §408.021.

(c) Division Administrative Fee. The division [~~Division~~] may assess a fee, as published on the division's [~~Division's~~] website, in accordance with Labor Code §413.020 when resolving disputes pursuant to §133.307 and §133.308 of this title [~~subchapter~~] if the decision indicates the following:

(1) the health care provider billed an amount in conflict with division [~~Division~~] rules, including billing rules, fee guidelines or treatment guidelines;

(2) the insurance carrier denied or reduced payment in conflict with division [~~Division~~] rules, including reimbursement or audit rules, fee guidelines or treatment guidelines;

(3) the insurance carrier has reduced the payment based on a contracted discount rate with the health care provider but has not made the contract or the health care provider notice required under Labor Code §408.0281 available upon the division's [~~Division's~~] request;

(4) the insurance carrier has reduced or denied payment based on a contract that indicates the direction or management of health care through a health care provider arrangement that has not been certified as a workers' compensation network, in accordance with Insurance Code Chapter 1305 or through a health care provider arrangement authorized under Labor Code §504.053(b)(2); or

(5) the insurance carrier or health care provider did not comply with a provision of the Insurance Code, Labor Code or related rules.

(d) Confidentiality. Any documentation exchanged by the parties during MDR that contains information regarding a patient other than the injured employee for that claim must be redacted by the party submitting the documentation to remove any information that identifies that patient.

(e) Severability. If a court of competent jurisdiction holds that any provision of §§133.305, 133.307, or [~~and~~] 133.308 of this title is [~~subchapter are~~] inconsistent with any statutes of this state, [~~are~~] unconstitutional, or [~~are~~] invalid for any reason, the remaining provisions of these sections [~~shall~~] remain in full effect.

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 Insurance, Division of Workers' Compensation
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CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

28 TAC §134.600

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to 28 Texas Administrative Code (TAC) §134.600, concerning preauthorization, concurrent review, and voluntary certification of health care. These amendments are necessary: (1) to harmonize §134.600 with other Division rules and policies, Chapter 504, Labor Code, and certain provisions of Chapters 1305 and 4201, Insurance Code; and (2) to make other changes necessary to clarify the implementation and application of this section. The Division proposes these amendments in conjunction with its proposed amendments to 28 TAC Chapter 133 (relating to General Medical Provisions) published elsewhere in this issue of the *Texas Register.*

On December 16, 2011, the Division withdrew its proposed amendments to §134.600, which were published in the July 29, 2011, issue of the *Texas Register* (36 TexReg 4344). The Division determined this withdrawal was necessary because the primary purpose of those proposed amendments was to harmonize §134.600 with the amendments to 28 TAC §§19.2001 - 19.2017 and 19.2019 - 19.2021 (relating to Utilization Reviews for Health Care Provided under Workers' Compensation Coverage) (Subchapter U) proposed by the Department in the July 8, 2011, issue of the *Texas Register.* On December 2, 2011, however, the Department withdrew these proposed amendments to Subchapter U and announced that it would be issuing new informal draft rules on the same topic in early 2012. In light of this withdrawal and announcement, the majority of the Division's proposed amendments to §134.600 became premature and could not be adopted. The Division, therefore, intends to propose informal draft rules relating to utilization review of workers' compensation health care services that will harmonize with the Department's proposed informal draft rules relating to utilization review after the Department has informally proposed those rules.

Additionally, the Division reproposes the amendments to §134.600 that do not relate to the Department's proposed amendments to Subchapter U. As stated above, these proposed amendments are necessary: (1) to harmonize §134.600 with other Division rules and procedures, Chapter 504, Labor Code, and certain provisions of Chapters 1305 and 4201, Insurance Code; and (2) to make other changes necessary to clarify the implementation and application of this section. The Division emphasizes that most of these proposed amendments were previously proposed on July 29, 2011 before being withdrawn.

The Division has also added amendments to this proposal that were not previously proposed in the Division's withdrawn amendments. Most of these changes have been proposed in response to public comments the Division received on its withdrawn proposal. Specifically, these changes: (1) permit requestors to resubmit a request for preauthorization for the same health care services if the requestor can provide objective clinical documentation to support a substantial change in the injured employee's course of treatment or other applicable clinical circumstance; (2) make it an administrative violation to frivolously resubmit a preauthorization request; (3) delete the proposed requirement that an insurance carrier's reconsideration procedures must include a provision that states the time period an insurance carrier may take to complete the reconsideration may not exceed one calendar day from the date of receipt of all information necessary to complete the reconsideration; and (4) clarify that all utilization review agents or registered insurance carriers who perform utilization review under this section must have written policies that evidence compliance with Labor Code §504.055 regarding expedited provision of medical benefits for first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment. These changes are also detailed below.

Lastly, these proposed amendments make non-substantive changes to this section to conform to current nomenclature, reformatting, consistency, clarity, and to correct typographical and/or grammatical errors.

Proposed Amended §134.600(a). The proposed amendment to §134.600(a)(4) clarifies that a Division granted exemption for work hardening or work conditioning programs from preauthorization and concurrent review requirements only extends to services that are consistent with the Division's treatment guidelines. This amendment is necessary to harmonize this definition with the Division's amendment to §134.600(p)(4) and (q)(2), which provide, respectively, that preauthorization or concurrent review is required for all exempted work hardening or work conditioning programs if the proposed services will exceed or are not addressed by the Division's treatment guidelines.

Proposed amended §134.600(f). The proposed amendments to §134.600(f) provides that requests for preauthorization must now also include the name of the injured employee; the name of the requestor and requestor's professional license number or national provider identifier, or injured employee's name if the injured employee is requesting the preauthorization; the name and professional license number or national provider identifier of the health care provider who will render the health care if different than the requestor; and the facility name and the facility's national provider identifier, if applicable. These amendments are necessary for proper identification of all parties to the request and to ensure the appropriate review of the request.

Proposed amended §134.600(o). The proposed amendment to §134.600(o)(1) extends the deadline for a requestor to submit a request for reconsideration after receiving denial of a preauthorization request from 15 working days to 30 days. This amendment is necessary to harmonize this requirement with the parallel requirement for network claims under Insurance Code §1305.354, which provides requestors 30 days to submit a request for reconsideration.

The proposed amendment to §134.600(o)(2) extends the deadline for an insurance carrier to respond to a request for reconsideration of a denial of a preauthorization request. The deadline is extended from "within 5 working days of receipt of the request" to "as soon as practicable but not later than the 30th day after receiving a request for reconsideration." This amendment is necessary to harmonize this requirement with an analogous requirement for network claims under Insurance Code §1305.354, which provides insurance carriers the same amount of time to respond to a request for reconsideration of an adverse determination. This requirement also corresponds with Insurance Code §4201.359, which provides that a utilization review agent's procedures must provide that it will respond to an appeal of an adverse determination "as soon as practicable but not later than the 30th day after receiving a request for reconsideration."

The proposed amendment to §134.600(o)(3) provides that "[i]n addition to the requirements in this section, the insurance carrier's reconsideration procedures shall include a provision that the period during which the reconsideration is to be completed shall be based on the medical or clinical immediacy of the con-

dition, procedure, or treatment." This amendment is necessary to harmonize §134.600 with §10.103(b)(3) of this title (relating to Reconsideration of Adverse Determination) and to help ensure timely processing of reconsideration requests.

The proposed amendment to §134.600(o)(5) provides that a request for preauthorization for the same health care shall only be resubmitted when the requestor provides objective clinical documentation to support a substantial change in the injured employee's medical condition or condition or objective clinical documentation that demonstrates that the injured employee has met clinical prerequisites for the requested health care that had not been met before submission of the previous request. This amendment is necessary to clarify that requestors may resubmit a preauthorization request when an injured employee's medical condition has not substantially changed, but the injured employee has now met certain clinical prerequisites for the requested procedure that the injured employee had not met before submission of the previous request that would now make review of the medical necessity of the requested procedure appropriate. These substantial changes in course of treatment or other health care services could include, for instance, obtaining necessary psychological evaluations or an additional period of conservative care. The Division has also proposed an amendment to §134.600(o)(5) that makes it an administrative violation to frivolously resubmit a request for preauthorization for the same health care.

Proposed amended §134.600(p). Proposed amended §134.600(p)(4) provides that preauthorization is required for all work hardening or work conditioning services if the proposed services are requested by a non-exempted work hardening or work conditioning program or by a Division exempted program if the services will exceed or are not addressed by the Division's treatment guidelines as described in subsection (p)(12). This amendment is necessary to clarify that the exemption provided by subsection (a)(4) only extends to work hardening or work conditioning program services insofar as those services are consistent with the Division's treatment guidelines. Proposed amended §134.600(p) also provides that the preauthorization requirement of subsection (p)(12) does not apply to drugs prescribed for claims under §§134.506, 134.530 or 134.540 of this title (relating to Pharmaceutical Benefits). This clarifying amendment is necessary because the Division's recent amendments to §134.506 and newly adopted §134.530 and §134.540 provide that drugs prescribed under either the Division's open or closed formulary only require preauthorization as provided by those sections.

Proposed amended §134.600(q). The proposed amendment to §134.600(q)(2) provides that concurrent review is required for all work hardening or work conditioning services if the proposed services are requested by a non-exempted work hardening or work conditioning program or by a Division exempted program if the services will exceed or are not addressed by the Division's treatment guidelines as described in subsection (p)(12). This amendment is necessary to clarify that the exemption provided by §134.600(a)(4) only extends to work hardening or work conditioning program services insofar as those services are consistent with the Division's treatment guidelines.

Proposed amended §134.600(t). The proposed amendment to §134.600(t) provides that an insurance carrier must maintain accurate records to reflect information regarding requests for reconsideration and requests for medical dispute resolution, in addition to information regarding requests for preauthorization or concurrent utilization, review approval/denial decisions, and appeals. This amendment is necessary to assist the Division in complying with its duties of monitoring, compilation and maintenance of statistical data, review of insurance carrier records, maintenance of an investigation unit, and medical review as required by Labor Code §§414.002, 414.003, 414.004, 414.005, and 414.007.

Proposed amended §134.600(u). Proposed new §134.600(u) provides that "[for] the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19 of this title. Additionally, all utilization review agents or registered insurance carriers who perform utilization review under this section must have written policies that evidence compliance with Labor Code §504.055, regarding expedited provision of medical benefits for first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment." This amendment is necessary to clarify the application of the Insurance Code and Department rules to utilization review under this section and to clarify the application of Labor Code §504.055 to all utilization review agents who review the health care services provided to first responders who have suffered serious bodily injuries under this section.

Mr. Matthew Zurek, Executive Deputy Commissioner of Health Care Management and System Monitoring, has determined that for each year of the first five years the proposed rule will be in effect there will be minimal fiscal implications to state or local government as a result of enforcing or administering this section. There also will be no measurable effect on local employment or the local economy as a result of the proposed rule.

Mr. Zurek has determined that the proposed rule will have no or minimal impact on the cost of the Division's monitoring duties regarding utilization review or dispute resolution, because the proposed rule primarily implements statutory requirements and definitions or clarifies the existing application of Division rules or policies regarding preauthorization or concurrent review under the Act.

There will be no fiscal implication to local governments as a result of enforcing or administering the proposed amendments.

Local government and state government as a covered entity will be impacted in the same manner as persons required to comply with the proposed amendments as described later in the preamble.

Mr. Zurek has determined that for each year of the first five years the section is in effect, the public benefit as a result of the proposed amendments will be increased clarification of current Division policies regarding its treatment guidelines and exempted work hardening and work conditioning programs. This increased clarity should result in better and more efficient compliance. These proposed amendments also harmonize the Division's current rule with Chapter 4201, Insurance Code.

Furthermore, Mr. Zurek has determined that the costs of compliance associated with the proposal primarily result from existing requirements in Insurance Code, Chapter 4201, in Title 5, Labor Code, or in existing Division rules or policies. Mr. Zurek has also determined that any costs associated with the clarification that preauthorization is required for all exempted work hardening or work conditioning programs if the services will exceed or are not addressed by the Division's treatment guidelines

in §134.600(a)(4) and (p)(4) primarily result from the Division's current reimbursement policies for these services and §137.100 of this title (relating to Treatment Guidelines).

As required by the Government Code §2006.002(c), the Division has determined that the proposal will not have an adverse economic effect on the small and micro-businesses that may be required to comply with the proposed amendments to this section. The Division estimates that 30 of the insurance carriers and 6,355 of the health care provider employers required to comply with this proposal may qualify as small or micro-businesses for the purposes of Government §2006.001. The Division has also determined that the cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. Small and micro-business insurance carriers, therefore, will, as a result of these proposed amendments incur no costs not attributable to Chapter 4201, Insurance Code, Title 5, Labor Code, or existing Division rules or policies.

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 January 30, 2012. Comments may be submitted via the internet through the Division's internet website at www.tdi.texas.gov/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, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after the close of comment will not be considered.

Any request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. CST by the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Labor Code §§408.021, 413.014, and 504.055 and Insurance Code §§1305.354, 4201.054, and 4201.359 and under the general authority of §402.00128 and §402.061. In relevant part, Labor Code §408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed and is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or maintain employment. Labor Code §413.014 provides that the commissioner by rule shall specify which health care treatments and services require express preauthorization or concurrent review by the insurance carrier. Labor Code §504.055 provides, in relevant part, that insurance carriers and political subdivisions shall accelerate and give priority to an injured first responder's claim for medical benefits. Insurance Code §1305.354 provides that a utilization review agent's procedures for review of reconsideration of an adverse determination must include written notification to the requesting party of the determination of the request for reconsideration as soon as practicable, but not later than the 30th day after the utilization review agent received the request. Insurance Code §4201.054 provides that the requirements of Chapter 4201 apply to utilization review of a health care services provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code. Insurance Code §4201.359 provides that a utilization review agent's procedures for review of reconsideration of an adverse determination must include written notification of determination of the appeal to the requesting party as soon as practicable, but not later than the 30th day after the utilization review agent received the request.

Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

The following statutes are affected by this proposal: §134.600 - Labor Code §§408.021, 413.014, 504.055; and Insurance Code §§1305.354, 4201.054, 4201.359.

§134.600. Preauthorization, Concurrent Review, and Voluntary Certification of Health Care.

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

(1) Ambulatory surgical services: surgical services provided in a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

(2) Concurrent review: a review of on-going health care listed in subsection (q) of this section for an extension of treatment beyond previously approved health care listed in subsection (p) of this section.

(3) Diagnostic study: any test used to help establish or exclude the presence of disease/injury in symptomatic individuals [~~persons~~]. The test may help determine the diagnosis, screen for specific disease/injury, guide the management of an established disease/injury, and formulate a prognosis.

(4) Division exempted program: a Commission on Accreditation of Rehabilitation Facilities (CARF) accredited work conditioning or work hardening program that has requested and been granted an exemption by the division [~~Division~~] from preauthorization and concurrent review requirements except for those provided by subsections (p)(4) and (q)(2) of this section.

(5) Final adjudication: the commissioner [~~Commissioner~~] has issued a final decision or order that is no longer subject to appeal by either party.

(6) Outpatient surgical services: surgical services provided in a freestanding surgical center or a hospital outpatient department to patients who do not require overnight hospital care.

(7) Preauthorization: prospective approval obtained from the insurance carrier [~~(carrier)~~] by the requestor or injured employee [~~(employee)~~] prior to providing the health care treatment or services (health care).

(8) Requestor: the health care provider or designated representative, including office staff or a referral health care provider/health care facility that requests preauthorization, concurrent review, or voluntary certification.

(9) Work conditioning and work hardening: return -to- work rehabilitation programs as defined in Chapter 134 of this

title (relating to Benefits--Guidelines for Medical Services [~~Service~~], Charges, and Payments).

(b) When division-adopted [~~Division-adopted~~] treatment guidelines conflict with this section, this section prevails.

(c) The insurance carrier is liable for all reasonable and necessary medical costs relating to the health care:

(1) listed in subsection (p) or (q) of this section only when the following situations occur:

(A) an emergency, as defined in Chapter 133 of this title (relating to General Medical Provisions);

(B) preauthorization of any health care listed in subsection (p) of this section that was approved prior to providing the health care;

(C) concurrent review of any health care listed in subsection (q) of this section that was approved prior to providing the health care; or

(D) when ordered by the commissioner [~~Commissioner~~];

(2) or per subsection (r) of this section when voluntary certification was requested and payment agreed upon prior to providing the health care for any health care not listed in subsection (p) of this section.

(d) The insurance carrier is not liable under subsection (c)(1)(B) or (C) of this section if there has been a final adjudication that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury.

(e) The insurance carrier shall designate accessible direct telephone and facsimile numbers and may designate an electronic transmission address for use by the requestor or injured employee to request preauthorization or concurrent review during normal business hours. The direct number shall be answered or the facsimile or electronic transmission address responded to by the insurance carrier within the time limits established in subsection (i) of this section.

(f) The requestor or injured employee shall request and obtain preauthorization from the insurance carrier prior to providing or receiving health care listed in subsection (p) of this section. Concurrent review shall be requested prior to the conclusion of the specific number of treatments or period of time preauthorized and approval must be obtained prior to extending the health care listed in subsection (q) of this section. The request for preauthorization or concurrent review shall be sent to the insurance carrier by telephone, facsimile, or electronic transmission and, include the:

(1) name of the injured employee;

(2) [~~(1)~~] specific health care listed in subsection (p) or (q) of this section;

(3) [~~(2)~~] number of specific health care treatments and the specific period of time requested to complete the treatments;

(4) [~~(3)~~] information to substantiate the medical necessity of the health care requested;

(5) [~~(4)~~] accessible telephone and facsimile numbers and may designate an electronic transmission address for use by the insurance carrier;

(6) [~~(5)~~] name of the requestor and requestor's professional license number or national provider identifier, or injured employee's name if the injured employee is requesting preauthorization; [~~provider performing the health care; and~~]

(7) name, professional license number or national provider identifier of the health care provider who will render the health care if different than paragraph (6) of this subsection and if known;

(8) [~~(6)~~] facility name, and the facility's national provider identifier if the proposed health care is to be rendered in a facility; and [~~and estimated date of proposed health care.~~]

(9) estimated date of proposed health care.

(g) A health care provider may submit a request for health care to treat an injury or diagnosis that is not accepted by the insurance carrier in accordance with Labor Code §408.0042.

(1) The request shall be in the form of a treatment plan for a 60 day timeframe.

(2) The insurance carrier shall review requests submitted in accordance with this subsection for both medical necessity and relatedness.

(3) If denying the request, the insurance carrier shall indicate whether the denial is based on medical necessity and/or unrelated injury/diagnosis in accordance with subsection (m) of this section.

(4) The requestor or injured employee may file an extent of injury dispute upon receipt of an insurance [~~a~~] carrier's response which includes a denial due to unrelated injury/diagnosis, regardless of the issue of medical necessity.

(5) Requests which include a denial due to unrelated injury/diagnosis may not proceed to medical dispute resolution based on the denial of unrelatedness. However, requests which include a denial based on medical necessity may proceed to medical dispute resolution for the issue of medical necessity in accordance with subsection (o) of this section.

(h) Except for requests submitted in accordance with subsection (g) of this section, the insurance carrier shall approve or deny requests based solely upon the medical necessity of the health care required to treat the injury, regardless of:

(1) unresolved issues of compensability, extent of or relatedness to the compensable injury;

(2) the insurance carrier's liability for the injury; or

(3) the fact that the injured employee has reached maximum medical improvement.

(i) The insurance carrier shall contact the requestor or injured employee by telephone, facsimile, or electronic transmission with the decision to approve or deny the request as follows:

(1) within three working days of receipt of a request for preauthorization; or

(2) within three working days of receipt of a request for concurrent review, except for health care listed in subsection (q)(1) of this section, which is due within one working day of the receipt of the request.

(j) The insurance carrier shall send written notification of the approval or denial of the request within one working day of the decision to the:

(1) injured employee;

(2) injured employee's representative; and

(3) requestor, if not previously sent by facsimile or electronic transmission.

(k) The insurance carrier's failure to comply with any timeframe requirements of this section shall result in an administrative violation.

(l) The insurance carrier shall not withdraw a preauthorization or concurrent review approval once issued. The approval shall include:

(1) the specific health care;

(2) the approved number of health care treatments and specific period of time to complete the treatments; and

(3) a notice of any unresolved dispute regarding the denial of compensability or liability or an unresolved dispute of extent of or relatedness to the compensable injury.

(m) The insurance carrier shall afford the requestor a reasonable opportunity to discuss the clinical basis for a denial with the appropriate doctor or health care provider performing the review prior to the issuance of a preauthorization or concurrent review denial. The denial shall include:

(1) the clinical basis for the denial;

(2) a description or the source of the screening criteria that were utilized as guidelines in making the denial;

(3) the principle reasons for the denial, if applicable;

(4) a plain language description of the complaint and appeal processes, if denial was based on Labor Code §408.0042, include notification to the injured employee and health care provider of entitlement to file an extent of injury dispute in accordance with Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference); and

(5) after reconsideration of a denial, the notification of the availability of an independent review.

(n) The insurance carrier shall not condition an approval or change any elements of the request as listed in subsection (f) of this section, unless the condition or change is mutually agreed to by the health care provider and insurance carrier and is documented.

(o) If the initial response is a denial of preauthorization or concurrent review, the requestor or injured employee may request reconsideration. [If the initial response is a denial of concurrent review, the requestor may request reconsideration.]

(1) The requestor or injured employee may within 30 [15 working] days of receipt of a written initial denial request the insurance carrier to reconsider the denial and shall document the reconsideration request.

(2) The insurance carrier shall respond to the request for reconsideration of the denial:

(A) as soon as practicable but not later than the 30th day after receiving [within five working days of receipt of] a request for reconsideration of denied preauthorization; or

(B) within three working days of receipt of a request for reconsideration of denied concurrent review, except for health care listed in subsection (q)(1) of this section, which is due within one working day of the receipt of the request;

(3) In addition to the requirements in this section, the insurance carrier's reconsideration procedures shall include a provision that the period during which the reconsideration is to be completed shall be based on the medical or clinical immediacy of the condition, procedure, or treatment.

(4) [(3)] The requestor or injured employee may appeal the denial of a reconsideration request regarding medical necessity by filing a dispute in accordance with Labor Code §413.031 and related division [Division] rules.

(5) [(4)] A request for preauthorization for the same health care shall only be resubmitted when the requestor provides objective clinical documentation to support a substantial change in the injured employee's medical condition or objective clinical documentation that demonstrates that the injured employee has met clinical prerequisites for the requested health care that had not been met before submission of the previous request. The insurance carrier shall review the documentation and determine if any [a] substantial change in the injured employee's medical condition has occurred or if all necessary clinical prerequisites have been met. A frivolous resubmission of a preauthorization request for the same health care constitutes an administrative violation.

(p) Non-emergency health care requiring preauthorization includes:

(1) inpatient hospital admissions, including the principal scheduled procedure(s) and the length of stay;

(2) outpatient surgical or ambulatory surgical services as defined in subsection (a) of this section;

(3) spinal surgery;

(4) all [non-exempted] work hardening or [non-exempted] work conditioning services requested by: [programs;]

(A) non-exempted work hardening or work conditioning programs; or

(B) division exempted programs if the proposed services exceed or are not addressed by the division's treatment guidelines as described in paragraph (12) of this subsection;

(5) physical and occupational therapy services, which includes those services listed in the Healthcare Common Procedure Coding System (HCPCS) at the following levels:

(A) Level I code range for Physical Medicine and Rehabilitation, but limited to:

(i) Modalities, both supervised and constant attendance;

(ii) Therapeutic procedures, excluding work hardening and work conditioning;

(iii) Orthotics/Prosthetics Management;

(iv) Other procedures, limited to the unlisted physical medicine and rehabilitation procedure code; and

(B) Level II temporary code(s) for physical and occupational therapy services provided in a home setting;

(C) except for the first six visits of physical or occupational therapy following the evaluation when such treatment is rendered within the first two weeks immediately following:

(i) the date of injury, or

(ii) a surgical intervention previously preauthorized by the insurance carrier;

(6) any investigational or experimental service or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care;

(7) all psychological testing and psychotherapy, repeat interviews, and biofeedback, except when any service is part of a preauthorized or division [~~Division~~] exempted return-to-work rehabilitation program;

(8) unless otherwise specified in this subsection, a repeat individual diagnostic study:

(A) with a reimbursement rate of greater than $350 as established in the current Medical Fee Guideline, or

(B) without a reimbursement rate established in the current Medical Fee Guideline;

(9) all durable medical equipment (DME) in excess of $500 billed charges per item (either purchase or expected cumulative rental);

(10) chronic pain management/interdisciplinary pain rehabilitation;

(11) drugs not included in the applicable division [~~Division's~~] formulary;

(12) treatments and services that exceed or are not addressed by the commissioner's [~~Commissioner's~~] adopted treatment guidelines or protocols and are not contained in a treatment plan preauthorized by the insurance carrier. This requirement does not apply to drugs prescribed for claims under §§134.506, 134.530 or 134.540 of this title (relating to Pharmaceutical Benefits);

(13) required treatment plans; and

(14) any treatment for an injury or diagnosis that is not accepted by the insurance carrier pursuant to Labor Code §408.0042 and §126.14 of this title (relating to Treating Doctor Examination to Define the Compensable Injury).

(q) The health care requiring concurrent review for an extension for previously approved services includes:

(1) inpatient length of stay;

(2) all [~~non-exempted~~] work hardening or [~~non-exempted~~] work conditioning services requested by: [~~programs;~~]

(A) non-exempted work hardening or work conditioning programs; or

(B) division exempted programs if the proposed services exceed or are not addressed by the division's treatment guidelines as described in subsection (p)(12) of this section;

(3) physical and occupational therapy services as referenced in subsection (p)(5) of this section;

(4) investigational or experimental services or use of devices;

(5) chronic pain management/interdisciplinary pain rehabilitation; and

(6) required treatment plans.

(r) The requestor and insurance carrier may voluntarily discuss health care that does not require preauthorization or concurrent review under subsections (p) and (q) of this section respectively.

(1) Denial of a request for voluntary certification is not subject to dispute resolution for prospective review of medical necessity.

(2) The insurance carrier may certify health care requested. The carrier and requestor shall document the agreement. Health care provided as a result of the agreement is not subject to retrospective review of medical necessity.

(3) If there is no agreement between the insurance carrier and requestor, health care provided is subject to retrospective review of medical necessity.

(s) An increase or decrease in review and preauthorization controls may be applied to individual doctors or individual workers' compensation claims, by the division [~~Division~~] in accordance with Labor Code §408.0231(b)(4) and other sections of this title.

(t) The insurance carrier shall maintain accurate records to reflect information regarding requests for preauthorization, or concurrent review approval/denial decisions, and appeals, including requests for reconsideration and requests for medical dispute resolution, if any. The insurance carrier shall also maintain accurate records to reflect information regarding requests for voluntary certification approval/denial decisions. Upon request of the division [~~Division~~], the insurance carrier shall submit such information in the form and manner prescribed by the division [~~Division~~].

(u) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with, or a utilization review agent that is certified by, the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19. Additionally, all utilization review agents or registered insurance carriers who perform utilization review under this section must have written policies that evidence compliance with Labor Code §504.055, regarding expedited provision of medical benefits for first responders employed by political subdivisions who sustain a serious bodily injury in course and scope of employment.

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105696
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 356. GROUNDWATER MANAGEMENT

SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

31 TAC §356.23

The Texas Water Development Board (TWDB) proposes an amendment to §356.23, concerning Designation of Groundwater Management Areas. This section designates and delineates groundwater management areas (GMAs) as required by Water Code §35.004.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT

The TWDB proposes an amendment to §356.23 in response to a request to change the boundary lines between GMA 9 and GMA 10 for portions of the Hays Trinity Groundwater Conservation District and the Trinity-Glen Rose Groundwater Conservation District.

At the same time, the TWDB proposes to make minor corrections to the seven digital files identified in §356.23 that collectively constitute a data set delineating the GMA boundary lines. Over time, the files become corrupt and no longer accurately reflect the boundaries of counties, districts, the GMAs, and natural features described in the files. This rulemaking will correct those errors which, though not significant individually, do affect the overall accuracy of the data and the maps generated from that data.

A CD-ROM containing the data set is located in the TWDB offices. The updated CD-ROM contains all of the geographic information system data used to create the boundaries as well as software and instructions on how to locate a specific area by coordinates or other means on a digital map. The same information also can be found on the TWDB web site at *http://www.twdb.state.tx.us.* Maps may be generated from the data sets maintained and updated by the TWDB and used for purposes of creating visual representations of the GMA boundaries.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Melanie Callahan, Chief Financial Officer, has determined that for the first five-year period the amendment is in effect there will be no fiscal impact or additional costs for state or local governments because of the proposed rulemaking.

This rulemaking is not expected to result in reductions in costs to either state or local governments. This rulemaking is not expected to have any impact on state or local revenues. This rulemaking does not require any increase in expenditures for state or local governments as a result of administering this rulemaking. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from this rulemaking.

PUBLIC BENEFITS AND COSTS

Ms. Callahan also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it improves administration, development, and enforcement of desired future conditions and the rules of the affected groundwater conservation districts.

LOCAL EMPLOYMENT IMPACT STATEMENT

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY ANALYSIS

The TWDB has determined that the proposed rulemaking is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT

The TWDB has determined that the promulgation and enforcement of this proposed rule will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed rule does not burden or restrict or limit the owner's right to or use of property. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

SUBMITTAL OF COMMENTS

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, *rulescomments@twdb.state.tx.us,* or by fax at (512) 475-2053.

STATUTORY AUTHORITY

The amendment is proposed under the authority of Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §35.004, which provides that the TWDB shall designate groundwater management areas covering all major and minor aquifers in the state.

The statutory provisions affected by the proposed amendment is Texas Water Code, Chapter 35.

§356.23. Designation of Groundwater Management Areas.

[~~Seven digital files entitled "Groundwater_Management_Areas_04_18_07.dbf DBF File (database file)," "Groundwater_Management_Areas_04_18_07.prj PRJ File (projection file)," "Groundwater_Management_Areas_04_18_07.sbn SBN File," "Groundwater_Management_Areas_04_18_07.sbx SBX File," "Groundwater_Management_Areas_04_18_07.shp SHP File (shape, i.e. point, polygon or line)," "Groundwater_Management_Areas_04_18_07.shx SHX File," and "Groundwater_Management_Areas_04_18_07.shp.xml XML Document (metadata file)" collectively constituting the data set delineating groundwater management area boundary lines for the State of Texas are adopted by reference.~~] The boundaries of the groundwater management areas have been delineated [~~were created~~] using a geographic information system maintained and updated by the Texas Water Development Board. The digital files and a graphic representation of the groundwater management area boundaries entitled "Groundwater Management Areas_12_15_12.jpg" [~~"Groundwater Management Areas_04_18_07.jpg"~~] are available on a CD-ROM located in the offices of the Texas Water Development Board and[~~,~~] on the agency's [~~board's~~] web site at http://www.twdb.state.tx.us [~~, and are on file with the Secretary of State, Texas Register~~]. The graphic representation includes groundwater management area boundaries superimposed on a map that includes Texas county lines and may be used for creating graphic representations of the groundwater management area boundaries and other associated geographic features. The following digital files collectively constitute the data set delineating boundary lines for the designated groundwater management areas for the State of Texas. These files are controlling in the event of a conflict with any graphic representation. [~~entitled "Groundwater_Management_Areas_04_18_07.dbf DBF File (database file)," "Groundwater_Management_Areas_04_18_07.prj PRJ File (pro-~~

~~jection file),"~~ ~~"Groundwater_Management_Areas_04_18_07.sbn SBN File,"~~ ~~"Groundwater_Management_Areas_04_18_07.sbx SBX File,"~~ ~~"Groundwater_Management_Areas_04_18_07.shp SHP File (shape, i.e. point, polygon or line),"~~ ~~"Groundwater_Management_Areas_04_18_07.shx SHX File,"~~ ~~and~~ ~~"Groundwater_Management_Areas_04_18_07.shp.xml XML Document (metadata file)"~~ ~~are controlling in the event of a conflict with any graphic representation.~~]

(1) Groundwater_Management_Areas_12_15_12.dbf DBF File (database file);

(2) Groundwater_Management_Areas_12_15_12.prj PRJ File (projections file);

(3) Groundwater_Management_Areas_12_15_12.sbx SBX File;

(4) Groundwater_Management_Areas_12_15_12.sbn SBN File;

(5) Groundwater_Management_Areas_12_15_12.shp SHP File (shape, i.e. point, polygon or line);

(6) Groundwater_Management_Areas_12_15_12.shx SHX File; and

(7) Groundwater_Management_Areas_12_15_12.shp.xml XML Document (metadata file).

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105673
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 463-8061

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER DD. OIL FIELD CLEANUP REGULATORY FEE

34 TAC §3.732

The Comptroller of Public Accounts proposes an amendment to §3.732, concerning reporting requirements for the gas fee. This section is being amended pursuant to Senate Bill 1, 82nd Legislature, First Special Session, 2011. Senate Bill 1 added language to create the Oil and Gas Regulation and Cleanup Fund as an account in the General Revenue Fund of the state treasury.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to clarify the account to which collected fee revenue is to be deposited. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Natural Resource Code, §81.117.

§3.732. Reporting Requirements for the Gas Fee.

(a) Imposition. Except as provided by subsection (c)(2) of this section, the oil field cleanup regulatory fee on gas is due for the production month of September 1991 and all subsequent months.

(b) Reports. The fee is to be reported and paid on the natural gas report in the same manner as the occupation tax is imposed by Tax Code, Chapter 201.

(c) Amount of fee.

(1) Except as provided in paragraph (2) of this subsection; the rate of the fee for gas produced prior to September 1, 2001 shall be one-thirtieth of $.01 ($.000333) per 1,000 cubic feet (MCF) of gas and the rate of the fee for gas produced September 1, 2001 and later shall be one-fifteenth of $.01 ($.000667) per 1,000 cubic feet (MCF) of gas.

(2) The fee shall not be collected, or required to be paid for the production month that begins on the first day of the second month following the Texas Railroad Commission's certification to the comptroller that the [~~oil field cleanup~~] fund balance equals or exceeds $20 million. The comptroller shall publish notification in the *Texas Register* that the fee shall no longer be collected 15 days prior to the beginning of the production month for which the fee shall no longer be collected.

(3) If the Railroad Commission certifies to the comptroller that the balance of the fund has fallen below $10 million, the fee shall again be due beginning the first day of the second month following the commission's certification to the comptroller. The comptroller shall publish notification in the *Texas Register* that the fee shall be required to be collected 15 days prior to the beginning of the production month for which the fee shall be collected.

(d) Volume subject to fee. The fee will be collected on all gas produced and saved, except an interest owned by a governmental entity as defined in §3.14 of this title (relating to Exemption of Certain Interest Owners from Gas Occupation Taxes).

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

Filed with the Office of the Secretary of State on December 12, 2011.

TRD-201105516

Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER C. STANDARDS

37 TAC §35.47

The Texas Department of Public Safety (the department) proposes new §35.47, concerning Residential Solicitation. This rule is intended to provide assurance to the public and to local law enforcement that those who engage in residential solicitation of private security services are properly licensed with the department.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the new rule is in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule. There are no anticipated economic costs to individuals who are required to comply with this rule. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the new rule is in effect the anticipated public benefit is enhanced public safety through greater assurance that those who solicit residents for the purpose of selling private security services (including alarm systems) are properly licensed under the Private Security Act, as well as through the facilitation of complaint submission on licensees by the public. There should be no economic costs resulting from this new rule.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) are affected by this proposal.

§35.47. Residential Solicitation.

A license holder or employee of a license holder who offers or attempts to sell regulated goods or services to a homeowner or resident of a home or apartment through direct physical contact, including door to door solicitation, shall:

(1) carry a department-issued pocket card, or a receipt of registration issued by the department, and present said pocket card or proof of registration for inspection to the homeowner or resident;

(2) inform the homeowner or resident of the person's name and employer's name;

(3) provide to the homeowner or resident, at no charge, a document or business card listing the person's name, employer's name, address, phone number, license number, and the department's phone number with instructions on how to contact or file a complaint with the department;

(4) not approach or solicit a home or residence before the hour of 9:00 a.m. or after the hour of 8:00 p.m., or during any times where a placard is displayed indicating that the homeowner or residential occupant does not wish to be solicited; and

(5) provide to the local law enforcement agency with primary jurisdiction a written list of all registrants that will be engaging in the door-to-door solicitation of its residents before any solicitation occurs. The licensed company shall update the information provided to the above-referenced agency if there are any changes to the list. This notification can be made via fax, email, regular mail, or by hand delivery to the agency. This notification shall include the company name and department-issued license number.

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

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105546
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-5848

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SUBCHAPTER E. GENERAL ADMINISTRATION AND EXAMINATIONS

37 TAC §35.63, §35.70

The Texas Department of Public Safety (the department) proposes amendments to §35.63 and §35.70, concerning General Administration and Examinations. Amendments to §35.63 are necessary to render the requirements for photographs required with an application for a private security license consistent with those of the Concealed Handgun Licensing Program, and specifically to authorize the use of driver license photographs when possible. Amendments to §35.70 modify the fee structure to address the additional costs associated with the production of a new, hard plastic license.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendments. There are no anticipated economic costs to individuals who are required to comply with these amendments. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rules are in effect the anticipated public benefit will be enhanced public safety through the assurance that those who provide private security services regulated under the Private Security Act are in fact licensed by the department. This will be achieved through a higher quality photographic image that corresponds when possible to that which appears on the individual's driver license and a new physical license card facilitated by these amendments. The amendments also provide for a more cost efficient mechanism for the receipt and processing of the photographs. There should be no economic costs resulting from the amendments to these rules.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter; and Texas Occupations Code, §1702.062, which authorizes the department to establish licensing fees by rule.

Texas Government Code, §411.004(3) and Texas Occupations Code, §§1702.061(b), 1702.062, and 1702.112 are affected by this proposal.

§35.63. Photographs.

Applicants shall submit two identical photographs of the applicant to the department. The photographs must be un-retouched color prints. Snapshots, vending machine prints, and full length photographs will not be accepted. The photographs must be 2 inches by 2 inches in size and printed on photo quality paper. The photographs must be taken in normal light, with a contrasting white, off-white, or blue background. The photographs must present a good likeness of the applicant taken within the last six months. Unless worn daily for religious purposes, all hats or headgear must be removed for the photograph and no item or attire may cover or otherwise obscure any facial features (eyes, nose, and mouth). Eyeglasses must be removed for the photograph. The photographs must present a clear, frontal image of the applicant and include the full face from the bottom of the chin to the top of the head, including hair. The image of the applicant must be between 1 and 1-3/8 inches. Only the applicant may be portrayed. Photographs in which the face of the person being photographed are not in focus will not be accepted. Upon development of an interface allowing the Regulatory Services Division to access the photographs on file with the Driver License Division system or development of other electronic means to obtain the applicant's photograph, applicants may not be required to submit printed photographs. [~~Photographs required by the Act shall be in color and shall show a facial likeness of applicants. Photographs placed on pocket cards shall have been taken within six months prior to the issuance of the card and be 1" x 1 1/4" in size.~~]

§35.70. Fees.

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

(f) Upon completion of development and production of the department's secure, laminated pocket card, an additional fee of $5.00 will be charged when a pocket card is issued.

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

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105547
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-5848

SUBCHAPTER F. ADMINISTRATIVE HEARINGS

37 TAC §35.93

The Texas Department of Public Safety (the department) proposes amendments to §35.93, concerning Penalty Range. This amendment adds a fine to the board's rule-based standardized penalty schedule for the violation of the board's proposed new §35.47, relating to Residential Solicitation. This rule also provides guidance to the Private Security Bureau staff and the regulated industry regarding the fine associated with violations of the new rule.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule. There are no anticipated economic costs to individuals who are required to comply with this rule. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit as a result of the rule is more transparency and greater consistency relating to the manner in which the department administers the statute. There should be no economic costs resulting from this rule.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter; and Texas Occupations Code, §1702.402(c), which authorizes the department to adopt a rule-based standardized penalty schedule.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) and §1702.402(c) are affected by this proposal.

§35.93. Penalty Range.

The board hereby adopts the following as guidelines for administrative penalties to be used in proceedings under Subchapter Q of the Act (§1702.401 et seq.) for violations of the Act and this chapter. The following fines are to be construed as maximum penalties only. In assessing fines, department personnel are encouraged to consider the factors provided in §1702.402 of the Act.
Figure: 37 TAC §35.93

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

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105548
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-5848

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SUBCHAPTER N. COMPANY LICENSE QUALIFICATIONS

37 TAC §35.221

The Texas Department of Public Safety (the department) proposes amendments to §35.221, concerning Qualifications for Investigations Company License. The amendments remove the requirement that training courses be taught in a "face to face classroom" environment, thus permitting online instruction.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendments. There are no anticipated economic costs to individuals who are required to comply with these amendments. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of the amendments will be greater access to private investigative services and assurance that those who are providing such services have received the necessary training. There should be no economic costs resulting from the amendments of this rule.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) and §1702.004 are affected by this proposal.

§35.221. Qualifications for Investigations Company License.

(a) Pursuant to §1702.114 of the Act, the board has determined that an applicant for licensure as a private investigations company (as owner), or the prospective manager of the applicant company, must have met one of the following qualifications:

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

(5) A specialized course of study directly designed for and related to the private investigations profession, taught and presented through affiliation with a four-year college or university accredited and recognized by the State of Texas. This course of study must be endorsed by the four year college or university's department of criminal justice program and include a departmental faculty member(s) on its instructional faculty. This course of study must consist of a minimum of two hundred instructional [~~face-to-face classroom~~] hours including coverage of ethics, Private Security Board administrative rules, the Private Security Act, and related statutes.

(b) Other combinations of education and investigation-related experience may be substituted for the above at the discretion of the board or its designated representative [~~bureau manager~~].

(c) (No change.)

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

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105549
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-5848

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SUBCHAPTER Q. TRAINING

37 TAC §35.256

The Texas Department of Public Safety (the department) proposes amendments to §35.256, concerning Application for a Training Instructor Approval. The amendments are intended to clarify the number of hours of instruction required for approval as a private security training instructor, and to recognize the certification as a concealed handgun license instructor as evidence of qualification as such private security training instructor.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact for state and local government or local economies.

Ms. Hudson also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendments. There are no anticipated economic costs to individuals who are required to comply with these amendments. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of the amendments will be greater clarity in the eligibility criteria for training instructors, and therefore greater efficiency in the manner in which the department administers the statute and assurance that those who are providing such services have received the necessary training. There should be no economic costs resulting from the amendments of this rule.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 the state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on this proposal may be sent to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) and §1702.1675 are affected by this proposal.

§35.256. Application for a Training Instructor Approval.

(a) An application for approval as an instructor shall contain evidence of qualification as required by the board. Instructors may be approved for classroom and/or firearm training. An individual may apply for approval for one or both of these categories. To qualify for [~~a~~] classroom or firearm instructor approval the applicant [~~for approval~~] must submit acceptable and reasonably current certificates of training for each category. The classroom instructor and firearm certificates shall represent a combined [~~each have consisted of a~~] minimum of 40 hours of board approved instruction.

(b) Proof of qualification as a classroom instructor shall include, but not be limited to:

(1) an instructor's certificate issued by Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE);

(2) an instructor's certificate issued by federal, state, or political subdivision law enforcement agency approved by the manager [~~academy~~];

(3) an instructor's certificate issued by the Texas Education Agency; [~~and~~]

(4) an instructor's certificate relating to law enforcement, private security, or industrial security issued by a junior college, college, or university; or[~~.~~]

(5) a concealed handgun instructor certificate issued by the department.

[~~(c) In addition to the proof of qualification, a classroom instructor shall complete the Level III Instructor's 24 hour training course and submit completion certificate to the bureau.~~]

(c) [~~(d)~~] Proof of qualification as a firearm training instructor shall include, but not be limited to:

(1) an instructor's certificate issued by the Law Enforcement Activities Division of the National Rifle Association (NRA);

(2) an instructor's certificate issued by TCLEOSE; [~~and~~]

(3) a firearm instructor's certificate issued by a federal, state or political subdivision law enforcement agency approved by the manager; or[~~.~~]

(4) a concealed handgun instructor certificate issued by the department.

(d) [~~(e)~~] A letter of approval from the board shall be issued to each approved instructor and shall be valid for a period of one year. The instructor's approval may be renewed during the month preceding the month in which the approval expires for a period of one year after expiration, upon application to the board and payment of the renewal fee.

(e) [~~(f)~~] The board may revoke or suspend an instructor's approval or deny the application or renewal thereof upon evidence that:

(1) The instructor or applicant has violated any provisions of the Act or this chapter;

(2) The qualifying instructor's certificate has been revoked or suspended by the issuing agency;

(3) A material false statement was made in the application; or

(4) The instructor does not meet the qualifications set forth in the provisions of the Act and this chapter as amended.

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

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105550
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-5848

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), proposes repeal of 40 TAC Chapter 101, Administrative Rules and Procedures, Subchapters A, B, C, D, F, I, and J, and proposes, as replacement of the rules and/or subject matter of the rules contained therein, a new Chapter 101, Administrative Rules and Procedures, with new subchapters: Subchapter A, General Rules; Subchapter B, Historically Underutilized Businesses; Subchapter C, Councils, Board, and Committees; Subchapter D, Privacy and Confidentiality; and Subchapter E, Appeals and Hearing Procedures.

Specifically, DARS proposes repeal of the following rules: Subchapter A, General Rules, §§101.101, 101.103, 101.105, 101.107, 101.109, 101.111, 101.113, 101.115, 101.117, 101.119, 101.121, 101.123, 101.131; Subchapter B, Purchase of Goods and Services, §§101.201, 101.203, 101.209, 101.211, 101.213; Subchapter C, Historically Underutilized Businesses, §§101.551, 101.553, 101.555, 101.557; Subchapter D, Councils and Committees, §§101.601, 101.603, 101.605; Subchapter F, Durable Medical Equipment and Assistive Technology Listing, §§101.1001, 101.1003, 101.1005, 101.1007, 101.1009, 101.1011; Subchapter I, Administrative Rules and Procedures Pertaining to Early Childhood Intervention Services, Division 3, Relationship with Private Donors, §§101.5751, 101.5753, 101.5755, 101.5757, 101.5759; and Subchapter J, Appeals and Hearing Procedures, Division 1, General Rules, §§101.7001, 101.7003, 101.7005, 101.7007, 101.7009, 101.7011, 101.7013, 101.7015, 101.7017, 101.7019, 101.7021, 101.7023, 101.7025, 101.7027, 101.7029, 101.7031, 101.7033, 101.7035, 101.7037, 101.7039, 101.7041, 101.7043, 101.7045, 101.7047, 101.7049; Division 2, Division for Blind Services and Division for Rehabilitation Services, §§101.7051, 101.7053, 101.7055, 101.7057, 101.7059, 101.7061, 101.7063, 101.7065, 101.7067, 101.7069, 101.7071, 101.7073; Division 3, Division for Early Childhood Intervention Services, §§101.8011, 101.8013, 101.8015; Division 4, Office for Deaf and Hard of Hearing Services, §§101.8051, 101.8053, 101.8055, 101.8057, 101.8059, 101.8061, 101.8063, 101.8065, 101.8067, 101.8069, 101.8071, 101.8073, 101.8075, 101.8077, and 101.8079.

DARS proposes the following new rules: Subchapter A, General Rules, §101.101, Purpose; §101.103, Legal Authority; §101.105, Definitions; §101.107, Opportunities for Citizen Participation; §101.109, Complaints; §101.111, Cooperation with Other Public Agencies; §101.113, Criminal History Information on Applicants for Employment; §101.115, Use of Criminal History Information in Contracting; §101.117, Fees for Department Publications; §101.119, Gifts and Donations to DARS; and §101.121, Qualified Vocational Rehabilitation Counselor (QVRC);

Subchapter B, Historically Underutilized Businesses, §101.201, Purpose; §101.203, Legal Authority; §101.205, Definitions; and §101.207, Adoption of Rules;

Subchapter C, Councils, Board, and Committees, Division 1, Rehabilitation Council of Texas, §101.301, Purpose; §101.303, Legal Authority; §101.305, Definitions; §101.307, Tasks; §101.309, Reports; §101.311, Funding; §101.313, Duration of RCT; Division 2, State Independent Living Council, §101.401, Purpose; §101.403, Legal Authority; §101.405, Definitions; §101.407, Tasks; §101.409, Funding; §101.411, Duration of SILC; Division 3, Early Childhood Intervention Advisory Committee, §101.501, Purpose, §101.503, Legal Authority, §101.505, Definitions; §101.507, Membership Composition; §101.509, Tasks; §101.511, Meetings; §101.513, Compensatory Per Diem; §101.515, Absences From Advisory Committee Meetings; §101.517, Duration; and Division 4, Board for Evaluation of Interpreters Advisory Board, §101.601, Purpose; §101.603, Legal Authority; §101.605, Definitions; §101.607, Substantive Rules; and Division 5, BET Elected Committee of Managers (ECM), §101.701, Purpose; §101.703, Legal Authority; §101.705, Definitions; and §101.707, Substantive Rules;

Subchapter D, Privacy and Confidentiality, §101.805, Definitions; §101.807, Privacy Policies; §101.809, Confidentiality of Consumer Information in Vocational Rehabilitation Program; §101.811, Confidentiality of Consumer Information in the Specialized Telecommunications Assistance Program; and §101.813, Use of Consumer Information in the Deaf and Hard of Hearing Driver Identification Program;

Subchapter E, Appeals and Hearing Procedures, Division 1, General Rules, §101.901, Purpose; §101.903, Legal Authority; §101.905, Definitions; §101.907, Filing a Request for Review; §101.909, Time for Hearing; §101.911, Assignment of Impartial Hearing Officer; §101.913, Powers and Duties of Impartial Hearing Officer; §101.915, Substitution of Impartial Hearing Officer; §101.917, Reasonable Accommodations; §101.919, Appearance of Parties at Hearings; Representation; §101.921, Failure to Attend Hearing and Default; §101.923, Witness Fees; §101.925, Prehearing Conferences; §101.927, Dismissal Without Hearing; §101.929, Conduct of Hearing; §101.931, Order of Proceedings; §101.933, Rules of Evidence; §101.935, Transcription of Proceedings; §101.937, Prepared Testimony; §101.939, Pleadings; §101.941, Continuance; §101.943, Motion for Reconsideration; §101.945, Civil Action; §101.947, Mediation Procedures; §101.949, Computation of Time; Division 2, Division for Blind Services and Division for Rehabilitation Services, §101.1001, Purpose; §101.1003, Legal Authority; §101.1005, Definitions; §101.1007, Filing a Request for Review; §101.1009, Filings; §101.1011, Discovery and Mandatory Disclosures; §101.1013, Documentary Evidence and Official Notice; §101.1015, Impartial Hearing Officer Decision; §101.1017, Finality of the Hearing Officer's Decision; §101.1019, Implementation of Final Decision; §101.1021, Motion for Reconsideration; §101.1023; Appeal of Final Decision; Division 3, Division for Early Childhood Intervention Services, §101.1101, Purpose; §101.1107, Administrative Hearings Concerning Individual Child Rights; §101.1109, Motion for Reconsideration; §101.1111, Appeal of Final Decision; Division 4, Office for Deaf and Hard of Hearing Services, §101.1201, Purpose; §101.1203, Legal Authority; §101.1205, Definitions; §101.1207, Rules and Procedures Governing Hearings; §101.1209, Revocation and Suspension of a Certificate; §101.1211, Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate; §101.1213, Codes of Professional Conduct and Ethics; §101.1215, Filing a Request for Hearing; §101.1217, Filings; §101.1219, Discovery and Evidence; §101.1221, Documentary Evidence and Official Notice; §101.1223, Impartial Hearing Officer Decision; §101.1225, Finality of the Hearing Officer's Decision; §101.1227, Implementation of Final Decision; §101.1229, Motion for Reconsideration; and §101.1231, Appeal of Final Decision.

The repeal and new rules are proposed as a result of DARS' four-year rule review of Chapter 101, Administrative Rules and Procedures, conducted as required by Texas Government Code §2001.039. DARS determined that the reasons for initially adopting the rules contained in Chapter 101, Subchapters A, B, C, D, and J, continue to exist, but the reasons for initially adopting the rules in Subchapters F and I, no longer exist. However, DARS is repealing all of Chapter 101 and proposing new Chapter 101, Administrative Rules and Procedures. The new Chapter 101 rules are necessary to align with statutes and current DARS operations; to add recent rule changes regarding Historically Underutilized Businesses from the Comptroller of Public Accounts; to delete rules that are no longer necessary; to add divisions to Subchapter C, Councils, Board, and Committees; to add new subchapter for privacy and confidentiality; and to renumber and revise the rules for clear and concise language.

The following address the specific changes to Chapter 101:

The repeal and replacement of Subchapter A, General Rules, is necessary to move related sections from other subchapters in this chapter; to add new sections concerning legal authority, gifts and donations to; qualified vocational rehabilitation counselor (QVRC); and to renumber and revise the rules for clear and concise language.

The repeal of Subchapter B, Purchase of Goods and Services, is necessary because the subject matter is being moved to Chapter 104, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services, which is contemporaneously proposed elsewhere is this issue of the *Texas Register.*

The repeal and replacement of Subchapter C, Historically Underutilized Businesses, is necessary because of recent changes by the Comptroller of Public Accounts to rules governing Historically Underutilized Businesses and because the rules are renumbered and revised for clear and concise language.

The repeal and replacement of Subchapter D, Council and Committees, is necessary because the rules needed to be renumbered and revised for clear and concise language. The rules will now be in new Subchapter C and the subchapter rules are being divided into new Divisions 1 - 5, to include references to the board and committees included in other subchapters.

The rules in new Subchapter D, Privacy and Confidentiality, are necessary because the rules are renumbered and revised for clear and concise language.

The repeal of Subchapter F, Durable Medical Equipment and Assistive Technology, is necessary because the reasons for initially adopting them no longer exist.

The repeal of Subchapter I, Administrative Rules, and Procedures Pertaining to Early Childhood Intervention Services, is necessary because the reasons for initially adopting them no longer exist.

The repeal and replacement of Subchapter J, Appeals and Hearing Procedures, is necessary because the rules are renumbered and revised for clear and concise language. The rules and/or subject matter of the rules are being placed in new Subchapter E.

The following statutes and regulations authorize the proposed repeal and new rules: The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et seq.; the regulations of the Department of Education, Rehabilitation Services Administration, 34 C.F.R. Parts 361, 363, 364, 365, 366, and 367, as amended; Texas Human Resources Code, Chapters 73, 81, 82, 91, 111, 116, and 117; Texas Health and Safety Code, Chapter 432; The Individuals with Disabilities Education Act, as amended; 20 U.S.C. §1400 et seq. and implementing regulations; 29 U.S.C. §725 and §796d; 42 U.S.C. §§300x-3(a), 300x-4(e), and 15025; 34 C.F.R. Part 303, Subpart G; and Texas Government Code, Chapters 411, 551, 552, 559, 2001, 2155, and 2161.

Mary Wright, DARS chief financial officer, has determined that for each year of the first five years that the proposed repeal and new rules will be in effect, there are no foreseeable fiscal implications to either costs or revenues of state or local governments because of enforcing or administering the proposal.

Ms. Wright also has determined that the public benefit anticipated as a result of administering and enforcing the repeal and new rules will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the general administrative rules and procedures of the Department of Assistive and Rehabilitative Services. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposed repeal and new rules.

Further, in accordance with Texas Government Code, §2001.022, Ms. Wright has determined that the proposed repeal and new rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposed repeal and new rules will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposed repeal and new rules may be submitted within 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

SUBCHAPTER A. GENERAL RULES

40 TAC §§101.101, 101.103, 101.105, 101.107, 101.109, 101.111, 101.113, 101.115, 101.117, 101.119, 101.121, 101.123, 101.131

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.101. Definitions.

§101.103. Declaration of Purpose and Policy.

§101.105. Opportunities for Citizen Participation.

§101.107. Privacy Policies.

§101.109. Complaints.

§101.111. Cooperation with Other Public Agencies.

§101.113. Criminal History Information on Applicants for Employment.

§101.115. Use of Criminal History Information in Contracting.

§101.117. Confidentiality of Consumer Information in Vocational Rehabilitation Programs.

§101.119. Confidentiality of Consumer Information in the Specialized Telecommunications Assistance Program.

§101.121. Comparable Services and Benefits.

§101.123. Fees for Department Publications.

§101.131. Payment of Shift Differentials.

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105723
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER B. PURCHASE OF GOODS AND SERVICES

40 TAC §§101.201, 101.203, 101.209, 101.211, 101.213

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.201. Purchases for Individual Consumers of Vocational Rehabilitation Services.

§101.203. Standards for Facilities and Providers of Services.

§101.209. Alternative Purchasing Methods--Rates for Medical Services.

§101.211. Schedule of Rates.

§101.213. Contracts for Deaf and Hard of Hearing 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 December 19, 2011.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESSES

40 TAC §§101.551, 101.553, 101.555, 101.557

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.551. Purpose.

§101.553. Applicability.

§101.555. Definitions.

§101.557. Adoption of 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 December 19, 2011.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER D. COUNCILS AND COMMITTEES

40 TAC §§101.601, 101.603, 101.605

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.601. Rehabilitation Council of Texas.

§101.603. State Independent Living Council.

§101.605. Early Childhood Intervention Advisory Committee.

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105726
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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SUBCHAPTER F. DURABLE MEDICAL EQUIPMENT AND ASSISTIVE TECHNOLOGY LISTING

40 TAC §§101.1001, 101.1003, 101.1005, 101.1007, 101.1009, 101.1011

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.1001. Legal Basis and Purpose.

§101.1003. Definition.

§101.1005. Listing Items for Donation.

§101.1007. Stickers for Retailers.

§101.1009. Referral of Individuals.

§101.1011. Local Organizations.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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SUBCHAPTER I. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO EARLY CHILDHOOD INTERVENTION SERVICES
DIVISION 3. RELATIONSHIP WITH PRIVATE DONORS

40 TAC §§101.5751, 101.5753, 101.5755, 101.5757, 101.5759

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.5751. Purpose.

§101.5753. Definitions.

§101.5755. Donations by Private Donors to the Department of Assistive and Rehabilitative Services.

§101.5757. Relationship Between Private Organizations and the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services.

§101.5759. Standards of Conduct for Employees of the Department.

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-201105728
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER J. APPEALS AND HEARING PROCEDURES
DIVISION 1. GENERAL RULES

40 TAC §§101.7001, 101.7003, 101.7005, 101.7007, 101.7009, 101.7011, 101.7013, 101.7015, 101.7017, 101.7019, 101.7021, 101.7023, 101.7025, 101.7027, 101.7029, 101.7031, 101.7033, 101.7035, 101.7037, 101.7039, 101.7041, 101.7043, 101.7045, 101.7047, 101.7049

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.7001. Purpose and Scope.
§101.7003. Legal Authority.
§101.7005. Definitions.
§101.7007. Filing a Request for Review.
§101.7009. Time for Hearing.
§101.7011. Assignment of Impartial Hearing Officer.
§101.7013. Powers and Duties of Impartial Hearing Officer.
§101.7015. Substitution of Impartial Hearing Officer.
§101.7017. Reasonable Accommodations.
§101.7019. Appearance of Parties at Hearings; Representation.
§101.7021. Failure to Attend Hearing and Default.
§101.7023. Witness Fees.
§101.7025. Pre-hearing Conferences.
§101.7027. Dismissal Without Hearing.
§101.7029. Conduct of Hearing.
§101.7031. Order of Proceedings.
§101.7033. Rules of Evidence.
§101.7035. Transcription of Proceedings.
§101.7037. Prepared Testimony.
§101.7039. Pleadings.
§101.7041. Continuance.
§101.7043. Motion for Reconsideration.
§101.7045. Civil Action.
§101.7047. Mediation Procedures.
§101.7049. Computation of Time.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 2. DIVISION FOR BLIND SERVICES AND DIVISION FOR REHABILITATION SERVICES

40 TAC §§101.7051, 101.7053, 101.7055, 101.7057, 101.7059, 101.7061, 101.7063, 101.7065, 101.7067, 101.7069, 101.7071, 101.7073

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.7051. Purpose and Scope.

§101.7053. Legal Authority and Scope.

§101.7055. Definitions.

§101.7057. Filing a Request for Review.

§101.7059. Filings.

§101.7061. Discovery and Mandatory Disclosures.

§101.7063. Documentary Evidence and Official Notice.

§101.7065. Impartial Hearing Officer Decision.

§101.7067. Finality of the Hearing Officer's Decision.

§101.7069. Implementation of Final Decision.

§101.7071. Motion for Reconsideration.

§101.7073. Appeal of Final Decision.

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105730
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 3. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

40 TAC §§101.8011, 101.8013, 101.8015

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.8011. Administrative Hearings Concerning Individual Child Rights.

§101.8013. Motion for Reconsideration.

§101.8015. Appeal of Final Decision.

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105731
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-4050

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DIVISION 4. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

40 TAC §§101.8051, 101.8053, 101.8055, 101.8057, 101.8059, 101.8061, 101.8063, 101.8065, 101.8067, 101.8069, 101.8071, 101.8073, 101.8075, 101.8077, 101.8079

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.8051. Purpose, Scope and Authority.

§101.8053. Rules and Procedures Governing Hearings.

§101.8055. Definitions.

§101.8057. Revocation and Suspension of a Certificate.

§101.8059. Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate.

§101.8061. Codes of Professional Conduct and Ethics.

§101.8063. Filing a Request for Hearing.

§101.8065. Filings.

§101.8067. Discovery and Evidence.

§101.8069. Documentary Evidence and Official Notice.

§101.8071. Impartial Hearing Officer Decision.

§101.8073. Finality of the Hearing Officer's Decision.

§101.8075. Implementation of Final Decision.

§101.8077. Motion for Reconsideration.

§101.8079. Appeal of Final Decision.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER A. GENERAL RULES

40 TAC §§101.101, 101.103, 101.105, 101.107, 101.109, 101.111, 101.113, 101.115, 101.117, 101.119, 101.121

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.101. Purpose.

(a) DARS is the principal authority in the state on matters relating to rehabilitation of people with disabilities. All other state agencies engaged in rehabilitation activities and related services to people must coordinate those activities and services with DARS.

(b) The State of Texas provides rehabilitation and related services to eligible people with disabilities so that they may prepare for and engage in a gainful occupation or achieve maximum personal independence for the person.

(c) DARS provides services subject to the availability of funds in accordance with the state plans required by federal law and regulation, policies established by DARS, and contracts with the providers of such services.

(d) Under operational policies established by DARS, the commissioner is responsible for the administration, supervision, planning, and direction of all rehabilitation service programs.

(e) Any person who believes that he or she is eligible for rehabilitation services may contact any DARS office or employee for assistance.

§101.103. Legal Authority.

DARS implements its general powers and duties pursuant to its statutory authority promulgated in Texas Human Resources Code, Chapter 73 (relating to Interagency Council on Early Childhood Intervention Services); Chapter 81 (relating to Texas Commission for the Deaf and Hard of Hearing); Chapter 91, (relating to Texas Commission for the Blind); Chapter 111, Texas Rehabilitation Commission; and Chapter 117, (relating to Department of Assistive and Rehabilitative Services); as well as pursuant to federal authority.

§101.105. Definitions.

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

(1) DARS--The Texas Department of Assistive and Rehabilitative Services.

(2) Counselor--A DARS employee who is trained to provide vocational guidance and counseling and meets the minimum qualifications designated in a functional job description.

(3) State plan--The plan for vocational rehabilitation services submitted by the DARS Division for Rehabilitation Services and the DARS Division for Blind Services in compliance with the Rehabilitation Act of 1973, as amended, Title I.

§101.107. Opportunities for Citizen Participation.

In addition to other procedures listed in Part 2 of this title (relating to Department of Assistive and Rehabilitative Services), people with disabilities, parents of infants and toddlers with disabilities, and other citizens have the opportunity to:

(1) voice concerns through public representation on DARS committees, councils, and boards;

(2) attend and make public comments at public meetings (notices of all public meetings and agenda items are published in the *Texas Register);*

(3) comment on all proposed rules; and

(4) submit a petition requesting the adoption of rules.

(A) All petitions proposing the adoption of DARS rules shall be submitted in writing to the DARS commissioner. The petition must contain the following:

(i) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(ii) a statement of the statutory or other authority under which the rule is to be promulgated; and

(iii) the public benefits anticipated as a result of adopting the rule or the anticipated implications that could result from the failure to adopt the proposed rule.

(B) DARS staff members review the requests and present recommendations to DARS for action.

§101.109. Complaints.

(a) Complaints may be filed with DARS either in writing through mail, e-mail, or facsimile or by videotape for people who use sign language to communicate. Complaints should be directed to the DARS customer service representative or to the commissioner.

(b) For the purpose of directing complaints to DARS, DARS may notify consumers and service recipients of its name, mailing address, and telephone number by including the information:

(1) on each registration form, application, or written contract relating to participation in a program that is funded in any part by money derived from or through DARS;

(2) on a sign that is prominently displayed in the place of business of each person or entity engaging in a program that is funded in any part by money derived from or through DARS;

(3) in a bill for service provided by a person or entity engaging in a program that is funded in any part by money derived from or through DARS; or

(4) in other media for dissemination of information as determined by DARS.

(c) Ordinarily, DARS resolves complaints within 60 days.

(d) Information about complaints specifically related to early childhood intervention services may be found in Chapter 108 of this title (relating to Division for Early Childhood Intervention Services).

(e) Information about complaints specifically related to Blind Children's Vocational Discovery and Development Program may be found in Chapter 106 of this title (relating to Division for Blind Services).

§101.111. Cooperation with Other Public Agencies.

DARS enters into appropriate cooperative arrangements with, and uses the services and facilities of, other federal, state, and local public agencies providing services related to rehabilitation of people with disabilities. DARS also works toward maximum coordination and consultation with programs for and relating to rehabilitation of veterans with disabilities.

§101.113. Criminal History Information on Applicants for Employment.

(a) DARS may use Criminal History Conviction information obtained from the Texas Department of Public Safety when evaluating applicants for employment.

(b) In addition to or instead of that described in subsection (a) of this section, DARS may use Criminal History Record Information obtained from the Texas Department of Public Safety when evaluating the applications of the following applicants, in accordance with Texas Government Code, §§411.0985, 411.1131, 411.1142, and 411.117:

(1) Applicants for positions in the Division for Rehabilitation Services and the Division for Disability Determination Services: All applicants whose potential duties include direct contact with consumers of Vocational Rehabilitation Services, Comprehensive Rehabilitation Services, and Independent Living Services in the Division for Rehabilitation Services.

(2) Applicants for positions in the Division for Early Childhood Intervention Services: All applicants whose potential employment involves the delivery of early childhood intervention services or involves direct interactions with or the opportunity to interact and associate with children.

(3) Applicants for positions in the Division for Blind Services and DARS Headquarters Administration: All applicants for employment.

(c) DARS will deny employment to applicants whose criminal history contains a felony criminal conviction which has been determined by the Commissioner or Assistant Commissioner to make the applicant unfit or unsafe to perform the functions of the job.

(d) Criminal history information other than that described in subsection (b) of this section shall not be disqualifying for employment, but may be considered by DARS in determining the best qualified candidate for a position.

§101.115. Use of Criminal History Information in Contracting.

DARS may obtain criminal history information from the Texas Department of Public Safety and may use it in connection with award and administration of DARS contracts. When DARS uses the information, DARS includes the terms and conditions of use in the affected contracts.

§101.117. Fees for Department Publications.

DARS establishes and charges reasonable fees for DARS publications to cover the publication costs. However, DARS will waive the fee for a person who is disabled and financially unable to pay for the publication. The determination whether a person is financially unable to pay for a publication will be based on a review of the circumstances including information submitted by the person who is disabled.

§101.119. Gifts and Donations to DARS.

(a) DARS may receive and use gifts and donations for carrying out its purposes as authorized in statute.

(b) Only the commissioner may accept gifts or donations of real estate or permanent improvements to real estate.

(c) Other gifts or donations with a value of $500 or more may be accepted by the commissioner, deputy commissioner, assistant commissioners, or chief financial officer. They may delegate in writing the authority to accept.

(d) The chief financial officer sets, by DARS policy, the procedures concerning:

(1) accepting all gifts and donations; and

(2) delegating the authority to accept gifts and donations with value of less than $500.

(e) DARS has no current relationship with a private organization that exists to further the purposes of DARS.

(f) If DARS desires to form such a relationship, it will enter into a memorandum of understanding with the organization and will adopt rules for the relationship in accordance with Texas Government Code, Chapter 2255.

§101.121. Qualified Vocational Rehabilitation Counselor (QVRC).

(a) The Division for Rehabilitation Services (DRS) and Division for Blind Services (DBS) help counselors to meet the Comprehensive System of Personnel Development (CSPD) standard by making funds available through the Qualified Vocational Rehabilitation Counselor (QVRC) program for the required graduate education except when:

(1) unforeseen circumstances occur that may restrict or prohibit the funding; or

(2) management discontinues a counselor's participation in the program in the best interests of the division.

(b) The regional director (DRS), director of program management (DBS), or designee must approve QVRC financial assistance. This financial assistance is contingent on:

(1) funding;

(2) management approval; and

(3) compliance with qualifications for participation.

(c) Qualifications for participation in the QVRC Program require that vocational rehabilitation counselors, transition vocational rehabilitation counselors, vocational rehabilitation coordinators (DBS) or unit program specialists (DRS) applying for assistance must:

(1) have completed the initial training year;

(2) be meeting or exceeding job performance expectations;

(3) obtain the appropriate approvals to pursue a graduate degree or prescribed coursework;

(4) apply for Rehabilitation Services Administration (RSA) scholarship and university stipend funding; and

(5) be accepted by the appropriate institution of higher education.

(d) A counselor who meets the CSPD standard is considered a Qualified Vocational Rehabilitation Counselor.

(e) A counselor is expected to meet the CSPD standard within seven years from completion of the initial training year. Divisions must conduct transcript reviews and/or confirm certifications to determine compliance with standards or to outline coursework to be completed by the counselor.

(f) A counselor is expected to pay all costs or expenses:

(1) associated with the college application and admission except one GRE fee;

(2) related to tuition, fees, and books for any coursework that must be repeated because of failure to successfully complete; and

(3) related to completing work necessary to remove any grade of "I" (Incomplete) within three months, unless there are valid reasons (for example, serious illness, or university regulations to the contrary).

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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Sylvia F. Hardman
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Department of Assistive and Rehabilitative Services
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SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES

40 TAC §§101.201, 101.203, 101.205, 101.207

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.201. Purpose.

The purpose of this subchapter is to establish the authority and responsibility to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting in accordance with the HUB goals specified in the State of Texas Disparity Study. The State of Texas and the Department of Assistive and Rehabilitative Services (DARS) encourage the use of historically underutilized businesses (HUBs) and implement this responsibility without bias regarding race, ethnicity, or gender.

§101.203. Legal Authority.

This subchapter applies to all contracts and purchase orders established under Government Code, Chapter 2155. It also applies to all bids, proposals, offers, or other applicable expressions of interest over $100,000 as defined in Government Code, Chapter 2161, Subchapter F (relating to Subcontracting), and 34 TAC §20.14 (relating to Subcontracts).

§101.205. Definitions.

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

(1) DARS--The Texas Department of Assistive and Rehabilitative Services.

(2) Economically Disadvantaged Person--An eligible HUB owner as defined in 34 TAC §20.11 (relating to Definitions) whose business has not exceeded the graduation size standards established by 34 TAC §20.23 (relating to Graduation Procedures).

(3) Good-Faith Effort (GFE)--A procurement effort in which prime contractors take certain steps to promote inclusion of HUBs in contracts with an expected value of $100,000 or more as defined in 34 TAC §20.13 (relating to Statewide Annual HUB Utilization Goals) and §20.14 (relating to Subcontracts). When applied to agency GFE, the state auditor considers whether the agency has adopted rules under §2161.003, Government Code; has used the Texas Comptroller of Public Accounts, Texas Procurement and Support Services directory and other resources to identify HUBs that are able to contract with the agency; has made good-faith, timely efforts to contact identified HUBs regarding contracting opportunities; has conducted its procurement program in accordance with the good-faith methods set out in the comptroller's rules; and has established agency specific goals for contracting with HUBs in each procurement category based on scheduled fiscal year expenditures, the availability of HUBs in each category, the agency's historic utilization of HUBs, and other relevant factors as determined by rules adopted under §2161.002, Government Code.

(4) Historically Underutilized Business (HUB)--A business entity as defined in 34 TAC §20.11 that is certified by the State of Texas and has not exceeded the size standards established by 34 TAC §20.23 with its principal place of business in Texas.

(5) HUB Subcontracting Plan (HSP)--a written plan regarding the use of subcontractors that must be submitted with all responses to agency contracts with an expected value of $100,000 or more where subcontracting opportunities have been determined by the agency to be probable as defined in 34 TAC §20.13 and §20.14.

§101.207. Adoption of Rules.

In accordance with Government Code §2161.003, the Department of Assistive and Rehabilitative Services adopts the rules of the Texas Comptroller of Public Accounts, Texas Procurement and Support Services at 34 TAC Chapter 20, Subchapter B (relating to Historically Underutilized Business Program). These rules were promulgated by the Texas Comptroller of Public Accounts under Government Code, §2161.002.

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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Sylvia F. Hardman
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SUBCHAPTER C. COUNCILS, BOARD, AND COMMITTEES

DIVISION 1. REHABILITATION COUNCIL OF TEXAS

40 TAC §§101.301, 101.303, 101.305, 101.307, 101.309, 101.311, 101.313

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.301. Purpose.

The Rehabilitation Council of Texas (RCT) advises the DARS Division for Rehabilitation Services and the DARS Division for Blind Services in performing their responsibilities to provide vocational rehabilitation services for people with disabilities.

§101.303. Legal Authority.

The Rehabilitation Council of Texas (RCT) is created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code §725; and the Human Resource Code, §111.016. Federal law requires DARS to establish the RCT in order to receive federal financial assistance. Failure to establish the RCT would prohibit DARS from receiving federal financial assistance. In accordance with Human Resources Code, §111.0161, the RCT reports to and advises the executive commissioner or designee on the RCT's activities and the results of the RTC's work. In performing its advisory functions, the RCT works with the DARS commissioner, the DARS staff, and the executive commissioner or designee.

§101.305. Definitions.

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

(1) DARS--The Texas Department of Assistive and Rehabilitative Services.

(2) RCT--The Rehabilitation Council of Texas.

(3) Divisions--The DARS Division for Rehabilitation Services (DRS) and the DARS Division for Blind Services (DBS).

§101.307. Tasks.

Tasks. The council shall:

(1) review, analyze, and advise the divisions about their performance of responsibilities, particularly those relating to:

(A) eligibility determination (including order of selection);

(B) the extent, scope, and effectiveness of services provided; and

(C) functions performed by the divisions that potentially affect the ability of people with disabilities to achieve rehabilitation goals and objectives;

(2) advise the divisions and, at its discretion, helps prepare the State Plan for Vocational Rehabilitation Services; amendments to the plan; and applications, reports, needs assessments, and evaluations required;

(3) to the extent feasible, review and analyze the effectiveness of, and consumer satisfaction with:

(A) the functions performed by state agencies and other public and private entities responsible for performing functions for people with disabilities; and

(B) vocational rehabilitation services:

(i) provided, or paid for from funds made available, under 29 United States Code §725, or through other public or private sources; and

(ii) provided by state agencies and other public and private entities responsible for providing vocational rehabilitation services to people with disabilities; and

(C) the employment outcomes achieved by people who receive services under 29 United States Code §725, including the availability of health and other employment benefits in connection with those employment outcomes;

(4) coordinate with other councils in the state, including the State Independent Living Council established under 29 United States Code §796d; the advisory panel established under §612(a)(20) of the Individuals with Disabilities Education Act 20 U.S.C. §1412(a)(21); the State Council on Developmental Disabilities described in 42 United States Code §15025; the State Mental Health Planning Council established under 42 United States Code §300x-3(a); and the state workforce investment board;

(5) advise the divisions and coordinates working relationships between the divisions and the State Independent Living Council and centers for independent living within the state; and

(6) perform other comparable functions consistent with the Rehabilitation Act of 1973, as amended, that the RTC determines to be appropriate.

§101.309. Reports.

The Rehabilitation Council of Texas (RCT) shall:

(1) prepare and submit an annual report to the governor or appropriate state entity and the commissioner on the status of vocational rehabilitation programs operated within the state, and make the report available to the public; and

(2) submit to the commissioner of the Rehabilitation Services Administration, United States Department of Education, periodic reports that the commissioner may reasonably request, and keep records that the commissioner finds necessary to verify those reports.

§101.311. Funding.

The Rehabilitation Council of Texas (RCT) is funded primarily by federal funds, and its existence is required in order for DARS to receive and expend federal funds.

§101.313. Duration of RCT.

The RCT will be abolished on August 31, 2015.

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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Sylvia F. Hardman
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DIVISION 2. STATE INDEPENDENT LIVING COUNCIL

40 TAC §§101.401, 101.403, 101.405, 101.407, 101.409, 101.411

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.401. Purpose.

The State Independent Living Council (SILC) is created and established as an independent council, as required by the Rehabilitation Act of 1973, as amended, and carries out its responsibilities as set forth in the federal law and regulations under which it is established.

§101.403. Legal Authority.

The State Independent Living Council (SILC) is authorized and required under the Rehabilitation Act of 1973, as amended, 29 United States Code §796d; and 34 C.F.R. §364.21. Failure to establish the SILC would prohibit DARS from receiving federal financial assistance.

§101.405. Definitions.

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

(1) DARS--The Texas Department of Assistive and Rehabilitative Services.

(2) SILC--State Independent Living Council.

§101.407. Tasks.

The State Independent Living Council (SILC) shall:

(1) in conjunction with DARS, jointly develops and submits the State Plan for Independent Living Services as required by federal law;

(2) monitors, reviews, and evaluates the implementation of the state plan;

(3) coordinates activities with the Rehabilitation Council of Texas set out in §101.301 of this subchapter (relating to Purpose) and other councils that address the needs of specific disability populations and issues under other federal law;

(4) ensures that all regularly scheduled meetings of the SILC are open to the public and sufficient advance notice is provided;

(5) submits to the federal government periodic reports that the federal government may reasonably request, and keeps records that the federal government finds necessary to verify those reports; and

(6) reports to the DARS Council at least annually on the SILC's actions and the results of the SILC's work.

§101.409. Funding.

The State Independent Living Council (SILC) is funded primarily by federal funds, and its existence is required in order for DARS to receive and expend federal funds.

§101.411. Duration of SILC.

The State Independent Living Council (SILC) will be abolished on August 31, 2015.

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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DIVISION 3. EARLY CHILDHOOD INTERVENTION ADVISORY COMMITTEE

40 TAC §§101.501, 101.503, 101.505, 101.507, 101.509, 101.511, 101.513, 101.515, 101.517

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.501. Purpose.

The Early Childhood Intervention Advisory Committee assists and advises DARS in performing its responsibility to provide early childhood intervention services to eligible infants and toddlers and their families.

§101.503. Legal Authority.

The Early Childhood Intervention Advisory Committee is authorized and required under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. §1441; its implementing regulations, 34 C.F.R. Part 303 Subpart G State Interagency Coordinating Council; and Human Resources Code, Chapter 73 Interagency Council on Early Childhood Intervention Services. Failure to establish the advisory committee would prohibit DARS from receiving federal financial assistance.

§101.505 Definitions.

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

(1) Advisory Committee--The Early Childhood Intervention Advisory Committee, which serves as the interagency coordinating council for Texas.

(2) DARS--The Texas Department of Assistive and Rehabilitative Services.

(3) IDEA--The Individuals with Disabilities Education Act.

(4) Secretary--The secretary of the United States Department of Education.

§101.507. Membership Composition.

(a) In accordance with HRC §73.004, the governor shall appoint official advisory committee members. Official members shall serve staggered six-year terms of office, with the terms of eight members expiring February 1 of each odd-numbered year.

(b) The advisory committee consists of no more than 25 official members. In addition to the requirements in 20 U.S.C. §1441(b) and 34 C.F.R. §303.601 (related to Composition), the advisory committee is composed of the following official members:

(1) At least seven official members must be parents, including minority parents.

(A) The parent members must either be parents of infants and toddlers with disabilities or be parents of children with disabilities age 12 or younger, and also must have knowledge of, or experience with, programs for infants and toddlers with disabilities.

(B) At least one member must be a parent of a child age 6 or younger with a disability, preferably a parent of an infant or toddler with a disability.

(C) No parent member may be an employee of a DARS-contracted early childhood intervention program.

(2) At least five official members must be public or private providers of early childhood intervention services.

(3) At least one official member must be a preschool specialist from an education service center.

(4) At least one official member must be a physician, preferably a pediatrician who deals with children with developmental disabilities.

(5) At least one official member must be a professional advocate for the rights of young children with developmental disabilities.

(c) DARS may appoint ex officio members to perform specific, time-limited tasks as needed. DARS determines voting status of ex officio members.

(d) The advisory committee shall elect its own presiding officers.

§101.509. Tasks.

(a) The advisory committee shall advise and assist:

(1) the DARS Division for Early Childhood Intervention Services in developing and implementing the policies that constitute the statewide early childhood intervention system; and

(2) the Texas Education Agency regarding appropriate services and the transition of toddlers with developmental disabilities to services provided under IDEA, Part B.

(b) The advisory committee shall assist DARS in achieving the:

(1) full participation, coordination, and cooperation of all appropriate public agencies;

(2) effective implementation of the statewide system, by establishing a process that includes:

(A) seeking information from service providers, service coordinators, parents, and others about any federal, state, or local policies that impede timely service delivery; and

(B) taking steps to ensure that any policy problems are resolved; and

(3) resolution of disputes to the extent appropriate.

(c) The advisory committee shall advise and assist DARS in certain administrative duties including:

(1) identifying sources of fiscal and other supports for services for early intervention programs;

(2) assigning financial responsibility to the appropriate agency; and

(3) promoting interagency agreements.

(d) The advisory committee shall advise and assist DARS in preparing applications for funds under IDEA Part C and amendments to those applications.

(e) The advisory committee shall advise and assist DARS, prepares an annual report to the governor and to the secretary. The report must:

(1) provide the status of DARS-contracted early childhood intervention services programs;

(2) contain the information required by the secretary for the year for which the report is made; and

(3) be submitted to the secretary by a date that the secretary establishes.

§101.511. Meetings.

The advisory committee shall conduct all meetings in compliance with 20 U.S.C. §1441(c); 34 C.F.R. §303.603, Texas Government Code, Chapters 551, 552, and 2001; and the bylaws developed by the advisory committee. DARS accommodates special needs. Upon request, DARS provides auxiliary aids or services to persons with disabilities.

§101.513. Compensatory Per Diem.

Official and ex officio members who attend meetings may be reimbursed for expenses for meals, lodging, and transportation as established in the current Texas State Appropriations Act, Article IX. The official and ex officio members who are parents are entitled to reimbursement for child care. All official and ex officio members are entitled to reimbursement for attendant care.

§101.515. Absences from Advisory Committee Meetings.

DARS may recommend to the governor the removal of any advisory committee member who is absent more than:

(1) half of the regularly scheduled meetings that the member is eligible to attend during each calendar year; or

(2) two consecutive regularly scheduled meetings that the member is eligible to attend.

§101.517. Duration.

The advisory committee will be abolished on August 31, 2015.

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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Sylvia F. Hardman
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DIVISION 4. BOARD FOR EVALUATION OF INTERPRETERS ADVISORY BOARD

40 TAC §§101.601, 101.603, 101.605, 101.607

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.601. Purpose.
The DARS Board for Evaluation of Interpreters is an advisory board appointed by the Executive Commissioner of the Health and Human Services Commission or the Executive Commissioner's designee, to assist DARS in administering DARS's interpreter certification programs.

§101.603. Legal Authority.
The BEI Advisory Board is created pursuant to Human Resources Code Chapter 81, §81.007, Board for Evaluation of Interpreters.

§101.605. Definitions.
The following words and terms, when used in this division, have the following meanings unless the context clearly indicates otherwise:

(1) DARS--The Texas Department of Assistive and Rehabilitative Services.

(2) BEI--Board for Evaluation of Interpreters.

§101.607. Substantive Rules.
DARS rules relating to the duties, authority, and responsibilities of the BEI Advisory Board are set forth in detail at Chapter 109, Subchapter B of this title (relating to Board for Evaluation of Interpreters (BEI) General Certificate or 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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DIVISION 5. BET ELECTED COMMITTEE OF MANAGERS (ECM)

40 TAC §§101.701, 101.703, 101.705, 101.707

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.701. Purpose.
The purpose of the Elected Committee of Managers (ECM) is to comply with the Randolph-Sheppard Act, which requires the agency, as the state licensing agency in Texas under the Act, to provide for the biennial election of a State Committee of Blind Vendors which, to the extent possible, is fully representative of all blind vendors in the state.

§101.703. Legal Authority.
The Elected Committee of Managers (ECM) is created pursuant to 20 U.S.C.A. §107b(1) of Chapter 6A of Title 20, known as the Randolph-Sheppard Act.

§101.705. Definitions.
The following words and terms, when used in this division, have the following meanings unless the context clearly indicates otherwise:

(1) DARS--The Texas Department of Assistive and Rehabilitative Services.

(2) DBS--Division for Blind Services.

(3) BET--Business Enterprises of Texas.

(4) ECM--Elected Committee of Managers.

§101.707. Substantive Rules.
DARS rules relating to the duties, authority, and responsibilities of the BET Elected Committee of Managers are set forth in Chapter 106, Subchapter G of this title (relating to Business Enterprises of Texas).

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105739
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER D. PRIVACY AND CONFIDENTIALITY

40 TAC §§101.805, 101.807, 101.809, 101.811, 101.813

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.805. Definitions.

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

(1) DARS--The Texas Department of Assistive and Rehabilitative Services.

(2) STAP--Specialized Telecommunications Assistance Program.

§101.807. Privacy Policies.

In accordance with Chapter 559, Government Code, DARS adheres to the following privacy policies.

(1) Right to be informed about information collected. A person has the right to be informed about information that DARS collects about the person unless DARS is allowed to withhold the information from the person under Government Code, §552.023(b).

(2) Right to notice about certain information laws and practices.

(A) When DARS collects information about a person by means of a form that the person completes and files with DARS, DARS informs the person of his or her rights related to the information collected. If the form is in a paper format, DARS posts a prominent notice of the person's rights on the form. Or if the form is in an electronic format on an Internet site, DARS prominently posts the notice on the Internet site in connection with the electronic form. The notice states that:

(i) with few exceptions, the person is entitled on request to be informed about the information that DARS collects about the person;

(ii) under the Government Code, §552.021 and §552.023, the person may receive and review the information; and

(iii) under the Government Code, §559.004, the person may have DARS correct information about the person that is incorrect.

(B) When DARS uses an Internet site to collect information about a person or about the computer network location or identity of a user of the site, DARS prominently posts on the site what information DARS is collecting, including such information being collected by means that are not obvious.

(3) Right to correction of incorrect information. DARS has established a procedure under which a person may have DARS correct information that DARS possesses about the person and that is incorrect. The person should send a written request to DARS, including his or her full name and mailing address; identify the incorrect information; and provide the correct information. If the information to be corrected is related to a social security disability determination, to a vocational rehabilitation case, or to a DARS personnel or employment record, the person's social security number should be included. The person should attach to the request any additional material needed to identify the incorrect information or verify the correct information. The person may choose to include with the request a daytime telephone number in case DARS needs to call to clarify the request. The person must sign and mail the request to Department of Assistive and Rehabilitative Services, ATTN: Records Management Office, 4900 North Lamar Boulevard, Austin, Texas 78751-2316. DARS will acknowledge receipt of the request, and will notify the person of final action taken.

(4) Applicability of Public Information Law. Government Code, Chapter 552, governs the charges that DARS may impose on a person who requests information that DARS collects about himself or herself. However, DARS does not charge a person to correct information about the person.

§101.809. Confidentiality of Consumer Information in Vocational Rehabilitation Program.

(a) Consumer records.

(1) All personal information available to DARS employees as they administer rehabilitation services programs, including names, addresses, and records of consumer evaluations, is confidential.

(2) DARS may use such information and records only for purposes directly connected with administering the rehabilitation programs.

(3) DARS may directly or indirectly disclose information only in administering the rehabilitation programs, except with the consumer's written consent, in compliance with a court order, or in accordance with a federal or state law or regulation. DARS may not share information containing identifiable personal information with advisory or other bodies that do not have official responsibilities for administration of the programs.

(4) Upon a consumer's request, DARS releases information to a consumer or, as appropriate, his parent, guardian, or other representative. If, in the opinion of the counselor, release to the consumer of a particular document in the consumer case file will have a harmful effect on the consumer, the consumer will be notified that there is information in the case file that can be released only to an appropriate representative designated in writing by the consumer.

(5) All consumer information is the property of DARS.

(b) Other records.

(1) Release of consumer records must be made in accordance with federal law and regulations.

(2) DARS may provide to and receive from any state agency other nonconfidential information for the purpose of increasing and enhancing services to consumers and improving agency operations.

§101.811. Confidentiality of Consumer Information in the Specialized Telecommunications Assistance Program.

(a) All information DARS receives in the application process for the STAP, including names and addresses, may be used only to administer the STAP. DARS administers the STAP under Chapter 109 of this title (relating to Office for Deaf and Hard of Hearing Services).

(b) DARS may not advertise, distribute, or publish the name, address, or other related information about a person who applies for assistance under the STAP. Information concerning the STAP is exempted from disclosure under the Public Information Act.

(c) All STAP applicant information is the sole property of DARS.

§101.813. Use of Consumer Information in the Deaf and Hard of Hearing Driver Identification Program.

(a) All information DARS receives in the application or issuance process for the Deaf and Hard of Hearing Driver Identification Program (Driver Identification Program), including names and addresses, may be used only to administer the Driver Identification Program. DARS administers the Driver Identification Program under Chapter 109 of this title (relating to Office for Deaf and Hard of Hearing Services).

(b) All Driver Identification Program applicant and recipient information is the sole property of DARS and may be disclosed only in accordance with applicable state or federal laws.

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105740
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER E. APPEALS AND HEARING PROCEDURES

DIVISION 1. GENERAL RULES

40 TAC §§101.901, 101.903, 101.905, 101.907, 101.909, 101.911, 101.913, 101.915, 101.917, 101.919, 101.921, 101.923, 101.925, 101.927, 101.929, 101.931, 101.933, 101.935, 101.937, 101.939, 101.941, 101.943, 101.945, 101.947, 101.949

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.901. Purpose.

(a) This subchapter establishes procedures:

(1) in Division 1 of this subchapter (relating to General Rules) that govern generally all administrative hearings and appeals;

(2) in Division 2 of this subchapter (relating to Division for Blind Services and Division for Rehabilitation Services) that govern appeals concerning the vocational rehabilitation, independent living, and comprehensive rehabilitation programs of the Division for Blind Services and Division for Rehabilitation Services;

(3) in Division 3 of this subchapter (relating to Division for Early Childhood Intervention Services) that govern hearings concerning the provision of appropriate early intervention services to a child or child's family; and

(4) in Division 4 of this subchapter (relating to Office for Deaf and Hard of Hearing Services) that govern hearings concerning the suspension, revocation, or probation of a certificate holder's certificate granted under the provisions of Chapter 81, Human Resources Code and Chapter 57, Government Code.

(b) The provisions of this subchapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of DARS or the substantive rights of any person.

(c) A person's decision to seek an informal resolution, under Divisions 2 and 4 of this subchapter, of matters about which the person is dissatisfied shall not prevent, compromise, or delay the person's access to formal resolution procedures in this subchapter.

§101.903. Legal Authority.

The following statutes and regulations authorize the procedures established by this subchapter:

(1) The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et seq., and regulations of the Department of Education, 34 C.F.R. Parts 361, 363, 364, 365, and 367 as amended;

(2) Texas Human Resources Code, Chapter 91, Subchapter D (concerning vocational rehabilitation services of the blind);

(3) Texas Human Resources Code, Chapter 111, Subchapter D (concerning vocational rehabilitation services);

(4) The Individuals with Disabilities Education Act, as amended, 20 U.S.C. §1400 et seq., and 34 C.F.R. §303.1 et seq., as amended (concerning early intervention services for children with disabilities and developmental delays);

(5) Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, as amended;

(6) Texas Human Resources Code, Chapters 81 and 82 (concerning services for people who are deaf); and

(7) Texas Government Code, Chapter 57 (concerning court interpreter certification program for interpreters for people who are hearing-impaired).

§101.905. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise. The use of the singular or plural case is not meant to be limiting unless the context clearly indicates otherwise.

(1) Act--The Rehabilitation Act of 1973 as amended, 29 U.S.C. §701, et seq.

(2) Appellant--An applicant, eligible individual, authorized representative, or parent who has initiated formal procedures under this subchapter.

(3) Applicant--A person who has applied for services but for whom an eligibility determination has not been made.

(4) Authorized representative--An attorney authorized to practice law in the State of Texas, or a person designated by a party to represent the party in hearing procedures. The term includes a parent or a person made legally responsible for the child by a court of competent jurisdiction.

(5) Commissioner--The chief executive officer of the Department of Assistive and Rehabilitative Services.

(6) Consumer--The term "consumer" refers to and includes a person who:

(A) under Division 2 of this subchapter (relating to Division for Blind Services and Division for Rehabilitation Services), has been determined eligible for and is receiving services from DARS;

(B) under Division 3 of this subchapter (relating to Division for Early Childhood Intervention Services), is a parent, child, or the child's family; or

(C) under Division 4 of this subchapter (relating to Office for Deaf and Hard of Hearing Services), not only has been determined eligible for and is receiving services from DARS, but also is an individual defined by §101.1205(e) of this subchapter (relating to Definitions).

(7) DARS--The Texas Department of Assistive and Rehabilitative Services, its officers, employees, and agents.

(8) Discovery--The process by which a party, before any final hearing on the merits, may obtain evidence and other information that is relevant to a claim or defense in the appeal.

(9) Eligible individual--Any individual person whom DARS has determined to be eligible to receive vocational rehabilitation services.

(10) Hearing--A formal review conducted under this chapter. This term includes prehearing conferences.

(11) Impartial hearing officer (IHO)--A person who is appointed to conduct a hearing under this chapter.

(12) Parent--

(A) Under Division 2 of this subchapter, the term "parent" whether in the singular or plural means a minor child's natural or adoptive parent, the spouse of the minor child's natural or adoptive parent, the minor child's surrogate or foster parent, the spouse of the surrogate or foster parent, or other person made legally responsible for the minor child by a court.

(B) Under Division 3 of this subchapter, the meaning of the term "parent" is as defined in §108.103 of this title (relating to Definitions).

(13) Party--A person or agency named or admitted to participate in a formal hearing.

(14) Person--Any individual; representative; corporation; or other entity, including any public or nonprofit corporation, or agency or instrumentality of federal, state, or local government.

(15) Record--The official record of a hearing, including all arguments, briefs, pleadings, motions, intermediate rulings, orders, evidence received or considered, statements of matters officially noticed, questions and offers of proof, objections and rulings on objections, proposed findings of fact, conclusions of law, and hearing officer decision; any other decision, opinion, or report by the hearing officer or commissioner; and all DARS memoranda or data, including consumer and applicant files, submitted to or considered by the impartial hearing officer.

§101.907. Filing a Request for Review.

(a) Persons who may file a Request for Review.

(1) Under Division 2 of this subchapter (relating to Division for Blind Services and Division for Rehabilitation Services), an applicant or eligible individual who is dissatisfied with a DARS determination made by staff of DARS that affects the provision of vocational rehabilitation services may request a review of the determination.

(2) Under Division 3 of this subchapter (relating to Division for Early Childhood Intervention Services), a parent, DARS ECI, or the contractor responsible for services to a child may initiate a hearing involving the identification, evaluation, placement, or provision of appropriate early intervention services to a child or child's family.

(3) Under Division 4 of this subchapter (relating to Office for Deaf and Hard of Hearing Services), a certificate holder may request a review of a proposal by DARS to revoke or suspend a certificate or place a certificate holder on probation.

(b) A request for a review brought:

(1) under Division 2 of this subchapter, shall be filed, as provided in §101.1009 of this subchapter (relating to Filings) with the hearings coordinator, DARS Legal Services;

(2) under Division 3 of this subchapter, is filed, as provided in §101.1107 of this subchapter (relating to Administrative Hearings Concerning Individual Child Rights) with the assistant commissioner for ECI or, with the hearings coordinator, DARS Legal Services, if that assistant commissioner so delegates; and

(3) under Division 4 of this subchapter, is filed as provided in §101.1215 and §101.1217 of this subchapter (relating to Filing a Request for Hearing and Filings).

§101.909. Time for Hearing.

A hearing conducted under Division 2 of this subchapter (relating to Division for Blind Services and Division for Rehabilitation Services), by an impartial hearing officer selected in accordance with this division, will be held within 60 days of an applicant's or eligible individual's request for review of a DARS determination that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved before the 60th day or the parties agree to a specific extension of time.

§101.911. Assignment of Impartial Hearing Officer.

(a) The hearings coordinator as described in §101.1215 and §101.1217 of this subchapter (relating to Filing a Request for Hearing and Filings) shall select, on a random basis, or by agreement between DARS' authorized representative and the appellant, or if appropriate, the appellant's authorized representative or a parent.

(b) The impartial hearing officer shall be an individual who:

(1) is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(2) has knowledge of the delivery of vocational rehabilitation services, the state plan, and the federal and state regulations governing appeals under Division 2 of this subchapter (relating to Division for Blind Services and Division for Rehabilitation Services);

(3) has received training specified by DARS with respect to the performance of official duties; and

(4) has no personal, professional, or financial interest that would conflict with his or her objectivity in the hearing.

(c) An individual is not considered to be an employee of a public agency for the purposes of subsection (b) of this section solely because the individual is paid by the agency to serve as a hearing officer.

(d) In addition to those qualifications in subsections (a) - (c) of this section, an impartial hearing officer who conducts hearings under Division 3 of this subchapter (relating to Division for Early Childhood Intervention Services) must have knowledge about the provisions of the Individuals with Disabilities Education Act; the rules promulgated under that act; and services available for eligible children and their families.

(e) Despite the provisions in subsection (a) of this section, if in a subsequent appeal, the appellant raises factual issues or claims that either were previously adjudicated or could have been adjudicated in a prior appeal:

(1) the hearings coordinator may appoint the same IHO that heard the prior appeal to hear a subsequent appeal; or

(2) the IHO, on DARS' motion, reassigns the appeal to the IHO who heard the prior appeal.

§101.913. Powers and Duties of Impartial Hearing Officer.

(a) The impartial hearing officer has the authority and duty to:

(1) conduct a full and impartial hearing;

(2) take action to avoid unnecessary delay in the disposition of the proceeding; and

(3) maintain order.

(b) The impartial hearing officer has the power to regulate the course of the hearing, including the power to:

(1) administer oaths;

(2) take testimony;

(3) rule on questions of evidence;

(4) rule on discovery issues;

(5) issue orders relating to hearing and prehearing matters, including orders granting motions to subpoena witnesses and imposing nonmonetary sanctions regarding discovery;

(6) admit or deny party status;

(7) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

(8) grant continuance(s);

(9) request parties to submit legal memoranda, proposed findings of fact, and conclusions of law; and

(10) issue decisions based on findings of fact and conclusions of law.

(c) Unless required for the disposition of ex parte matters authorized by law, the impartial hearing officer may not directly or indirectly communicate in connection with any issue of fact or law with the commissioner or any party or a party's authorized representative, except on notice and opportunity for each party to participate.

(d) The authority of the impartial hearing officer concerning any discovery under subsection (b) of this section is subject to the authority granted by these rules or the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001.

§101.915. Substitution of Impartial Hearing Officer.

(a) If for any reason an impartial hearing officer is unable to continue presiding over a pending hearing, or issue a decision after the conclusion of the hearing, another impartial hearing officer shall be designated as a substitute to complete the hearing and render a decision in accordance with these rules.

(b) The substitute impartial hearing officer may use the existing record and may conduct further proceedings as are necessary and proper to conclude the hearing and render a decision.

§101.917. Reasonable Accommodations.

(a) Any hearing or proceedings conducted under this subchapter shall be held, whenever feasible, by telephone (directly or by relay), but at a time and place reasonably accessible either to the appellant or the certificate holder and any witnesses, and convenient for parties. In considering the physical location of a hearing or proceeding, the impartial hearing officer considers, among other factors:

(1) the suitability of any proposed facilities for a hearing, including such accommodations as the ability either of the appellant or the certificate holder and any witnesses to gain physical to the proceedings and facilities; and

(2) the comparative distances and times required to travel from places of work or residence to a proposed hearing location by parties and witnesses.

(b) DARS shall, upon reasonable notice, provide the appellant with readers or interpreters. Reasonable notice shall be considered to be no fewer than five working days prior to the proceeding unless good cause for a shorter period shall exist in the judgment of the impartial hearing officer.

(c) A copy of a transcript prepared during hearing proceedings and all notices and documents are provided to the appellant in an accessible format upon request.

§101.919. Appearance of Parties at Hearings; Representation.

(a) An individual may represent himself or herself.

(b) A party may be represented by an attorney authorized to practice law in Texas or by any other representative authorized by the party to represent him or her.

(c) A party's authorized representative shall be copied on all notices, pleadings, and other correspondence.

(d) A party's authorized representative remains the representative of record in absence of a formal request to withdraw and an order approving such withdrawal issued by the impartial hearing officer.

(e) DARS is not responsible for expenses incurred by appellants seeking remedy through this subchapter, and representation and attorney fees and related expenses are the responsibility of the individual parties.

§101.921. Failure to Attend Hearing and Default.

If, after receiving a notice of a hearing, a party or the party's authorized representative fails to attend the hearing, the impartial hearing officer may proceed and, where appropriate, may issue a default decision against the absent party.

§101.923. Witness Fees.

(a) Any witness or deponent who is not a party to and who is subpoenaed or otherwise appears at any hearing or proceeding at the request of DARS is entitled to receive reimbursement as provided in the Texas Government Code, §2001.103.

(b) DARS is not responsible for expenses incurred by any witness or deponent who is not a party to and who is subpoenaed or otherwise appears at any hearing or proceeding at the request of the appellant.

(c) The party calling or deposing an expert witness is responsible for all fees and expenses charged by the expert witness.

§101.925. Prehearing Conferences.

(a) The impartial hearing officer may hold a prehearing conference to resolve matters preliminary to the hearing. At the discretion of the impartial hearing officer, a prehearing conference may be held by telephone (directly or by relay). A prehearing conference may be convened to address any or all of the following matters:

(1) notice of jurisdiction or the impartial hearing officer's authority;

(2) scope or party status;

(3) the date and location of the final hearing;

(4) factual and legal issues;

(5) motions;

(6) issuance of subpoenas;

(7) discovery disputes;

(8) scheduling;

(9) stipulations;

(10) settlement conferences;

(11) requests for official notice;

(12) identification and exchange of documentary evidence;

(13) admissibility of evidence;

(14) identification and qualification of witnesses;

(15) order of presentation; and

(16) other matters that promote the orderly and prompt conduct of the hearing.

(b) Within five business days of the date on which the IHO receives the appellant's petition or request for review, the impartial hearing officer shall notify the appellant in writing of any other matters the impartial hearing officer considers expedient for an orderly conduct of the prehearing, including the following:

(1) the final or merits hearing will be held within 60 days after the date when the hearings coordinator received the petition or request for review;

(2) the appellant's right to request mediation;

(3) the reasons for the prehearing conference;

(4) the way the appellant might request a continuance of the prehearing conference;

(5) the effect of failing to participate in a prehearing conference; and

(6) the appellant's right to be represented.

§101.927. Dismissal Without Hearing.

(a) The impartial hearing officer may entertain motions for dismissal without a hearing for the following reasons:

(1) failure to pursue the hearing;

(2) unnecessary duplication of proceedings, res judicata, or collateral estoppel;

(3) withdrawal of the request for hearing;

(4) moot questions;

(5) lack of jurisdiction;

(6) failure to raise a material issue in the pleading;

(7) failure of a party or authorized representative to appear at a scheduled hearing;

(8) failure to respond to a discovery request; and

(9) failure to respond to any order by the impartial hearing officer including an order to disclose the identities of witnesses and exhibits.

(b) If the impartial hearing officer finds that a motion for dismissal should be granted, the impartial hearing officer may enter a final order of dismissal.

§101.929. Conduct of Hearing.

(a) On a genuine issue in a contested case, each party or authorized representative is entitled to:

(1) call witnesses, including parties;

(2) offer evidence;

(3) cross-examine any witness called by another party; and

(4) make opening and closing statements.

(b) Once the hearing is begun, the parties and authorized representatives may be off the record only when the impartial hearing officer permits. If the discussion off the record is pertinent, then the impartial hearing officer summarizes the discussion for the record.

(c) Objections shall be timely noted in the record.

(d) The impartial hearing officer may continue a hearing from time to time and from place to place. If the time and place for the hearing to reconvene are not announced at the hearing, a notice is mailed stating the time and place of the hearing.

(e) The impartial hearing officer may question witnesses and parties and/or direct the submission of supplemental evidence.

§101.931. Order of Proceedings.

(a) A case shall be called to order by the impartial hearing officer.

(b) Proceedings under Divisions 2 and 3 of this subchapter (relating to Division for Blind Services and Division for Rehabilitation Services and Division for Early Childhood Intervention Services) are conducted according to the following:

(1) The appellant may state briefly the nature of the claim or defense, what the appellant expects to prove, and the relief sought. Immediately thereafter, DARS may make a similar statement, and any other parties are afforded similar rights as determined by the impartial hearing officer. The impartial hearing officer may limit the time available for each party or authorized representative with respect to such statement.

(2) Evidence is then introduced by the appellant. DARS, or its authorized representative, and any other parties may cross-examine each of the appellant's witnesses.

(3) Cross-examination is not limited solely to matters raised on direct examination. Parties or authorized representatives are entitled to redirect and recross-examination.

(4) Unless the statement has already been made, the DARS or its authorized representative may briefly state the nature of the claim or defense, what DARS expects to prove, and the relief sought.

(5) Evidence, if any, is introduced by DARS. The appellant and any other parties may cross-examine each of DARS' witnesses.

(6) Any other parties may make statements and introduce evidence. The appellant and DARS may cross-examine the other parties' witnesses.

(7) The parties may present rebuttal evidence.

(8) The parties may be allowed to make either oral or written closing statements at the discretion of the impartial hearing officer.

(9) The impartial hearing officer may examine any witness and party.

(c) The order of proceedings set out in subsection (b) of this section applies to proceedings under Division 4 of this subchapter (relating to Office for Deaf and Hard of Hearing Services), except that DARS bears the burden of proof and is entitled to present its case first subject to cross-examination by the certificate holder and any other parties. Once DARS rests, the certificate holder may present his or her case.

(d) The impartial hearing officer may permit deviations from this order of procedure in the interest of justice or to expedite the proceedings.

(e) Parties shall provide four copies of each exhibit offered.

(f) Burden of proof. The party seeking affirmative relief, either on the case as a whole or on an issue, bears the burden of proof to prove the affirmative of the issue, or the party's case as a whole, by a preponderance of the evidence. In cases brought under Division 4 of this subchapter, DARS bears the burden of proof.

§101.933. Rules of Evidence.

(a) The rules of evidence as applied in nonjury civil cases by the district courts of the state of Texas apply to a hearing under this subchapter.

(b) Exceptions: evidence inadmissible under the rules of evidence applied in nonjury civil cases by the district courts of the state of Texas may be admitted:

(1) if it consists of any documents contained in any file of DARS related to the appellant; or

(2) if it is:

(A) necessary to ascertain the facts not reasonably susceptible of proof under those rules;

(B) not precluded by statute; and

(C) of a type on which reasonably prudent persons commonly rely in the conduct of their affairs.

(c) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

§101.935. Transcription of Proceedings.

(a) Unless precluded by law, the hearing shall be recorded electronically by tape recorder or similar device either by the IHO or by someone designated by the IHO. The tape recording is the official record of the testimony offered as evidence during the hearing. Any party, however, may request, at the party's expense, that the hearing be recorded by a court reporter if the request is made within ten days of the date for the hearing.

(b) In lieu either of a recording of the testimony electronically or of the reporting of testimony by a court reporter, the parties to a hearing may agree upon a statement of the evidence, agree to use taped transcriptions as a statement of the testimonial evidence, or agree to the summarization of testimony before the impartial hearing officer; provided, however, that proceedings or any part of them must be transcribed on written request of any party.

(c) Unless otherwise provided in this subchapter, the party requesting a transcription of any electronic recording of the proceedings shall bear the cost for transcribing any such electronically recorded testimony. Nothing provided for in this section limits DARS to a stenographic record of the proceedings.

§101.937. Prepared Testimony.

In all proceedings and after all parties of record have been given copies, the prepared testimony of a witness upon direct examination may be incorporated in the record as if read or received as an exhibit. The prepared testimony may be either in narrative or question and answer form. The witness must be sworn and must identify the testimony. The witness is subject to cross-examination, and the prepared testimony is subject to a motion to strike in whole or in part.

§101.939. Pleadings.

(a) In a formal appeal, all pleadings, for which no other form is prescribed, shall contain:

(1) the name of the party making the pleading;

(2) the names of all other known parties;

(3) a concise statement of the facts alleged and relied upon;

(4) a request stating the type of relief, action, or order desired;

(5) any other matter required by law;

(6) a certificate of service, as required by these rules; and

(7) the signature of the party or the party's authorized representative making the pleading.

(b) Any pleading filed in a formal appeal may be amended up to 14 days before the date of the hearing. Amendments filed after that time may be accepted at the discretion of the impartial hearing officer.

(c) Any pleading may adopt and incorporate, by specific reference, any part of any document or entry in the official files and records of DARS.

(d) All pleadings relating to any matter pending before DARS shall be filed with the impartial hearing officer and all parties.

(e) All pleadings must be in a format and medium reasonably calculated to provide the required information and must be clear and legible.

(f) Pleadings shall contain the name, address, and telephone number of the party filing the document or the name, telephone number, and business address of the authorized representative.

(g) The party or the party's authorized representative filing the pleading shall include a signed certification that a true and correct copy of the pleading has been served on every other party.

§101.941. Continuance.

(a) The impartial hearing officer, at his or her discretion, may grant a continuance to further the interests of justice. No motion for continuance shall be granted, unless it is made in writing or stated in the record, and the motion shall set forth the specific grounds upon which the party seeks the continuance.

(b) Unless made during a prehearing or hearing, a party seeking a continuance, cancellation of a scheduled proceeding, or extension of an established deadline must file such motion no later than 10 days before the date or deadline in question. A motion filed fewer than 10 days before the date or deadline in question must contain a certification that the movant contacted the other party or party's authorized representative and whether it is opposed by the party or party's authorized representative. Further, if a continuance to a certain date is sought, the motion must include a proposed date or dates and must indicate whether the other party or party's authorized representative contacted agrees on the proposed new date or dates.

§101.943. Motion for Reconsideration.

(a) Any party to a hearing may file a motion for reconsideration within 20 days after the party is notified of the issuance of the decision of the impartial hearing officer. The motion shall be filed as follows:

(1) for hearings held under Divisions 2 and 4 of this subchapter (relating to Division for Blind Services and Division for Rehabilitation Services and Office for Deaf and Hard of Hearing Services), the motion is filed with the hearings coordinator, DARS Legal Services; and

(2) for hearings held under Division 3 of this subchapter (relating to Division for Early Childhood Intervention Services), the motion is filed with the assistant commissioner for ECI, or with the hearings coordinator, DARS Legal Services, if the assistant commissioner so designates.

(b) The motion for reconsideration must specify the matters in the decision of the impartial hearing officer that the party considers to be erroneous. Any response to the motion for reconsideration must be filed no later than 30 days after a party, or a party's attorney or representative, is notified of the impartial hearing officer's issuance of the decision.

(c) The impartial hearing officer shall rule on the motion for reconsideration no later than 15 days after receipt of the motion, or after receipt of the response to the motion for reconsideration, whichever comes later. If the motion is granted, the IHO issues a decision upon reconsideration within an additional 15 days. If the impartial hearing officer fails to rule on the motion for reconsideration within 15 days, the motion is denied as a matter of law.

(d) Service. Service of the impartial hearing officer's decision or of a motion or response under this section shall be made by any of the following means to a party, a party's attorney, or representative:

(1) hand-delivery;

(2) courier-receipted delivery;

(3) regular first-class mail, certified, or registered mail;

(4) email or facsimile transmission before 5:00 p.m. on a business day to the recipient's current email address or telecopier number; or

(5) such other means as the impartial hearing officer may direct.

(e) Date of service. The date of service is the date of hand-delivery, of delivery by courier, of mailing, of emailing, or of facsimile transmission, unless otherwise required by law. Unless the contrary is shown, a decision, motion, or response that is sent by regular first-class mail is presumed to have been received within three days of the date of postmarking, if enclosed in a wrapper addressed to the recipient's last known address with return address to the sender, stamped with the appropriate first-class postage, and deposited with the U.S. Postal Service on the date postmarked.

§101.945. Civil Action.

(a) Any party who disagrees with the findings and decision of an impartial hearing officer has a right to bring a civil action in any court of competent jurisdiction without regard to the amount in controversy.

(b) A person must initiate a civil action for review of an impartial hearing officer's decision by filing a petition not later than the 30th day after the date on which the decision that is the subject of complaint is final and appealable.

§101.947. Mediation Procedures.

(a) An applicant, eligible individual, or parent who has initiated a proceeding under this subchapter may request mediation to resolve the dispute. DARS, with the consent of the applicant, eligible individual, or parent, may also originate the request for mediation.

(b) Mediation is voluntary on the part of the parties; must not be used to deny or delay the right of an individual to a hearing under this subchapter, or to deny any other right afforded by the Rehabilitation Act; and shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) DARS shall bear all costs related to the mediation process.

(d) Upon receiving a request for mediation from the parties, the hearings coordinator shall select an individual from a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of vocational rehabilitation, independent living services, comprehensive rehabilitation services, or the provision of services by Early Childhood Intervention Services, whichever may apply to the dispute.

(e) Sessions in the mediation process shall be coordinated by the mediator in a timely manner at a location convenient to both parties in the dispute.

(f) All discussions that occur during the mediation sessions are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The mediator may require the parties to sign a confidentiality pledge before the start of the mediation process.

(g) Any agreement reached through the mediation process is documented in a written mediation agreement and signed by the parties to the dispute. The agreement then becomes a part of the consumer record.

§101.949. Computation of Time.

(a) In computing any period of time prescribed or allowed by the rules in this subchapter, by order of an IHO, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included.

(b) Unless otherwise provided by the rules in this subchapter, the last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Saturdays, Sundays, and legal holidays are not counted for any purpose in any time period of five days or less in the rules under this subchapter.

(c) In computing the time periods required for filing a motion for reconsideration (§101.943 of this subchapter (relating to Motion for Reconsideration)) and for appealing a final decision of an IHO to a court (§101.945 of this subchapter (relating to Civil Action)), Saturdays, Sundays, and legal holidays are included.

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-201105741
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-4050

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DIVISION 2. DIVISION FOR BLIND SERVICES AND DIVISION FOR REHABILITATION SERVICES

40 TAC §§101.1001, 101.1003, 101.1005, 101.1007, 101.1009, 101.1011, 101.1013, 101.1015, 101.1017, 101.1019, 101.1021, 101.1023

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.1001. Purpose.

(a) This division establishes procedures under which an applicant or eligible person may appeal a determination made either by

the Division for Blind Services or by the Division for Rehabilitation Services that affects the provision of vocational rehabilitation services, independent living services, and comprehensive rehabilitation services for that applicant or eligible person.

(b) The provisions of this subchapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of DARS or the substantive rights of any person.

§101.1003. Legal Authority.

(a) The following statutes and regulations authorize the procedures established by this chapter:

(1) The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701 et seq. and regulations of the Department of Education, Rehabilitation Services Administration, 34 C.F.R. §361.57 et seq., as amended;

(2) Texas Human Resources Code, Chapter 91 (concerning vocational rehabilitation services for the people who are blind and visually impaired);

(3) Texas Human Resources Code, Chapter 111 (concerning vocational rehabilitation services for people with disabilities); and

(4) Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, as amended.

(b) The procedures in this division apply to those determinations made by DARS' personnel that affect the provision of vocational rehabilitation services, independent living services, or comprehensive rehabilitation services by DARS.

(1) Unless the determination concerns the denial, reduction, suspension or termination of vocational rehabilitation services, independent living or comprehensive rehabilitation services by the Department, it is not subject to review under the procedures of this subchapter.

(2) The following decisions or determinations are not subject to review under this subchapter:

(A) administrative decisions that are made by DARS' supervisors or managers without reference to any specific applicant or consumer and that apply generally to the provision of vocational rehabilitation services to applicants or consumers, including to those concerning the assignment of personnel;

(B) decisions, diagnoses, or judgments made by, or actions or omissions of third-party vendors or service providers;

(C) decisions concerning the content of an applicant's or consumer's record of service for which remedies are provided under 34 C.F.R. §361.38(c)(4) and §361.47(a)(12); and

(D) decisions allegedly violating any state or federal antidiscrimination or civil rights statute (as amended), including the provisions of Texas Labor Code, Chapter 21; Rehabilitation Act of 1973; Section 504, the Americans with Disabilities Act; or Age Discrimination in Employment Act.

(c) Ineligibility. The following may challenge a determination of ineligibility through the procedures of this division:

(1) applicants who are found not to be eligible for vocational rehabilitation services; and

(2) previously eligible individuals who have been determined no longer eligible for vocational rehabilitation services under 34 C.F.R. §361.43.

(d) A person's decision to seek an informal resolution to matters about which the person is dissatisfied shall not prevent, compromise, or delay the person's access to formal resolution procedures in this division.

(e) DARS shall not suspend, reduce, or terminate vocational rehabilitation services being provided to an applicant or consumer, including evaluation and assessment services and the development of an Individualized Plan for Employment, pending a resolution of the applicant's or consumer's appeal by mediation or hearing unless:

(1) the applicant or consumer requests a suspension, reduction, or termination of services; or

(2) DARS has evidence that the applicant or consumer obtained the services through misrepresentation, fraud, collusion, or criminal conduct.

§101.1005. Definitions.

The words and terms defined in §101.905 of this subchapter (relating to Definitions), when used in this division, have the same meanings unless the context clearly indicates otherwise. The use of the singular or plural is not meant to be limiting unless the context clearly indicates otherwise.

§101.1007. Filing a Request for Review.

(a) Any applicant or eligible individual who is dissatisfied with a determination, as described in §101.1003 of this subchapter (relating to Legal Authority), made either by the Division for Blind Services or the Division for Rehabilitation Services may request a review of the determination. Although no prescribed form is required to file a request, preprinted forms for this purpose are maintained in every DARS office and are available upon request.

(b) The request for a review shall be filed in writing with the hearings coordinator, DARS Legal Services.

(1) A request shall be considered filed on the day that it is received by the hearings coordinator.

(2) Preprinted forms for this purpose are available upon request either from the hearings coordinator, DARS Legal Services, or from any DARS office.

(c) Upon receiving a request for review, the hearings coordinator, DARS Legal Services, shall, within five working days, mail the appellant:

(1) the name, address, and phone number of the Client Assistance Program established under federal law;

(2) the name of the impartial hearing officer appointed to hear the appeal, and the date, time, and place of any prehearing;

(3) a copy of applicable hearing procedures; and

(4) notice that the appellant has the right to request mediation procedures.

(d) Timeliness of a request for review. A request is considered timely if it is received by DARS no later than 180 days from the date of the determination that is the subject of an applicant's or eligible individual's request for review.

§101.1009. Filings.

(a) All filings shall be sent to DARS, 4800 North Lamar, Suite 300, Austin, Texas 78756, with the notation "Attention: Hearings Coordinator," or delivered to DARS at that address.

(b) A copy of all filings shall be sent by mail or otherwise delivered to all parties.

(c) A certificate of service shall be contained in or attached to all filings. The certificate must be signed by the person making the

filing, show the manner of service, state that the filing has been served on all other parties, and identify those parties. The certificate is prima facie evidence of service.

§101.1011. Discovery and Mandatory Disclosures.

(a) Written Discovery. Requests for disclosure of information shall be the only form of written discovery that the parties are entitled to make. Unless a party is ordered by the IHO during a pretrial conference to disclose other information in addition to the items in this section, a party may request in writing that the other party disclose or produce the following:

(1) the names, addresses, and phone numbers of persons having knowledge of relevant facts, including those who might be called as witnesses and any expert who might be called to testify;

(2) for any testifying expert:

(A) the subject matter on which the expert will testify;

(B) the expert's summary; and

(C) a brief summary of the substance of the expert's mental impressions and opinions and the basis for them; and all documents and tangible things reflecting such information;

(3) the issues and in general the factual basis for a party's claims and defenses in the appeal; and

(4) information concerning the appellant's employment, including the appellant's job application with the appellant's current employer and any personnel evaluations.

(b) Subject to the provisions in this section, parties may obtain discovery regarding any matter that is relevant to a claim or defense in the appeal.

(c) All discovery requests should be directed to the party from which discovery is being sought.

(d) All disputes with respect to any discovery matter shall be filed with and resolved by the impartial hearing officer.

(e) All parties shall be afforded a reasonable opportunity to file objections and motions to compel with the impartial hearing officer regarding any discovery requests.

(f) Copies of discovery requests and documents filed in response thereto shall be filed on all parties, but should not be filed with the impartial hearing officer or the hearings coordinator unless directed to do so by the impartial hearing officer or when in support of objections, motions to compel, motions for protective order, or motions to quash.

(g) Any documents contained in any file of DARS related to the appellant are considered to be admissible. DARS must, without awaiting either an order or a discovery request under subsection (a) of this section, provide to the appellant a complete copy of the appellant's record of services, as described in 34 C.F.R. §361.47, including any electronically stored or preserved records.

§101.1013. Documentary Evidence and Official Notice.

(a) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the original and the copy or excerpt.

(b) When numerous similar documents that are otherwise admissible are offered into evidence, the impartial hearing officer may limit the documents received to those that are typical and representative. The impartial hearing officer may also require that an abstract of relevant data from the documents be presented in the form of an exhibit, provided that all parties be given the right to examine the documents from which such abstracts were made.

(c) The following laws, rules, regulations, and policies are officially noticed:

(1) The Rehabilitation Act of 1973, as amended, 29 U.S.C. §701, et seq.;

(2) Department of Education regulations, 34 C.F.R. Parts 361, 363, 364, 365, and 367;

(3) Texas Human Resources Code, Chapter 91 and Chapter 111;

(4) Department of Assistive and Rehabilitative Services, Division for Blind Services' and Division for Rehabilitation Services' State Plan for Vocational Rehabilitation Services;

(5) Department of Assistive and Rehabilitative Services, Division for Blind Services, Vocational Rehabilitation and Independent Living Manuals; and Division for Rehabilitation Services, Rehabilitation Policy Manual;

(6) Texas Administrative Code, Title 40, Part 2, Department of Assistive and Rehabilitative Services.

(d) Official notice also may be taken of:

(1) all facts that are judicially cognizable; and

(2) generally recognized facts within the area of DARS' specialized knowledge.

§101.1015. Impartial Hearing Officer Decision.

(a) Within 30 days of the hearing completion date, the impartial hearing officer shall issue a decision that is based on the evidence and which is consistent with the provisions of the approved state plan; the Rehabilitation Act of 1973, as amended; federal vocational rehabilitation regulations and state regulations and policies that are consistent with federal requirements, and shall provide to the appellant or, if appropriate, the appellant's authorized representative, and DARS' authorized representative or DARS Legal Services, as appropriate, a full written report of the findings of fact, conclusions of law, and any other grounds for the decision.

(b) The hearing completion date is the date upon which the impartial hearing officer receives the transcript, if any was prepared, of the oral hearing, or, if no transcript was prepared, the date of the adjournment of the hearing.

(c) The decision shall address each issue considered by the impartial hearing officer.

(d) The impartial hearing officer may prescribe such remedies as are appropriate within the scope of, and permitted by, the Human Resources Code, Chapters 91 and 111; Rehabilitation Act; the regulations of Rehabilitation Services Administration of the Department of Education; and DARS' policies and rules.

(1) The impartial hearing officer may not award restitutionary, compensatory, or monetary relief, including monetary damages to any party.

(2) The impartial hearing officer may not prescribe an action affecting the employment of a DARS employee.

§101.1017. Finality of the Hearing Officer's Decision.

The decision of the impartial hearing officer is the final decision of DARS, and, if no timely motion for reconsideration is filed, becomes the final decision of DARS.

§101.1019. Implementation of Final Decision.

If a party brings a civil action to challenge a final decision of an impartial hearing officer, the final decision involved shall be implemented pending review by the court.

§101.1021. Motion for Reconsideration.

Either party to a hearing may file a motion for reconsideration with the hearings coordinator, DARS Legal Services, as provided in §101.943 of this subchapter (relating to Motion for Reconsideration).

§101.1023. Appeal of Final Decision.

A party aggrieved by a final decision may bring an action for judicial review as provided in §101.945 of this subchapter (relating to Civil Action).

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 3. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

40 TAC §§101.1101, 101.1107, 101.1109, 101.1111

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.1101. Purpose.

This division is intended to bring DARS procedures for hearings into compliance with Part C of the Individuals with Disabilities Education Act, and the applicable federal regulations, 34 C.F.R. §303.1 et seq. This division supplements existing DARS rules governing hearings and is intended to be applied together except where a conflict exists, in which case this division shall prevail.

§101.1107. Administrative Hearings Concerning Individual Child Rights.

(a) Applicability. This division applies only to hearings which involve the identification, evaluation, placement, or provision of appropriate early intervention services to a child and the child's family under Early Childhood Intervention. This process is also referred to as the due process complaint process or due process hearing process.

(b) Request for hearing.

(1) The following may initiate a hearing on any matter described in subsection (a) of this section and in §101.907 of this subchapter (relating to Filing a Request for Review): a parent, DARS ECI, or the contractor responsible for services to a child.

(2) The request for hearing must be in writing and filed as provided in §101.907 of this subchapter with the ECI assistant commissioner. The request for hearing is considered filed when actually received by the ECI assistant commissioner.

(c) Impartial hearing officer.

(1) Hearings shall be conducted by an impartial hearing officer appointed and selected as provided in §101.911 of this subchapter (relating to Assignment of Impartial Hearing Officer) and §101.915 of this subchapter (relating to Substitution of Impartial Hearing Officer). The impartial hearing officer must be a person who in addition to the qualifications listed in §101.911 of this subchapter:

(A) is knowledgeable about the provision of ECI comprehensive services;

(B) is knowledgeable about the provisions for ECI due process hearings, the needs of children and families, and the services available to the child and family;

(C) will listen to viewpoints about the due process complaint, examine information relevant to the issues, and seek to reach timely resolution of the due process complaint; and

(D) will provide a record of the proceedings, including a written decision.

(2) The person must not be an employee of DARS or any program involved in the provision of services or care to the child or the child's family, or have a personal or professional interest that would conflict with his or her objectivity in the hearing.

(3) A person is not an employee of an agency solely because the person is paid to implement the complaint resolution or hearing process.

(d) Hearing rights. In addition to those rights provided parties to a hearing under Division 1 of this subchapter (relating to General Rules), a party to a hearing shall have a right to:

(1) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early childhood intervention comprehensive services;

(2) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(3) obtain a written or electronic verbatim record of the hearing; and

(4) obtain written findings of fact, conclusions of law, and decision.

(e) Hearing procedures. In addition to the procedures provided in Division 1 of this subchapter:

(1) The impartial hearing officer shall afford the parties an opportunity for hearing after reasonable notice of not less than 10 days, unless the parties have agreed otherwise.

(2) The impartial hearing officer may issue subpoenas and commissions to take depositions under the Government Code, Chapter 2001. Subpoenas and commissions to take depositions shall be issued in the name of DARS.

(3) The impartial hearing officer shall issue a final decision no later than 30 days after a request for hearing is filed. A final decision must be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact must be based exclusively on the evidence and on matters officially noticed under the Government

Code, Chapter 2001. The final decision shall be transmitted to each party by the hearing officer.

(4) A hearing officer may grant specific extensions of time beyond the period set out in paragraph (3) of this subsection at the request of a party.

(5) Hearings conducted under these sections are closed to the public unless the parent requests that the hearing be open.

(f) Child's status during proceedings.

(1) During the pendency of any administrative proceeding regarding a due process complaint, unless the parties agree otherwise, the child involved in the complaint must continue to receive appropriate comprehensive services previously agreed upon.

(2) If the complaint involves an application for initial admission to a program, the child must receive those comprehensive services not in dispute.

§101.1109. Motion for Reconsideration.

A party to a hearing may file a motion for reconsideration with the hearings coordinator, DARS Legal Services, as provided in §101.943 of this subchapter (relating to Motion for Reconsideration).

§101.1111. Appeal of Final Decision.

A party aggrieved by a final decision may bring an action for judicial review as provided in §101.945 of this subchapter (relating to Civil Action).

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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DIVISION 4. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

40 TAC §§101.1201, 101.1203, 101.1205, 101.1207, 101.1209, 101.1211, 101.1213, 101.1215, 101.1217, 101.1219, 101.1221, 101.1223, 101.1225, 101.1227, 101.1229, 101.1231

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.1201. Purpose.

This division establishes rules and procedures for hearings conducted under Texas Human Resources Code, Chapter 81, and Texas Government Code, Chapter 57, whenever DARS proposes to suspend or revoke a certificate or place a certificate holder on probation.

§101.1203. Legal Authority.

(a) The provisions of Texas Human Resources Code, Chapters 81 and 82; Texas Occupations Code, Chapter 53; and Texas Government Code, Chapters 57 and 2001, authorize these rules and procedures.

(b) Except as otherwise noted in this division, the rules and procedures of this division apply to all certificate holders, including certified court interpreters.

§101.1205. Definitions.

(a) The words and terms defined in §101.905 of this subchapter (relating to Definitions), when used in this division, have the same meanings unless the context clearly indicates otherwise. The use of the singular or plural is not meant to be limiting unless the context clearly indicates otherwise.

(b) Board for Evaluation of Interpreters--Refers to the DARS certification programs for interpreters for persons who are deaf and hard of hearing created under Texas Human Resources Code §81.007.

(c) Board for Evaluation of Interpreters Advisory Board--Refers to the advisory board appointed by the Executive Commissioner of the Health and Human Services Commission, or the Executive Commissioner's designee, to assist DARS in administering DARS' interpreter certification programs, and authorized under Texas Human Resources Code §81.007.

(d) Certificate holder--An interpreter who was issued a certificate by DARS under Texas Human Resources Code, Chapter 81, or Texas Government Code, Chapter 57. Unless otherwise noted, certificate holder and interpreter have the same meaning.

(e) Consumer--Includes any individual, whether deaf, hearing impaired, or hearing, who is part of an interpreted conversation.

(f) Director--The director of the Office for Deaf and Hard of Hearing Services, Division for Rehabilitation Services, Department of Assistive and Rehabilitative Services.

(g) DHHS--The Office for Deaf and Hard of Hearing Services, which is part of the Department of Assistive and Rehabilitative Services, Division for Rehabilitation Services.

§101.1207. Rules and Procedures Governing Hearings.

Unless otherwise provided in this division, the rules and procedures in Division 1 of this subchapter (relating to General Rules), shall govern hearings conducted under this division.

§101.1209. Revocation and Suspension of a Certificate.

(a) DHHS, on its own determination or based on the recommendation of the Advisory Board to the Board for Evaluation of Interpreters, may revoke or suspend a certificate or place a certification holder on probation for a violation of a statute, rule, or policy of DARS. If a certificate holder is placed on probation, DHHS may require the practitioner:

(1) to report regularly to DHHS on matters that are the basis of the probation;

(2) to limit practice to those areas prescribed by DHHS; or

(3) to continue or renew professional education until a satisfactory degree of skill has been attained in those areas that are the basis of the probation.

(b) Emergency Suspension. DHHS, through its director, may issue an emergency suspension order to any BEI certificate holder, except for BEI certified court interpreters, if the director has reasonable cause to believe that the conduct of the certified interpreter creates an imminent danger to public health or safety.

(1) An emergency suspension issued by the DHHS is effective immediately without a hearing or notice to the certificate holder. Notice to the certificate holder shall be presumed established on the date that a copy of the signed emergency suspension order is sent to the certificate holder at the address shown in the current records of DARS.

(2) A copy of the emergency suspension order is sent to all government entities, institutions, or facilities with which the certificate holder is known to be associated.

(3) If a written request for a hearing is received from the suspended certificate holder within 15 days of the date of the emergency suspension notice, DARS shall conduct a hearing not later than the 30th day after the date on which a hearing request is received to determine if the emergency suspension will be continued, modified, or rescinded. Any written request for a hearing received after 15 days from the date of the emergency suspension notice is governed by §101.1215 of this subchapter (relating to Filing a Request for Hearing).

(c) Revocation or suspension of certification of a certified court interpreter. DARS may revoke or suspend a court interpreter certification under this subchapter only after a hearing. DARS may reissue a court interpreter certificate to a person whose court interpreter certificate has been revoked if the person applies in writing to DARS and shows good cause to justify reissuance of the certificate. Copies of procedures for submitting applications for reissuance after revocation of a court interpreter certificate may be obtained from DHHS.

§101.1211. Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate.

DHHS may deny application; suspend or revoke certification; or otherwise discipline, reprimand, or place on probation a certificate holder for any of the following causes:

(1) violations of federal or state laws that are substantiated by credible evidence, whether or not there is a complaint, indictment, or conviction, such violations include, but are not limited to, the following:

(A) any felony, including homicide, rape, sexual abuse of a child, indecency with a child, injury to a child, aggravated assault, robbery, burglary, theft, forgery, bribery, and perjury;

(B) any misdemeanor involving moral turpitude that involves dishonesty, fraud, deceit, misrepresentation, or deliberate violence, or that reflects adversely on the certificate holder's honesty, trustworthiness, or fitness to interpret under the scope of the person's certificate; or

(C) any offense involving theft or controlled substances;

(2) engaging in sexually inappropriate behavior with or comments directed at a consumer, including individuals who are part of the interpreted situation;

(3) using or being under the influence of drugs, whether or not controlled, or intoxicating liquors to an extent that affects the interpreter's professional competence;

(4) impersonating another person who holds an interpreter certification from DARS;

(5) allowing another person to use the certificate holder's certificate or five-year certificate renewal documents;

(6) misrepresenting oneself or another interpreter as having a certification awarded by DARS or as having a certification level different from the actual level of certification awarded by DARS;

(7) using fraud; deception, which includes cheating; or misrepresentation on an application for certification during the certification examination, or in the annual certificate maintenance or five-year certificate renewal process;

(8) violating or aiding in the violation of the Code of Professional Conduct described in §101.1213(a)(1) of this subchapter (relating to Codes of Professional Conduct and Ethics) or, with respect to certified court interpreters only, of the Code of Ethics and Professional Responsibility of Certified Court Interpreters described in §101.1213(a)(2) of this subchapter;

(9) being grossly incompetent or grossly negligent in performing the duties as an interpreter; or having demonstrated repeated and/or continuous negligence or irresponsibility in the performance of the duties;

(10) being adjudicated mentally incompetent by a court of competent jurisdiction;

(11) intentionally harassing, abusing, or intimidating, either physically or verbally, a consumer, including individuals who are part of the interpreted situation; a board member; a rater; or any staff member of DARS;

(12) intentionally divulging or using inappropriately any aspect of confidential information relating to the certification examination including content, topic, vocabulary, identity of individuals involved in the tests, skills, written test questions, and any other testing materials considered confidential;

(13) failure to meet requirements for annual certificate maintenance or five-year certificate renewal;

(14) engaging in the practice of interpreting while identified as a certified interpreter even though certification is suspended;

(15) falsifying or providing false documents in support of five-year certificate renewal, by altering original letters, certificates issued through continuing education, or attendance verification;

(16) failure to disclose a criminal conviction or providing false or misleading information concerning a criminal conviction;

(17) failure to provide information or documentation requested by DARS for any purpose related to certification or the certification program, including information or documentation requested:

(A) in consideration of an application for certification, annual certificate maintenance, or five-year certificate renewal; or

(B) concerning criminal conviction records.

(18) violation of a statute, rule, order, or policy of DARS or the terms or conditions of a probation, suspension, or revocation imposed by DARS.

§101.1213. Codes of Professional Conduct and Ethics.

(a) Applicable Codes of Conduct and Ethics.

(1) The Code of Professional Conduct of the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf, Inc. (RID) shall govern the professional conduct of interpreters/transliterators certified by the Office.

(2) The Code of Ethics and Professional Responsibility of Certified Court Interpreters of the Office shall govern the professional conduct of court interpreters certified under Texas Government Code, Chapter 57.

(A) The Code of Professional Conduct of the National Association of the Deaf (NAD) and the Registry of Interpreters for the

Deaf, Inc., (RID) govern the professional conduct of interpreters and transliterators certified by DHHS.

(B) The Code of Ethics and Professional Responsibility of Certified Court Interpreters of DHHS governs the professional conduct of court interpreters certified under Texas Government Code, Chapter 57.

(b) Willful violation of either the NAD-RID Code of Professional Conduct or the Code of Ethics and Professional Responsibility of Certified Court Interpreters is grounds for suspension or revocation of certification under §101.1211 of this subchapter (relating to Grounds for Denying, Revoking, or Suspending an Interpreter's Certificate).

(c) Copies of the Codes.

(1) Copies of the NAD-RID Code of Professional Conduct may be obtained from the National Association of the Deaf, from the Registry of Interpreters for the Deaf, Inc., or from DHHS.

(2) Copies of the Code of Ethics and Professional Responsibility of Certified Court Interpreters may be obtained from DHHS.

§101.1215. Filing a Request for Hearing.

(a) A certificate holder, other than a certified court interpreter, whose certificate DARS proposes to suspend, revoke, or place on probation, may request a hearing. A certified court interpreter's certificate may be suspended or revoked by DARS only after a hearing.

(b) Although no prescribed form is required to file a request, preprinted forms for this purpose are maintained by DHHS and are available upon request.

(c) The request for hearing shall be filed in writing with the hearings coordinator, DARS Legal Services. A request is considered filed on the day that it is received by the hearings coordinator.

(d) Upon receiving a request for review, the hearings coordinator, DARS Legal Services, within five business days, shall notify the certificate holder of the name of the impartial hearing officer appointed to hear the appeal, and the date, time, and place of any prehearing.

(e) Timeliness of a request for hearing. Except as prescribed in §101.1209(b) of this subchapter (relating to Revocation and Suspension of a Certificate), relating to a hearing request on an emergency suspension, unless good cause is shown, a request shall be considered timely if it is received by DARS' hearings coordinator no later than 60 days from the date the certificate holder is served according to Government Code, §2001.054(c) with written notice of DARS' proposal to revoke or suspend the certificate holder's certificate or place the certificate holder on probation.

§101.1217. Filings.

(a) All filings shall be sent to DARS, 4800 North Lamar, Suite 300, Austin, Texas 78756 with the notation "Attention: Hearings Coordinator," or delivered to DARS at that address.

(b) A copy of all filings shall be sent by mail or otherwise delivered to all parties.

(c) A certificate of service shall be contained in or attached to all filings. The certificate must be signed by the person making the filing, show the manner of service, state that the filing has been served on all other parties, and identify those parties. The certificate is prima facie evidence of service.

§101.1219. Discovery and Evidence.

(a) The Texas Government Code, Chapter 2001, governs discovery and the admissibility of evidence.

(b) All discovery requests should be directed to the party from which discovery is being sought.

(c) All disputes with respect to any discovery matter shall be filed with and resolved by the impartial hearing officer.

(d) All parties shall be afforded a reasonable opportunity to file objections and motions to compel with the impartial hearing officer regarding any and all discovery requests.

(e) Copies of discovery requests and documents filed in response thereto shall be filed on all parties, but should not be filed with the impartial hearing officer or the hearings coordinator unless directed to do so by the impartial hearing officer or when in support of objections, motions to compel, motions for protective order, or motions to quash.

§101.1221. Documentary Evidence and Official Notice.

(a) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the original and the copy or excerpt.

(b) When numerous similar documents that are otherwise admissible are offered into evidence, the impartial hearing officer may limit the documents received to those that are typical and representative. The impartial hearing officer may also require that an abstract of relevant data from the documents be presented in the form of an exhibit, provided that all parties be given the right to examine the documents from which such abstracts were made.

(c) The following laws, rules, regulations, and policies are officially noticed:

(1) Texas Human Resources Code, Chapters 81 and 82;

(2) Texas Occupations Code, Chapter 53;

(3) Texas Administrative Code, Title 40, Part 2, Chapter 109, Office for Deaf and Hard of Hearing Services, Division for Rehabilitation Services, Department of Assistive and Rehabilitative Services; and

(4) where applicable, Texas Government Code, Chapter 57.

(d) Official notice also may be taken of:

(1) all facts that are judicially cognizable; and

(2) generally recognized facts within the area of DARS' specialized knowledge.

§101.1223. Impartial Hearing Officer Decision.

(a) Within 30 days of the hearing completion date, the impartial hearing officer shall issue a decision and shall provide to the appellant or, if appropriate, the appellant's authorized representative, the director, and DARS' authorized representative a full written report of the findings of fact, conclusions of law, and any other grounds for the decision.

(b) The hearing completion date shall be that date upon which the impartial hearing officer receives the transcript, if any was prepared, of the oral hearing, or, if no transcript was prepared, the date of the adjournment of the hearing.

(c) The decision shall address each issue considered by the impartial hearing officer.

(d) The impartial hearing officer may prescribe such remedies as are appropriate within the scope of Texas Human Resources Code, Chapters 81 and 82, and Texas Occupations Code, Chapter 53.

§101.1225. Finality of the Hearing Officer's Decision.

The decision of the impartial hearing officer is the final decision of DARS, and, if no timely motion for reconsideration is filed, becomes the final decision of DARS.

§101.1227. Implementation of Final Decision.

If a party brings a civil action to challenge a final decision of an impartial hearing officer, the final decision involved shall be implemented pending review by the court.

§101.1229. Motion for Reconsideration.

Either party to a hearing may file a motion for reconsideration with the hearings coordinator, DARS Legal Services, as provided in §101.943 of this subchapter (relating to Motion for Reconsideration).

§101.1231. Appeal of Final Decision.

A party aggrieved by a final decision may bring an action for judicial review as provided in §101.945 of this subchapter (relating to Civil Action).

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105744
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-4050

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CHAPTER 102. PURCHASE OF GOODS AND SERVICES BY THE DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes new Chapter 102, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services, Subchapter A, Purchase of Goods and Services, §102.201, Purpose; §102.203, Legal Authority; §102.205, Definitions; §102.207, Procurement Objectives; §102.209, Compliance with State Requirements; §102.211, Other Rates and Fees; §102.213, Alternative Purchasing Methods-Rates for Medical Services; §102.215, Schedule of Rates; §102.217, Cancellation or Suspension of Solicitation; §102.219, Memorandum of Understanding with State Agencies; §102.221, Contracts for Deaf and Hard of Hearing Services; and Subchapter B, Protest Procedures, §102.307, Availability of Protest Procedures.

Elsewhere in this issue of the *Texas Register,* DARS contemporaneously proposes the repeal of 40 TAC Chapter 104, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services, Subchapter C, §§104.251, 104.253, 104.255, 104.257, 104.259, 104.261 and Subchapter J, Protest Procedures, §104.301.

The repeals and new rules are proposed in accordance with DARS' four-year rule review of Chapter 104, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services, as required by Texas Government Code §2001.039. DARS determined that the reasons for initially adopting these rules continue to exist. However, DARS is repealing all of Chapter 104 and replacing with new Chapter 102, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services. The new Chapter 102 rules are necessary to align with statutes and current DARS operations; to delete repetitive or obsolete rules; to include rules that were removed from Chapter 101, Administrative Rules and Procedures and determined to be more appropriate in Chapter 102; and to renumber and revise the rules for clear and concise language.

The following addresses the specific changes from current Chapter 104 to new Chapter 102:

The repeal of Chapter 104, Subchapter C, Purchase of Goods and Services, and replacement of the subject matter contained therein into new Chapter 102, Subchapter A, is necessary to include rules that have been determined to be more appropriate for placement in new Chapter 102, Subchapter A; to allow for inclusion of rules contained in Chapter 101, Administrative Rules and Procedures, which are being contemporaneously repealed elsewhere in this edition of the *Texas Register;* and to renumber and revise the rules for clear and concise language.

The repeal of Chapter 104, Subchapter J, Protest Procedures, and replacement of the subject matter in new Chapter 102, Subchapter B, is necessary to renumber and revise the rules for clear and concise language.

Mary Wright, DARS chief financial officer, has determined that for each year of the first five years the proposed rules are in effect, there are no foreseeable fiscal implications to either costs or revenues of state or local governments because of enforcing or administering the rules.

Ms. Wright also determined that the public benefit anticipated as a result of enforcing the changes will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the general rules for the purchasing of goods and services by the Department of Assistive and Rehabilitative Services. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposed rules.

Further, in accordance with Texas Government Code, §2001.022, Ms. Wright has determined that the proposed rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposed rules will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposal may be submitted with 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

SUBCHAPTER A. PURCHASE OF GOODS AND SERVICES

40 TAC §§102.201, 102.203, 102.205, 102.207, 102.209, 102.211, 102.213, 102.215, 102.217, 102.219, 102.221

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which provides the executive commissioner of the Texas Health and Human Services Commission

the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§102.201. Purpose.

Title 1, Texas Administrative Code (TAC), Chapter 391 (relating to Purchase of Goods and Services by Health and Human Services Agencies), governs the purchase of consumer goods and services by all health and human services agencies, including the Texas Department of Assistive and Rehabilitative Services (DARS). This chapter supplements criteria contained in 1 TAC Chapter 391.

§102.203. Legal Authority.

The Texas Department of Assistive and Rehabilitative Services is delegated purchasing authority for consumer goods and services under Government Code, Chapter 2155. DARS contracts with other state agencies in accordance with the Interagency Cooperation Act (Government Code, Chapter 771). DARS contracts with the local governmental agencies in accordance with the Interlocal Cooperation Act (Government Code, Chapter 791). DARS purchases administrative goods and services in accordance with 34 TAC Chapter 20 (relating to Texas Procurement and Support Services).

§102.205. Definitions.

The following words and terms, when used in this chapter and Chapter 101 of this title (relating to Administrative Rules and Procedures), have the following meanings, unless the context clearly indicates otherwise:

(1) Award--The act of communicating acceptance of a bid or offer to the bidder or offeror, thereby forming a contract. The term also applies to the act of communicating acceptance of a grant proposal. Preliminary awards to not form a contract at that time.

(2) Bid--An offer to contract with the state submitted in response to a bid invitation.

(3) Bona fide emergency--A purchase of goods or services required as a direct result of an emergency that constitutes an immediate threat to public health or safety or which creates an imminent risk of loss to the purchasing entity that the entity documents and justifies in the procurement record.

(4) Contract--A promise, or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. It is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. The term also encompasses the written document that describes the terms of the agreement. For state contracting purposes, it generally describes the terms of a purchase of goods or services from a vendor or service provider; however, the term also encompasses grant arrangements.

(5) Contractor--An entity or person holding a written agreement with a purchasing entity to provide goods and services; or a recipient or subrecipient holding a written agreement with a grantor or recipient to carry out all or part of a program.

(6) DARS--The Texas Department of Assistive and Rehabilitative Services.

(7) Formal competitive procurement--A competitive procurement with an estimated value that equals or exceeds the value required for posting the solicitation on the Electronic State Business Daily.

(8) Goods--Transportable articles of trade or commerce that can be bartered or sold. Goods do not include services or real property. For health and human services agencies, goods do not include:

(A) goods within the definition of "automated information system" under Government Code, Chapter 2157;

(B) goods obtained under an Interagency Contract or an Interlocal Contract; or

(C) goods used in support of a health and human services agency's health care programs and acquired under Government Code, §2155.144.

(9) Informal competitive procurement--A competitive procurement with a value that is less than the value required for posting the solicitation on the Electronic State Business Daily.

(10) Offer--A proposal by one party to another that invites the other party to accept. An offer may consist of a proposal to sell something, buy something, take some action, or refrain from doing something. If the offer is accepted and there is an exchange of consideration, a contract is created.

(11) Procurement--The acquisition of goods or services. Procurement can refer to the act of obtaining something through effort, and therefore does not necessarily involve the exchange of consideration or create a contract. The term is broader than purchasing, which has the connotation of an exchange of consideration (that is, buying), but the terms are generally used interchangeably.

(12) Provider--An individual or business entity that supplies goods or services to a purchasing entity under an agreement or contract to provide such goods or services.

(13) Proposal--Binding offer submitted by a respondent in response to a request for proposals (RFP).

(14) Purchase Order--A written document issued by DARS to accept a bid or an offer, thereby creating an agreement between the bidder or offeror and DARS.

(15) Solicitation--A document requesting submittal of bids or proposals for goods or services in accordance with the advertised specifications. May also apply to grant arrangements.

(16) Subcontract--A written agreement between the original contractor and a third party to provide all or a specified part of the goods, services, work, and materials required in the original contract.

§102.207. Procurement Objectives.

The rules in this chapter establish procedures and requirements to accomplish objectives that align with the rules in 1 TAC Chapter 391 (relating to Purchase of Goods and Services by Health and Human Services Agencies). The rules in this chapter also align with the rules in Chapter 101, Subchapter B of this title (relating to Historically Underutilized Businesses) and support small businesses and businesses that are at least 51 percent owned by minority group members, women, and persons with disabilities in having equal opportunity to compete for and to be selected for the award of contracts.

§102.209. Compliance with State Requirements.

In addition to 1 TAC Chapter 391 (relating to Purchase of Goods and Services by Health and Human Services Agencies), this chapter applies to the purchase of the following:

(1) goods or services, if the purchase is for special technical goods and services from another state agency as defined in Government Code, Chapter 771; and

(2) goods and services from a local government as defined in Government Code, Chapter 791.

§102.211. Other Rates and Fees.

DARS may establish reasonable fee schedules for purchased consumer goods and services. These fee schedules are designed to ensure the lowest reasonable cost and best value.

§102.213. Alternative Purchasing Methods - Rates for Medical Services.

Under Human Resources Code, §117.074, this rule adopts standards governing the determination of rates paid for medical services provided by DARS. The rates determined under these standards are reevaluated annually.

(1) Rates shall be established based on Medicare and Medicaid schedules for current procedural terminology (CPT). Where Medicare and Medicaid schedules are not applicable, rates that represent best value shall be established based on factors that include reasonable and customary industry standards for each specific service.

(2) Rates shall be established at a level adequate to ensure availability of qualified providers, and in adequate numbers to provide assessment and treatment, and within a geographic distribution that mirrors consumer or claimant distribution.

(3) Exceptions to established rates may be made on a case-by-case basis by the DARS medical director or optometric consultant.

§102.215. Schedule of Rates.

Under Human Resources Code, §117.074, and §102.213 of this subchapter (relating to Alternative Purchasing Methods - Rates for Medical Services), the executive commissioner of the Health and Human Services Commission has established a schedule of rates based on the standards adopted under §102.213 of this subchapter. The schedule of rates shall be reevaluated annually. Notice shall be provided to interested persons to allow those persons to present comments before a new or revised schedule of rates is adopted. The schedule of rates may be viewed or copies may be obtained by calling DARS at 1-800-628-5115 or visiting DARS at 4800 North Lamar Boulevard, Austin, Texas 78756.

§102.217. Cancellation or Suspension of Solicitation.

DARS has the right to accept or reject all or any part of any bids, offers, or proposals submitted in response to a solicitation. DARS may cancel or suspend a solicitation for any of the following reasons:

(1) specifications and costs in the invitation for bid (IFB), request for offer (RFO), or request for proposal (RFP) were inadequate, ambiguous, or otherwise deficient;

(2) goods or services are no longer required;

(3) bids, offers, or proposals received indicated that the services requested can be purchased by a different, less expensive method;

(4) all bids, offers, and proposals received are considered unreasonable;

(5) a staff member has good reason to believe during the course of procurement that the bids, offers, or proposals are fraudulent or submitted in bad faith; or

(6) DARS determines that cancellation or suspension is in the State's best interest.

§102.219. Memoranda of Understanding with State Agencies.

DARS may enter into a memorandum of understanding in accordance with Government Code, Chapter 531.

§102.221. Contracts for Deaf and Hard of Hearing Services.

(a) This rule only applies to contracts or grants issued for the Office for Deaf and Hard of Hearing Services.

(b) Before DARS contracts with or provides a grant to an agency, organization, or individual to provide direct services to persons who are deaf or hard of hearing, DARS makes reasonable efforts to notify all potential service providers of the availability and purpose of the contract or grant.

(c) The notice includes a request that all interested service providers submit within a specified period a contract or grant proposal for DARS's consideration. The notice also states the criteria that DARS will consider in determining which applicant will be awarded the contract or grant.

(d) DARS reviews all proposals submitted under this section and awards the contract or grant to the applicant that DARS determines is best able to provide the needed services. DARS may not award contracts or grants to a former employee of the Office for Deaf and Hard of Hearing Services within two years after the person's employment with the Office ceased.

(e) To ensure an equitable distribution of contract or grant funds, DARS has developed a formula to divide those funds among the agencies, organizations, or individuals that are awarded the contracts or grants.

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105703
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-4050

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SUBCHAPTER B. PROTEST PROCEDURES

40 TAC §102.307

The new rule is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which provides the executive commissioner of the Texas Health and Human Services Commission the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§102.307. Availability of Protest Procedures.

(a) A potential recipient of a purchase award may protest a purchase award under the following circumstances:

(1) the purchase award was made under a formal or informal competitive procurement method in accordance with 1 TAC Chapter 391 (relating to Purchase of Goods and Services by Health and Human Services Agencies), and the potential recipient submitted a bid or proposal that was not selected for the award; or

(2) the purchase award was a sole source or emergency procurement.

(b) The protest must be limited to matters relating to the protester's qualifications, the suitability of the goods or services offered by the protester, or alleged irregularities in the procurement process.

(c) Protesters must submit written protests to the DARS designated purchaser.

(d) In order for the protest to be evaluated on its merits, it must state:

(1) the protester's company name;

(2) specific action the protester is requesting be reconsidered;

(3) how the decision, action, or inaction by DARS violated published DARS policy, or state or federal laws and regulations regarding procurement;

(4) the protester's claim with specific supporting information such as references to pertinent parts of the original request for proposal, offer, bid, or the award documents;

(5) an explanation of the facts under disagreement; and

(6) the subsequent action the protester is requesting.

(e) The written protest must be signed by the protester or the protester's authorized representative.

(f) Failure to comply with any of the requirements in this section will result in dismissal of the protest.

(g) The DARS staff member who is making the decision regarding the protest may, at his or her sole discretion, request supplemental oral or written information from the protester or DARS staff if needed, to evaluate the protest.

(h) DARS limits the review of the protest to a desk review of:

(1) the materials supplied by the protester and the DARS staff member who made the award decision; and

(2) supplemental oral or written information requested by DARS and provided by the protester or DARS staff member.

(i) DARS shall not execute a purchase award for a purchase that is the subject of a protest filed in accordance with this section until DARS provides the protester with a written disposition of the protest. DARS may execute a purchase award when there is a pending protest if there is a bona fide emergency or when state or federal laws require a purchase to be awarded by a particular date.

(j) DARS's decision on the protest is the final administrative action taken by DARS.

(k) This section does not grant additional standing or right for an unsuccessful or prospective bidder to protest the award of a contract than otherwise exists in law.

(l) The right to protest nonselection for a purchase award does not apply to:

(1) the award of grants or subcontracts;

(2) goods or services purchased under the Interagency Cooperation Act, Government Code, Chapter 771; or the Interlocal Cooperation Act, Government Code, Chapter 791;

(3) the lease, purchase, or lease-purchase of real property;

(4) interstate or international agreements executed in accordance with applicable law; or

(5) goods or services purchased under contracts or processes administered by any other state agency.

(m) The following protest procedures are for purchase awards made under a formal competitive procurement.

(1) The protester must deliver the written protest to DARS by hand, certified mail return receipt requested, facsimile, or other verifiable delivery service.

(2) DARS must receive the protest no later than seven calendar days after DARS's notice of decision to execute a purchase award.

(3) The DARS commissioner or designee reviews the protest and issues a final determination regarding the protest.

(4) DARS sends the protester a written notice of the final determination within 30 days after receiving the written protest.

(n) The following protest procedures are for purchase awards made under an informal competitive procurement.

(1) The protester must deliver the written protest to DARS by email, hand, facsimile, or other verifiable delivery service.

(2) DARS must receive the protest no later than 24 hours, excluding weekends and state and federal holidays, after the time and date by which DARS told potential recipients that a decision would be made regarding the purchase award.

(3) The DARS purchasing manager reviews the protest and issues a final determination regarding the protest.

(4) The purchasing manager sends the protester a written notice of the final determination within one workday after the purchasing manager receives the written protest.

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

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105704
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 424-4050

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CHAPTER 103. GENERAL CONTRACTING RULES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), proposes new 40 TAC Chapter 103, General Contracting Rules, Subchapter A, General Contracting Information, §103.101, Purpose; §103.103, Legal Authority; §103.105, Definitions; Subchapter B, Contractor Requirements, §103.207, General Information; §103.209, General Requirements for Contracting; §103.211, Complaints; §103.213, Corrective Action Plan; §103.215, Contract Assignment; Subchapter C, Records, §103.307, Record Requirements; Subchapter D, Audits, Monitoring, and Reviews, §103.407, Access to Contractor Facilities and Records; §103.409, Independent Audits; §103.411, Compliance Monitoring; §103.413, Fiscal Monitoring; Subchapter

E, Adverse Actions, §103.507, Adverse Actions; §103.509, Debarment and Suspension of Current and Potential Contractor Rights; §103.511, Causes for and Conditions of Debarment; §103.513, Causes for and Conditions of Suspension; §103.515, Evidence for Debarment or Suspension; §103.517, Notice for Suspension and Debarment; §103.519, Appeals; §103.521, Request for Reconsideration; Subchapter F, Claims for Breach of Contract, §103.603, Legal Authority; §103.605, Definitions; §103.607, Claims; §103.609, Notice of Claim; §103.611, Negotiation Timetable; §103.613, Conduct of Negotiations; §103.615, Negotiation Settlement Approval Procedures; §103.617, Settlement Agreement After Negotiation; §103.619, Costs of Negotiation and Mediation; §103.621, Agreement to Mediate; §103.623, Conduct of Mediation; §103.625, Qualifications and Immunity of Mediator; §103.627, Mediation Settlement Agreement Procedures; §103.629, Confidentiality of Mediation and Final Settlement Agreement; and Subchapter G, Contract Termination, §103.707, Termination Procedures.

Elsewhere in this issue of the *Texas Register* DARS contemporaneously proposes the repeal of 40 TAC Chapter 105, General Contracting Rules, Subchapter A, General Contracting Information, §§105.1001, 105.1003; Subchapter B, Contractor Requirements, §§105.1011, 105.1013, 105.1015, 105.1017, 105.1019; Subchapter C, Records, §105.1101; Subchapter D, Audits, Monitoring and Reviews, §§105.1201, 105.1203, 105.1205, 105.1207; Subchapter E, Adverse Actions, §§105.1301, 105.1305, 105.1307, 105.1309, 105.1311, 105.1313, 105.1315, 105.1317; Subchapter F, Claims for Breach of Contract, §§105.1401, 105.1403, 105.1405, 105.1407, 105.1409, 105.1411, 105.1413, 105.1415, 105.1417, 105.1419, 105.1421, 105.1423, 105.1425; and Subchapter G, Contract Termination, §105.1501.

The repeal and new rules are proposed under the DARS four-year rule review of Chapter 105, General Contracting Rules, conducted as required by Texas Government Code §2001.039. DARS determined that the reasons for initially adopting these rules continue to exist. However, DARS is repealing all of Chapter 105. The rules and/or the subject matter of the rules contained in Chapter 105 are contemporaneously being proposed as new rules in Chapter 103, General Contracting Rules. The new Chapter 103 rules are necessary to align the rules to statutes and current DARS operations; to add and delete definitions; to delete repetitive and obsolete rules; to add related rules from Chapter 101, Administrative Rules and Procedures, that are contemporaneously being repealed and have been determined to be more appropriate for inclusion in new Chapter 103; and to renumber and revise the rules for clear and concise language.

The following address the specific changes to Chapter 103 from Chapter 105:

The repeal and replacement of Subchapter A, General Contracting Information, is necessary to include rules that were removed from Chapter 101, relating to Administrative Rules and Procedures, and determined to be more appropriate in Chapter 103, to add new and delete obsolete definitions, and to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter B, Contractor Requirements, is necessary to include rules from Chapter 101, Administrative Rules and Procedures, that are being contemporaneously repealed is this issue of the *Texas Register* and determined to be more appropriate in Chapter 103, and to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter C, Records, is necessary to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter D, Audits, Monitoring and Reviews, is necessary to rename the title to Audits, Monitoring, and Review, and to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter E, Adverse Actions, is necessary to add requirement to provide goods or services to DARS consumer's either directly or indirectly while working for a DARS contractor to debarment and suspension of current and potential contractor rights, and to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter F, Claims for Breach of Contract, is necessary to add new section legal authority, to add that the rules pertaining to breach of contract will apply to both consumers and administrative contracts, and to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter G, Contract Termination, is necessary to renumber and revise the rules for clear and concise language.

Mary Wright, DARS chief financial officer, has determined that for each year of the first five years that the proposed rules will be in effect, there are no foreseeable fiscal implications to either costs or revenues of state or local governments because of enforcing or administering the rules.

Ms. Wright also has determined that for each year of the first five years the proposed rules will be in effect, the public benefit anticipated as a result of enforcing the changes will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the general contracting rules of DARS. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposed new rules.

Further, in accordance with Texas Government Code, §2001.022, Ms. Wright has determined that the proposed rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposed rules will have no adverse economic effect on small businesses or micro-businesses.

The following statutes and regulations authorize the proposed new rules: Texas Government Code, Chapters 2155, 2252, 2261, and 2262.

Written comments on the proposed rules may be submitted within 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

SUBCHAPTER A. GENERAL CONTRACTING INFORMATION

40 TAC §§103.101, 103.103, 103.105

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provi-

sion of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§103.101. Purpose.

The purpose of this chapter is to establish general contracting rules for consumer goods and services contracts with the Texas Department of Assistive and Rehabilitative Services (DARS); except for Subchapter F of this chapter (relating to Claims for Breach of Contract), which establishes rules for claims for breach of contract for administrative and consumer goods and services contracts.

§103.103. Legal Authority.

The statutes and regulations under Government Code, Chapter 2260, authorize the procedures in this chapter.

§103.105. Definitions.

The following words and terms, when used in this chapter and Chapter 101 of this title (relating to Administrative Rules and Procedures), have the following meanings, unless the context clearly indicates otherwise.

(1) Amendment--A formal revision or addition to a contract.

(2) Bid--An offer to contract with the state submitted in response to a bid invitation.

(3) Commissioner--The chief executive officer of the Texas Department of Assistive and Rehabilitative Services.

(4) Contract--A promise, or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. It is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. The term also encompasses the written document that describes the terms of the agreement. For state contracting purposes, it generally describes the terms of a purchase of goods or services from a vendor or service contractor; however, the term also encompasses grant arrangements.

(5) Contract Assignment--The transfer of contractual rights held by one party to another party.

(6) Contractor--An entity or person holding a written agreement with a purchasing entity to provide goods and services; or a recipient or sub-recipient holding a written agreement with a grantor or sub-recipient to carry out all or part of a program.

(7) Contract records--All financial and programmatic records, supporting documents, papers, statistical data, or any other written or electronic materials that are pertinent to each specific contract instrument.

(8) Corrective action plan--Specific steps to be taken by a contractor to resolve identified deficiencies and/or to address concerns that the contracting agency has regarding the contractor's compliance with contract terms or other applicable laws, rules, or regulations. The corrective action plan may also focus on improving contractor performance (as it relates to service delivery, reporting, and/or financial stability).

(9) DARS--The Texas Department of Assistive and Rehabilitative Services.

(10) DARS policies -- For the purposes of this chapter only, the standards that DARS provides to contractors that stipulate performance expectations for contractors to provide goods or services under the contract.

(11) Effective date--The date of complete execution of the contract or the date upon which the parties agree the contract takes effect.

(12) Entity--An association, organization, governmental or business body, or existing body or class of persons that is chartered or organized for representing the interest of persons.

(13) Grant--An award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with rules, regulations, and guidance provided by the grantor agency.

(14) Memorandum of understanding (MOU)--A written document evidencing the understanding or agreement of two or more parties regarding the subject matter of the agreement. Because the underlying agreement may or may not be legally binding and enforceable in and of itself, a memorandum of understanding may or may not constitute a contract. It is generally considered a less formal way of evidencing an agreement, and is ordinarily used in state government only between or among state agencies or other government entities. The term is used interchangeably with "memorandum of agreement."

(15) Program--DARS activities designed to deliver services or benefits provided by statute.

(16) Subcontract--A written agreement between the original contractor and a third party to provide all or a specified part of the goods, services, work, and/or materials required in the original contract.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER B. CONTRACTOR REQUIREMENTS

40 TAC §§103.207, 103.209, 103.211, 103.213, 103.215

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§103.207. General Information.

This chapter does not supersede any DARS program rules for the provision of goods and services for consumer use or benefit.

§103.209. General Requirements for Contracting.

(a) To contract with DARS, the contractor must:

(1) meet eligibility requirements for contracting;

(2) if applicable, have and maintain the appropriate license(s);

(3) submit all documents and information required by DARS;

(4) comply with all applicable DARS and Texas Health and Human Services Commission rules and policies and terms of the contract with DARS;

(5) comply with all local, state, and federal regulations that apply to the contract;

(6) be authorized by law or the secretary of state to conduct business in the state of Texas;

(7) certify in writing that the contractor's taxes due to the state of Texas are current;

(8) ensure that staff members providing services are competent, professionally ethical, and qualified for positions held. Qualifications of staff members must meet all requirements established by state policy and regulations. The contractor must ensure that all staff members meet minimum qualifications; staff credentials supporting those qualifications must be on file at the time of hire; and staff credentials must be made available to DARS staff members upon request;

(9) provide for such fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting of funds provided by DARS and in accordance with DARS policies;

(10) maintain accurate and complete records and prepare and distribute reports according to the terms of the contract;

(11) ensure that any contractor facility in which services are provided is:

(A) such that the safety and health of the staff and consumers is protected; and

(B) accessible to individuals receiving services and complies with the requirements of the Architectural Barriers Act of 1968, the Uniform Federal Accessibility Standards, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act;

(12) have adequate operating funds available for conducting business on the effective date of the contract;

(13) have an adequate staff to provide services on the effective date of the contract;

(14) notify DARS in writing of changes to contract information according to the requirements of the contract. Unless otherwise specified in the contract, the contractor must notify DARS:

(A) within 10 calendar days after any address change, including the location of the agency's office, physical address, or mailing address;

(B) immediately of any change in administrator or director; and

(C) within seven working days of any change in the contact telephone number designated in the contract;

(15) report suspected violation of rules or laws to the appropriate investigative authority. This includes reporting abuse, neglect, and exploitation issues to the Texas Department of Family and Protective Services (DFPS) or to the appropriate Texas Department of Aging and Disability Services (DADS) licensing staff.

(b) To provide services, a contractor must maintain adequate:

(1) funding for provision of services; and

(2) staff for the provision of services.

(c) A contractor or potential contractor may not offer, give, or agree to give a DARS employee anything of value.

(d) A contractor or potential contractor may not engage in any activity that presents a real or apparent conflict of interest.

(e) A former DARS employee may not represent or receive compensation from any person concerning any contractual matter in which the former employee participated during his or her employment with the state.

(f) DARS may choose not to enter into a contract:

(1) when, in DARS' opinion, the contractor, potential contractor, or a controlling party has a prior unsatisfactory history in contracting with DARS or with another health and human services agency;

(2) if the contractor or potential contractor:

(A) subcontracts any direct care services without specific authorization from DARS; and/or

(B) assigns or transfers the contract without prior written approval of DARS;

(3) when DARS determines it is not in the best interest of DARS.

(g) DARS assigns the effective date of a contract.

(h) Goods or services purchased or reimbursed by DARS may be inspected or monitored at the discretion of DARS.

(i) DARS may require corrective action, suspend consumer referrals, and/or impose an adverse action against a contractor for failure to comply with the terms of the contract and/or DARS rules, policies, and procedures.

(j) A contractor must participate in orientation relating to DARS contract requirements before providing goods or services under a contract for the first time.

(k) A contractor shall ensure that any facility in which services are provided includes among the staff members, or shall obtain the services of, people able to communicate in the native language of applicants and consumers who have limited English speaking ability and ensure that appropriate modes of communication are used for all consumers.

(l) Contractors that provide vocational rehabilitation services shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

§103.211. Complaints.

Upon request from the consumer, the contractor must notify the consumer of the name, mailing address, and telephone number of DARS for the purpose of directing complaints.

§103.213. Corrective Action Plan.

The contractor must prepare and implement a corrective action plan in response to findings of deficiencies by DARS or other federal or state oversight authorities. The corrective action plan must be negotiated to the satisfaction of DARS. DARS may subsequently monitor and document the contractor's compliance with the corrective action plan.

§103.215. Contract Assignment.

(a) Without prior written approval from DARS, a contractor must not assign:

(1) its DARS contract, wholly or partly; or

(2) any right or duty required under the contract.

(b) A contract assignment is necessary when a different entity consents to assume ownership of a contractor's contract with DARS, including when there is a:

(1) change in contract ownership, such as the sale of the contract;

(2) change in legal status with the Texas Secretary of State (SOS), such as changing from a partnership to a corporation without filing articles of conversion with and receiving approval from SOS;

(3) change in employer identification number (EIN), unless DARS approves an exception; or

(4) transfer from one legal entity to another through a legal process, such as a sale by a bankruptcy trustee.

(c) A contract assignment is not necessary when a contractor undergoes a change in:

(1) name only that is not related to one of the events noted in subsection (b) of this section;

(2) legal status that involves filing articles of conversion with and receiving documented approval from the SOS, such as a limited partnership changing to a corporation; or

(3) ownership only, such as sale of majority ownership of stock.

(d) A contractor must notify DARS in writing at least 60 calendar days before the intended effective date of any change in legal entity status that would require a contract assignment.

(e) A contractor must return all required contract assignment forms and documents to DARS by the date requested by DARS.

(f) DARS may choose not to approve a contract assignment when:

(1) a contractor, proposed assignee, or a controlling party has a prior unsatisfactory history in contracting with DARS or with another health and human services agency, and/or may not be able to provide acceptable service under the contract;

(2) a contractor or proposed assignee:

(A) subcontracts any services without specific authorization from DARS; or

(B) assigns or transfers the contract without prior written approval of DARS; or

(3) DARS determines that it is not in the best interest of DARS.

(g) In appropriate circumstances, DARS may terminate a contract or take other adverse action if DARS does not approve a contract assignment.

(h) DARS determines the effective date of a contract assignment.

(i) DARS sends a contractor written notice of the contract assignment approval or disapproval. If DARS does not approve the contract assignment, the notice includes the action that DARS will take regarding the contract.

(j) Failure of a contractor to comply with any of the requirements in this section may result in denial of the contract assignment.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER C. RECORDS

40 TAC §103.307

The new rule is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§103.307. Record Requirements.

(a) The contractor must maintain all financial and contract-related records:

(1) according to recognized fiscal and accounting practices such as Generally Accepted Accounting Principles (GAAP); and

(2) in accordance with the DARS contract requirements, rules, policies and procedures.

(b) When required by DARS, the contractor must use the official DARS form to document services delivered.

(c) The contractor must maintain all records about the services provided to individuals in programs administered by DARS as required under each contract from the date the services were provided. If litigation or claim involving these records is still ongoing at the conclusion of the required time the contract specifies to maintain the records, the contractor must maintain the records until all litigation or claims are resolved.

(d) The contractor must maintain all work papers and records supporting information reported on cost reports, budgets, or other cost surveys for the duration stated in the contract after the end of the fiscal year in which the services were provided. If litigation or claim involving these records is still ongoing at the conclusion of the required time the contract specifies to maintain the records, the contractor must maintain the records until all litigation or claims are resolved.

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. AUDITS, MONITORING, AND REVIEWS

40 TAC §§103.407, 103.409, 103.411, 103.413

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§103.407. Access to Contractor Facilities and Records.

(a) Contractors must allow DARS and all appropriate federal and state agencies or their representatives access to contractor facilities to examine and copy contract records and supporting documents about services provided. The contractors and subcontractors must make the records available at reasonable times and for reasonable periods.

(b) If a contractor is terminating business operations, the contractor must ensure that:

(1) records are stored and accessible; and

(2) someone is responsible for adequately maintaining the records.

§103.409. Independent Audits.

(a) Contractors receiving operating funds through grants, cost-reimbursement contracts, or other contracts with DARS are required to have an independent audit as specified in the contract terms. Copies of these independent audit reports must be submitted to DARS for review. Independent audit work papers may also be reviewed at the discretion of DARS.

(b) The contractors are audited for compliance with federal and state laws and regulations, DARS policies and standards, and the terms of the contract.

§103.411. Compliance Monitoring.

(a) Any service purchased or reimbursed by DARS may be monitored at the discretion of DARS.

(b) DARS conducts monitoring reviews of the contractor's services to determine if the contractor is in compliance with the contract and with program rules and requirements. These reviews are conducted at the location where the contractor is providing the services unless DARS specifies a different location. DARS assesses contractor performance based on contract standards.

(c) During the monitoring review, the contractor must provide:

(1) adequate working space for reviewing the records;

(2) every record DARS requests for review; and

(3) copies, or access for DARS staff to make needed copies, of documents.

(d) During the monitoring review, DARS may:

(1) review a sample of consumer records to determine the contractor's compliance with contract requirements;

(2) interview consumers and staff members;

(3) observe consumers and staff members;

(4) consult with others, as appropriate; and

(5) conduct other activities, as appropriate.

(e) DARS may expand a compliance monitoring review period or the review sample at any time.

§103.413. Fiscal Monitoring.

(a) Fiscal monitoring is the review of documentation that supports the contractor's billing, as it exists at the time the DARS staff reviews the billing documentation. DARS may recoup payment if the service delivery documentation does not support the contractor's billing.

(b) DARS may conduct a fiscal monitoring review:

(1) in conjunction with a compliance monitoring review;

(2) independent of a compliance monitoring review;

(3) when a contract is terminated;

(4) as a result of a complaint; or

(5) at other times as DARS considers necessary.

(c) Fiscal monitoring is designed to ensure that:

(1) DARS received the goods or services paid for;

(2) The total amount paid by DARS was allowable under the contract; and

(3) The contractor maintained the financial records and internal controls necessary to adequately account for claims under the contract.

(d) DARS may use sampling methods in monitoring and auditing contracts.

(e) The contractor has the burden of proof in establishing entitlement to payments made under the contract.

(f) The contractor must provide the same accommodations as defined in §103.411 of this subchapter (relating to Compliance Monitoring).

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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SUBCHAPTER E. ADVERSE ACTIONS

40 TAC §§103.507, 103.509, 103.511, 103.513, 103.515, 103.517, 103.519, 103.521

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§103.507. Adverse Actions.

(a) DARS may impose an adverse action when the contractor fails to follow the terms of the contract or fails to comply with DARS rules, policies, and procedures. DARS may impose adverse actions for reasons including:

(1) DARS' determination that consumer health and safety is jeopardized;

(2) the contractor's failure to comply with its corrective action plan;

(3) the contractor's failure to follow an agreed-upon audit resolution payment plan;

(4) the contractor's failure to submit an acceptable cost report, if applicable;

(5) the contractor's failure to comply with the contract or program requirements;

(6) the contractor's failure to maintain a current required license or the contractor allowing the expiration of any required license, if applicable;

(7) the contractor's relocation to a new facility address that does not have the appropriate license, if applicable;

(8) the contractor's exclusion from contracting with DARS, any health and human services program, or the federal government;

(9) validated report(s) of abuse, neglect, or exploitation when the perpetrator is an owner, employee, or volunteer who has direct access to consumers.

(b) Types of adverse actions may include:

(1) Recoupment. DARS collects money the contractor owes as the result of overpayments or other billing irregularities.

(2) Vendor hold. DARS withholds the contractor's contract payments. DARS may put one or all of the contractor's contracts on vendor hold. The vendor hold is released when DARS determines that the contractor has resolved the reason(s) for the hold. In addition to the reasons listed in subsection (a) of this section, DARS may place a vendor hold on the contractor's contract(s):

(A) to recoup overpayments made to the contractor; or

(B) to recover any audit exceptions assessed against the contractor.

(3) Denial of claim. DARS denies payment in whole or part for a claim filed within program time limits.

(4) Suspension of subcontractor's participation or payments; termination of subcontract. DARS directs a contractor to suspend a subcontractor's participation, suspend a subcontractor's payments, or terminate a subcontract.

(5) Involuntary contract termination. DARS may terminate a contract for cause by citing the contractor's failure to comply with the terms of the contract or with DARS rules, policies, and procedures.

(6) Suspension. DARS temporarily suspends the contractor's right to conduct business with DARS. The causes for and conditions of suspension are described in §103.513 of this subchapter (relating to Causes for and Conditions of Suspension).

(7) Debarment. DARS does not allow a contractor to conduct business with DARS, in any capacity, for a certain period of time. The causes for and conditions of debarment are described in §103.511 of this subchapter (relating to Causes for and Conditions of Debarment).

§103.509. Debarment and Suspension of Current and Potential Contractor Rights.

(a) Requirements in this section apply to all types of contracts with DARS.

(b) Debarment is the termination of rights to continue an existing contract, to receive a new contract, to participate as a contractor or manager, to provide goods or services to DARS consumers either directly or indirectly while working for a DARS contractor, or to make a bid, offer, application, or proposal for a DARS contract. The debarment is for a specified time commensurate with the seriousness of the violation, the extent of the violation, prior impositions of sanctions or penalties, willingness to comply with program rules and directives, and other pertinent information. Generally, debarment does not exceed six years. Where conditions warrant, a longer period may be imposed.

(c) Suspension is the temporary suspension of a contractor's or potential contractor's rights to conduct business with DARS. A suspension is in effect until an investigation, hearing, or trial is concluded and DARS can make a determination about:

(1) the contractor's future right to contract or subcontract; or

(2) a potential contractor's future right to have DARS consider its offer, bid, proposal, or application.

(d) For purposes of both debarment and suspension of contractual rights, DARS may impute the conduct of an individual, corporation, partnership, or other association to the contractor, potential contractor, or the responsible entity of the contractor or potential contractor with whom the individual, corporation, partnership, or other association is employed or otherwise associated. Even though the underlying conduct may have occurred while an individual, corporation, partnership, or other association was not associated with the contractor or potential contractor, suspension of contractual rights or debarment may be imposed. Remedial actions taken by the responsible officials of the contractor or potential contractor are considered in determining whether either suspension of contractual rights or debarment is warranted.

§103.511. Causes for and Conditions of Debarment.

(a) DARS may remove contractual rights from an individual, a corporation, a partnership, or a division of a contractor or legal entity for causes including the following:

(1) being found guilty, pleading guilty, pleading nolo contendere, or receiving a deferred adjudication in a criminal court relating to:

(A) obtaining, attempting to obtain, or performing a public or private contractor subcontract;

(B) engaging in embezzlement, theft, forgery, bribery, falsification or destruction of records, fraud, receipt of stolen property, or any other offense indicating moral turpitude or a lack of business integrity or honesty;

(C) being involved with dangerous drugs, controlled substances, or other drug-related offense;

(D) violating federal antitrust statutes;

(E) committing an offense involving physical or sexual abuse or neglect;

(2) being debarred from contracting by any unit of the federal government or any unit of a state government;

(3) violating DARS contract provisions including failing to perform according to the terms, conditions, and specifications or within the time limit(s) specified in a DARS contract, including the following:

(A) failing to abide by applicable federal and state statutes, such as those regarding persons with disabilities and those regarding civil rights;

(B) having a record of failure to perform or of unsatisfactory performance according to the terms of one or more contracts or subcontracts, if that failure or unsatisfactory performance has occurred within five years preceding the determination to debar. This subparagraph applies only for actions occurring after the effective date of these rules. Failure to perform and unsatisfactory performance includes the following:

(i) failing to correct contract performance deficiencies after receiving written notice about them from DARS or its authorized agents;

(ii) failing to repay or make and follow through with arrangements satisfactory to DARS to repay identified overpayments or other erroneous payments, or assessed liquidated damages or penalties;

(iii) failing to meet standards that are required for licensure or certification, or that are required by state or federal law, DARS rules or standards incorporated in contracts concerning DARS contracts;

(iv) failing to execute contract amendments required by DARS;

(v) billing for services or merchandise not provided to the consumer;

(vi) submitting cost reports containing costs not associated with or not covered by the contract or DARS rules and instructions. Intent to increase individual or statewide rates or fees by submitting unallowable costs must be shown for a single cost report, but intent may be inferred when a pattern of submitting cost reports with unallowable costs is shown;

(vii) submitting a false report or misrepresentation which, if used, may increase individual or statewide rates or fees;

(viii) charging consumer or patient fees contrary to DARS rules or policy;

(ix) failing to notify and reimburse DARS or its agents for services DARS paid for when the contractor received reimbursement from a liable third party;

(x) failing to disclose or make available, upon demand, to DARS or its representatives (including appropriate federal and state agencies) records the contractor is required to maintain;

(xi) failing to provide and maintain services within standards required by statute, regulation, or contract; or

(xii) violating the Human Resources Code provisions applicable to the contract or any rule or regulation issued under the Code;

(4) submitting an offer, bid, proposal, or application that contains a false statement or misrepresentation or omits pertinent facts or documents that are material to the procurement;

(5) engaging in abusive or neglectful practice that results in or could result in death or injury to the consumer served by the contractor; or

(6) knowingly and willfully using a debarred person or legal entity as an employee, independent contractor, or agent to perform a contract with DARS.

(b) In accordance with terms specified by DARS, individuals, parts of entities, and entities that have been debarred may not:

(1) receive a contract;

(2) be allowed to retain a contract that has been awarded before debarment;

(3) bid or otherwise make offers to receive a contract or subcontract;

(4) participate in DARS programs that do not require the contractor to sign a contract or agreement;

(5) either personally or through a clinic, group, corporation, or other association, bill to or receive payment from DARS for any services or supplies provided by the debarred entity on or after the effective date of the debarment. Additionally, DARS will not pay for any services ordered, prescribed, or delivered by the debarred entity for DARS recipients after the date of debarment. No costs associated with a debarred entity, including the salary, fringe, overhead, payments to, or any other costs associated with an employee, owner, officer, director, board member, independent contractor, manager, or agent who was debarred may be included in a DARS cost report or any other document that will be used to determine an individual payment rate, a statewide payment rate, or a fee; or

(6) provide goods or services to DARS consumers either directly or indirectly while working for a DARS contractor.

(c) Debarment may be applied against an individual, a corporation, a partnership, a division of a contractor, or an entire legal entity, or a specified part of a legal entity.

(d) Even a single occurrence of a violation may result in debarment or suspension if it is severe. Other adverse actions may be taken if the violation is isolated or less severe.

§103.513. Causes for and Conditions of Suspension.

(a) DARS may suspend a contractor's or potential contractor's contractual rights whenever DARS finds that there is a reasonable basis to believe that grounds for debarment exist. Suspension may be imposed immediately following DARS' notification to a contractor or potential contractor. In addition, suspension may be imposed on a potential contractor if the contractor has an outstanding indictment or DARS has information about an offense that is grounds for indictment.

(b) Conditions of Suspension.

(1) DARS may withhold payments, wholly or partly, to the affected contractor during the period of suspension.

(2) DARS may refuse to accept a bid, offer, application, or proposal from, or to award a contract to, the affected potential contractor during the period of suspension.

(3) DARS may cease referrals of additional consumers to the suspended entity and may transfer existing consumers to other contractors.

(c) If DARS determines that the underlying reasons for suspension have been resolved in favor of the contractor, DARS must, if applicable:

(1) pay the withheld payments for any services that were provided during the suspension and that met the terms of an existing contract; and

(2) resume contract payments and consumer referrals.

(d) If DARS determines that underlying reasons for the suspension have not been resolved in favor of the contractor, DARS institutes debarment proceedings.

(e) In accordance with terms specified by DARS, individuals and entities whose contractual rights have been placed in suspension may not:

(1) receive a contract;

(2) submit an offer, bid, application, or proposal for a contract; or

(3) provide goods or services to DARS consumers either directly or indirectly while working for a DARS contractor.

(f) A suspension may be applied against an individual, an entire legal entity, or a specified part of a legal entity.

§103.515. Evidence for Debarment or Suspension.

The sufficiency of evidence required depends on the cause of the suspension or debarment.

(1) If there is evidence that the contractor or potential contractor has been found guilty, pleaded guilty, pleaded no contest, or received a deferred adjudication in criminal court relating to an activity prohibited in this chapter, that is sufficient evidence to suspend or debar. If the decision that caused debarment is reversed on appeal, the contractor must provide written proof of the reversal to have its contract rights restored. DARS restores contract rights unless the contractor is also debarred or suspended on other grounds.

(2) If the cause is debarment from contracting by any unit of the federal government or any unit of a state government, it is sufficient to offer official notice from the other state or federal agency that the entity has been debarred. The notice may be addressed to either DARS or the debarred entity.

(3) Other causes of debarment or suspension may be established by evidence of failure to meet contracting terms or standards, including evidence of the severity or recurrence of violations of performance requirements.

§103.517. Notice for Suspension and Debarment.

Written notices of suspension or debarment must include the following, as applicable:

(1) the grounds for the action;

(2) the length of the debarment;

(3) the conditions that might cause a suspension to be released;

(4) a statement explaining the effect of the suspension or debarment; and

(5) a statement of whether the suspension or debarment is in effect throughout DARS or just in a particular DARS program.

§103.519. Appeals.

(a) A contractor has the right to appeal any adverse action imposed by DARS.

(b) To appeal an adverse action, the contractor, referred to in this subchapter as the appellant, must ensure that DARS receives a written request for an appeal within 30 days of the contractor's receipt of the notice of adverse action.

(c) The appellant must ensure that the request for an appeal:

(1) clearly states that the purpose of the letter is to appeal DARS' adverse action;

(2) is received by DARS at the address provided in the notice of adverse action letter;

(3) is received by DARS according to time frames provided in this section; and

(4) includes all required information and documentation as outlined in this section.

(d) To be considered, the appeal must include the following:

(1) A statement of facts describing how a decision, action, or inaction by DARS deviated from contract terms, published policy, or state or federal laws or regulations;

(2) The appellant's claim, including pertinent contract sections;

(3) A statement of the issue(s) in dispute;

(4) A brief statement about why DARS' decision is wrong;

(5) Copies of evidence or documentation supporting the appeal; and

(6) The action requested.

(e) In the request for an appeal letter, the appellant may also request a meeting with DARS. This request should include a description of any special accommodations needed for the appellant, witnesses, or representatives. At the meeting, the appellant:

(1) may be represented by a person of his or her selection; and

(2) will be provided with an opportunity to present evidence and information to support his or her position.

(f) If the appeal does not meet the requirements of this chapter, DARS will notify the appellant that their request for an appeal is denied because it did not meet requirements.

(g) DARS provides a written decision to the appellant within 30 days after conclusion of the meeting, or if no meeting is held, within 45 days after the date DARS receives the appeal, unless the appropriate DARS representative extends the time.

§103.521. Request for Reconsideration.

(a) After DARS issues a decision on an appeal, the appellant may submit in writing a request for reconsideration.

(b) An appellant may submit a request for reconsideration only if the appellant's request for an appeal met the requirements set out in §103.519 of this subchapter (relating to Appeals).

(c) Requests for reconsideration must be addressed to the DARS commissioner and must be received by DARS within 20 days after the date DARS issues the decision on the appeal.

(d) The DARS commissioner may designate a representative(s) to receive the request for reconsideration and issue a decision on behalf of DARS.

(e) The request for reconsideration must:

(1) clearly state that the purpose of the letter is to request reconsideration of DARS' decision on an appeal;

(2) specifically point out any errors in the appeal decision;

(3) specify all relief requested; and

(4) state all reasons why the relief should be granted.

(f) DARS issues a decision on the request for reconsideration no later than 45 days after receipt of the request for reconsideration. The decision may affirm, reverse, or modify the adverse action previously imposed by DARS.

(g) The decision on the request for reconsideration is the final decision of DARS. However, if the contractor believes DARS breached the contract, the contractor may pursue further action according to Government Code, Chapter 2260.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER F. CLAIMS FOR BREACH OF CONTRACT

40 TAC §§103.603, 103.605, 103.607, 103.609, 103.611, 103.613, 103.615, 103.617, 103.619, 103.621, 103.623, 103.625, 103.627, 103.629

The new rules are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§103.603. Legal Authority.

The following statutes authorize procedures established in this subchapter:

(1) Government Code, Chapter 2260;

(2) Governmental Dispute Resolution Act, Government Code, Chapter 2009;

(3) Government Code, Chapter 552; and

(4) Civil Practice and Remedies Code, Chapter 154.

§103.605. Definitions.

These definitions supplement definitions in Government Code, Chapter 2260. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Claim--A demand for damages by the contractor based on DARS' alleged breach of the contract.

(2) Counterclaim--A demand by DARS based on the contractor's claim.

(3) Day--A calendar day. If an action is required to occur on a day falling on a Saturday, Sunday, or state or federal holiday, the next working day that is not one of these days is counted as the required day for purpose of the action.

(4) Event--An act or omission or a series of acts or omissions giving rise to a claim.

(5) Mediation--A consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them.

(6) Negotiation--A consensual bargaining process in which the parties attempt to resolve a claim and counterclaim.

(7) Parties--DARS and the contractor that have entered into a contract in connection with which a claim of breach of contract has been filed under this subchapter.

§103.607. Claims.

DARS resolves administrative and consumer contractor claims for breach of contract according to Government Code, Chapter 2260.

§103.609. Notice of Claim.

(a) A contractor asserting a claim of breach of contract under Government Code, Chapter 2260, must file notice of the claim in accordance with requirements of Government Code, Chapter 2260 and this section.

(b) The notice of claim must:

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

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the DARS commissioner or designee; and

(3) state in detail:

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

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

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

(c) The contractor may submit supporting documentation or other tangible evidence to facilitate DARS' evaluation of the contractor's claim.

§103.611. Negotiation Timetable.

(a) The parties will negotiate in accordance with the time frames established in Government Code, Chapter 2260. No party is obligated to settle with the other party as a result of the negotiation.

(b) If the parties agree to extend the time for negotiations, they enter into a written agreement that is signed by representatives of the

parties with authority to bind each respective party. The agreement provides for the specific date by which the negotiations will be completed. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(c) Nothing in this section is intended to prevent the parties from agreeing to begin negotiations earlier than the deadlines established in Government Code, Chapter 2260 or from continuing or resuming negotiations after the contractor requests a contested case hearing before the State Office of Administrative Hearings (SOAH).

§103.613. Conduct of Negotiations.

A negotiation under this subchapter may be conducted by any method, technique, or procedure agreed upon by the parties, including negotiation in person, by telephone, by correspondence, by video conference, or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement, and settle.

§103.615. Negotiation Settlement Approval Procedures.

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

§103.617. Settlement Agreement After Negotiation.

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

(b) A settlement agreement must be in writing and be signed by representatives of the contractor and DARS who have authority to bind each respective party.

§103.619. Costs of Negotiation and Mediation.

(a) Unless the parties agree otherwise, each party is responsible for its own costs incurred in connection with a negotiation and mediation, including the costs of attorneys' fees, consultants' fees, experts' fees, and documents requested by each party.

(b) The costs of the mediation process itself are divided equally between the parties.

§103.621. Agreement to Mediate.

The parties may use mediation as an option to resolve a breach of contract claim if both parties agree.

§103.623. Conduct of Mediation.

(a) The parties' settlement approval procedures must be disclosed by the parties before the mediation.

(b) The mediator must be acceptable to both parties.

(c) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009.

(d) To the extent possible, the parties must select representatives who are knowledgeable about the subject matter of the dispute that resulted in the claim for breach of contract, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§103.625. Qualifications and Immunity of Mediator.

(a) The mediator must possess the qualifications required for an impartial third party under Civil Practice and Remedies Code, Chapter 154, must be subject to the standards and duties prescribed by Civil Practice and Remedies Code, Chapter 154, and will have the qualified immunity of impartial third parties prescribed by Civil Practice and Remedies Code, Chapter 154, if applicable.

(b) The parties should decide whether, and to what extent, knowledge of the subject matter and experience in mediation would be advisable for the mediator.

(c) The parties should obtain from the prospective mediator the ethical standards that will govern the mediation.

§103.627. Mediation Settlement Agreement Procedures.

(a) An initial agreement must describe any procedures that the parties are required to follow in connection with final approval of the agreement.

(b) Any initial or final settlement agreement reached during or as a result of mediation that resolves an entire claim or any designated and severable portion of a claim must be in writing and signed by representatives of both parties who have authority to bind each respective party.

(c) If a settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement must identify the issues that are not resolved.

§103.629. Confidentiality of Mediation and Final Settlement Agreement.

(a) A mediation conducted under this subchapter is confidential in accordance with Government Code, Chapter 2009.

(b) The confidentiality of a final settlement agreement to which DARS is signatory that is reached as a result of the mediation is governed by Government Code, Chapter 552.

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

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Sylvia F. Hardman
General Counsel
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For further information, please call: (512) 424-4050

SUBCHAPTER G. CONTRACT TERMINATION

40 TAC §103.707

The new rule is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§103.707. Termination Procedures.

(a) DARS may terminate a contract for the following reasons:

(1) failure to comply with the terms of the contract or DARS' rules, policies, or procedures;

(2) lack of funding;

(3) mutual agreement;

(4) convenience;

(5) making a false certification that is a material breach of contract; or

(6) other reasonable cause.

(b) DARS sends the letter of notification to the contractor.

(c) When a contract is terminated, a review is conducted to determine any overpayment or underpayment. Settlement of claims under terminated contracts may be made by a negotiated agreement or as determined by DARS. The contractor is responsible for the prompt settlement of the termination claims.

(d) When a grant or cost reimbursement contract is terminated, equipment and supplies purchased under the contract may be subject to disposition as determined by DARS in accordance with the terms of the contract.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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CHAPTER 104. PURCHASE OF GOODS AND SERVICES BY THE DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes the repeal of 40 TAC, Chapter 104, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services, Subchapter C §§104.251, 104.253, 104.255, 104.257, 104.259, 104.261, 104.263 and Subchapter J, Protest Procedures, §104.301.

Elsewhere in this issue of the *Texas Register* DARS contemporaneously proposes new Chapter 102, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services, Subchapter A, Purchase of Goods and Services, §102.201, Purpose; §102.203, Legal Authority; §102.205, Definitions; §102.207, Procurement Objectives; §102.209, Compliance with State Requirements; §102.211, Other Rates and Fees; §102.213, Alternative Purchasing Methods-Rates for Medical Services; §102.215, Schedule of Rates; §102.217, Cancellation or Suspension of Solicitation; §102.219, Memorandum of Understanding with State Agencies; §102.221, Contracts for Deaf and Hard of Hearing Services; and Subchapter B, Protest Procedures, §102.307, Availability of Protest Procedures.

The repeals and new rules are proposed in accordance with DARS' four-year rule review of Chapter 104, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services, as required by Texas Government Code §2001.039. DARS determined that the reasons for initially adopting these rules continue to exist. However, DARS is repealing all of Chapter 104 and replacing with new Chapter 102, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services. The new Chapter 102 rules are necessary to align with statutes and current DARS operations; to delete repetitive or obsolete rules; to include rules that were removed from Chapter 101, Administrative Rules and Procedures and determined to be more appropriate in Chapter 102; and to renumber and revise the rules for clear and concise language.

The following addresses the specific changes from current Chapter 104 to new Chapter 102:

The repeal of Chapter 104, Subchapter C, Purchase of Goods and Services, and replacement of the subject matter contained therein into new Chapter 102, Subchapter A, is necessary to include rules that have been determined to be more appropriate for placement in new Chapter 102, Subchapter A; to allow for inclusion of rules contained in Chapter 101, Administrative Rules and Procedures, which are being contemporaneously repealed elsewhere in this edition of the *Texas Register*; and to renumber and revise the rules for clear and concise language.

The repeal of Chapter 104, Subchapter J, Protest Procedures, and replacement of the subject matter in new Chapter 102, Subchapter B, is necessary to renumber and revise the rules for clear and concise language.

Mary Wright, DARS chief financial officer, has determined that for each year of the first five years the proposed rules are in effect, there are no foreseeable fiscal implications to either costs or revenues of state or local governments because of enforcing or administering the rules.

Ms. Wright also determined that the public benefit anticipated as a result of enforcing the changes will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the general rules for the purchasing of goods and services by the Department of Assistive and Rehabilitative Services. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposed rules.

Further, in accordance with Texas Government Code, §2001.022, Ms. Wright has determined that the proposed rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposed rules will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposal may be submitted with 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

SUBCHAPTER C. PURCHASE OF GOODS AND SERVICES

40 TAC §§104.251, 104.253, 104.255, 104.257, 104.259, 104.261, 104.263

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which provides the executive commissioner of the Texas Health and Human Services Commission the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§104.251. Purpose.
§104.253. Authority.
§104.255. Definitions.
§104.257. Procurement Objectives.
§104.259. Compliance with State Requirements.
§104.261. Cancellation or Suspension of Solicitation.
§104.263. Memoranda of Understanding with State 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.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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SUBCHAPTER J. PROTEST PROCEDURES

40 TAC §104.301

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

The repeal is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which provides the executive commissioner of the Texas Health and Human Services Commission the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§104.301. Availability of Protest Procedures.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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CHAPTER 105 GENERAL CONTRACTING RULES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), proposes the repeal of 40 TAC Chapter 105, General Contracting Rules, Subchapter A, General Contracting Information, §§105.1001, 105.1003; Subchapter B, Contractor Requirements, §§105.1011, 105.1013, 105.1015, 105.1017, 105.1019; Subchapter C, Records, §105.1101; Subchapter D, Audits, Monitoring and Reviews, §§105.1201, 105.1203, 105.1205, 105.1207; Subchapter E, Adverse Actions, §§105.1301, 105.1305, 105.1307, 105.1309, 105.1311, 105.1313, 105.1315, 105.1317; Subchapter F, Claims for Breach of Contract, §§105.1401, 105.1403, 105.1405, 105.1407, 105.1409, 105.1411, 105.1413, 105.1415, 105.1417, 105.1419, 105.1421, 105.1423, 105.1425; and Subchapter G, Contract Termination, §105.1501.

Elsewhere in this issue of the *Texas Register* DARS contemporaneously proposes new Chapter 103, General Contracting Rules, Subchapter A, General Contracting Information, §103.101, Purpose; §103.103, Legal Authority; §103.105, Definitions; Subchapter B, Contractor Requirements, §103.207, General Information; §103.209, General Requirements for Contracting; §103.211, Complaints; §103.213, Corrective Action Plan; §103.215, Contract Assignment; Subchapter C, Records, §103.307, Record Requirements; Subchapter D, Audits, Monitoring, and Reviews, §103.407, Access to Contractor Facilities and Records; §103.409, Independent Audits; §103.411, Compliance Monitoring; §103.413, Fiscal Monitoring; Subchapter E, Adverse Actions, §103.507, Adverse Actions; §103.509, Debarment and Suspension of Current and Potential Contractor Rights; §103.511, Causes for and Conditions of Debarment; §103.513, Causes for and Conditions of Suspension; §103.515, Evidence for Debarment or Suspension; §103.517, Notice for Suspension and Debarment; §103.519, Appeals; §103.521, Request for Reconsideration; Subchapter F, Claims for Breach of Contract, §103.603, Legal Authority; §103.605, Definitions; §103.607, Claims; §103.609, Notice of Claim; §103.611, Negotiation Timetable; §103.613, Conduct of Negotiations; §103.615, Negotiation Settlement Approval Procedures; §103.617, Settlement Agreement After Negotiation; §103.619, Costs of Negotiation and Mediation; §103.621, Agreement to Mediate; §103.623, Conduct of Mediation; §103.625, Qualifications and Immunity of Mediator; §103.627, Mediation Settlement Agreement Procedures; §103.629, Confidentiality of Mediation and Final Settlement Agreement; and Subchapter G, Contract Termination, §103.707, Termination Procedures.

The repeal and new rules are proposed under the DARS four-year rule review of Chapter 105, General Contracting Rules, conducted as required by Texas Government Code §2001.039. DARS determined that the reasons for initially adopting these rules continue to exist. However, DARS is repealing all of Chapter 105. The rules and/or the subject matter of the rules contained in Chapter 105 are contemporaneously being proposed as new rules in Chapter 103, General Contracting Rules. The new Chapter 103 rules are necessary to align the rules to statutes and current DARS operations; to add and delete definitions; to delete repetitive and obsolete rules; to add related rules from Chapter 101, Administrative Rules and Procedures, that are contemporaneously being repealed and have been determined to be more appropriate for inclusion in

new Chapter 103; and to renumber and revise the rules for clear and concise language.

The following address the specific changes to Chapter 105:

The repeal and replacement of Subchapter A, General Contracting Information, is necessary to include rules that were removed from Chapter 101, relating to Administrative Rules and Procedures, and determined to be more appropriate in Chapter 103, to add new and delete obsolete definitions, and to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter B, Contractor Requirements, is necessary to include rules from Chapter 101, Administrative Rules and Procedures, that are being contemporaneously repealed is this issue of the *Texas Register* and determined to be more appropriate in Chapter 103, and to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter C, Records, is necessary to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter D, Audits, Monitoring and Reviews, is necessary to rename the title to Audits, Monitoring, and Review, and to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter E, Adverse Actions, is necessary to add requirement to provide goods or services to DARS consumer's either directly or indirectly while working for a DARS contractor to debarment and suspension of current and potential contractor rights, and to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter F, Claims for Breach of Contract, is necessary to add new section legal authority, to add that the rules pertaining to breach of contract will apply to both consumers and administrative contracts, and to renumber and revise the rules for clear and concise language.

The repeal and replacement of Subchapter G, Contract Termination, is necessary to renumber and revise the rules for clear and concise language.

Mary Wright, DARS chief financial officer, has determined that for each year of the first five years that the proposed repeal will be in effect, there are no foreseeable fiscal implications to either costs or revenues of state or local governments because of enforcing or administering the repeal.

Ms. Wright also has determined that for each year of the first five years the proposed repeal will be in effect, the public benefit anticipated as a result of enforcing the repeal will be to assure the public that the necessary rules are in place to provide a clear and concise understanding of the general contracting rules of the DARS. Ms. Wright has also determined that there is no probable economic cost to persons who are required to comply with the proposed repeal.

Further, in accordance with Texas Government Code, §2001.022, Ms. Wright has determined that the proposed repeal will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses.

The following statutes and regulations authorize the proposed repeal: Texas Government Code, Chapters 2155, 2252, 2261, and 2262.

Written comments on the proposed repeal may be submitted within 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

SUBCHAPTER A. GENERAL CONTRACTING INFORMATION

40 TAC §105.1001, §105.1003

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§105.1001. Purpose.

§105.1003. Definitions.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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SUBCHAPTER B. CONTRACTOR REQUIREMENTS

40 TAC §§105.1011, 105.1013, 105.1015, 105.1017, 105.1019

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§105.1011. General Information.

§105.1013. General Requirements for Contracting.

§105.1015. Complaints.

§105.1017. Corrective Action Plan.

§105.1019. Contracting Assignment.

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. RECORDS

40 TAC §105.1101

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

The repeal is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§105.1101. Record Requirements.

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. AUDITS, MONITORING AND REVIEWS

40 TAC §§105.1201, 105.1203, 105.1205, 105.1207

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§105.1201. Access to Contractor Facilities and Records.

§105.1203. Independent Audits.

§105.1205. Compliance Monitoring.

§105.1207. Fiscal Monitoring.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER E. ADVERSE ACTIONS

40 TAC §§105.1301, 105.1305, 105.1307, 105.1309, 105.1311, 105.1313, 105.1315, 105.1317

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§105.1301. Adverse Actions.

§105.1305. Debarment and Suspension of Current and Potential Contractor Rights.

§105.1307. Causes for and Conditions of Debarment.

§105.1309. Causes for and Conditions of Suspension.

§105.1311. Evidence for Debarment or Suspension.

§105.1313. Notice Requirements for Suspension and Debarment.

§105.1315. Appeals.

§105.1317. Request for Reconsideration.

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. CLAIMS FOR BREACH OF CONTRACT

40 TAC §§105.1401, 105.1403, 105.1405, 105.1407, 105.1409, 105.1411, 105.1413, 105.1415, 105.1417, 105.1419, 105.1421, 105.1423, 105.1425

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

The repeals are proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§105.1401. Claims.
§105.1403. Definitions.
§105.1405. Notice of Claim.
§105.1407. Negotiation Timetable.
§105.1409. Conduct of Negotiations.
§105.1411. Negotiation Settlement Approval Procedures.
§105.1413. Settlement Agreement After Negotiation.
§105.1415. Costs of Negotiation and Mediation.
§105.1417. Agreement to Mediate.
§105.1419. Conduct of Mediation.
§105.1421. Qualifications and Immunity of Mediator.
§105.1423. Mediation Settlement Agreement Procedures.
§105.1425. Confidentiality of Mediation and Final Settlement 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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Sylvia F. Hardman
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SUBCHAPTER G. CONTRACT TERMINATION

40 TAC §105.1501

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

The repeal is proposed in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the executive commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article or code is affected by this proposal.

§105.1501. Termination Procedures.

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 106. DIVISION FOR BLIND SERVICES

SUBCHAPTER B. CRISS COLE REHABILITATION CENTER

DIVISION 1. GENERAL RULES

40 TAC §106.305

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes amending its rules in Title 40, Part 2, Chapter 106, Division for Blind Services, Subchapter B, Criss Cole Rehabilitation Center, Division 1, General Rules, by adding new rule §106.305, Payment of Shift Differentials.

DARS conducted a review of existing rules in Title 40, Chapter 101, Administrative Rules and Procedures, Subchapter A, and determined the need to repeal §101.131, Payment of Shift Differentials. The repeal of §101.131 is contemporaneously proposed elsewhere in this issue of the *Texas Register*. This section is added to Chapter 106, Division for Blind Services, as it relates only to staff in this Center.

The proposed new rule is authorized by the Texas Human Resources Code Chapters 91 and 117, and the Texas General Appropriations Act, 82nd Legislature, 2011 Regular Session, Article II, Health and Human Services, Special Provisions Relating

to All Health and Human Services Agencies, Section 2. Night Shift and Weekend Differential, d. Employee Work Assignments (relating to employees assigned to the Criss Cole Rehabilitation Center or to special project facilities operated by DARS) (page II-108).

Mary Wright, DARS Chief Financial Officer, estimates that for each year of the first five years that the proposed new rule is in effect, there will be no foreseeable fiscal implications for state or local governments' costs or revenues as a result of enforcing or administering the proposal. No fiscal impact has been determined at this time to persons who are required to comply with the proposed new rule.

Ms. Wright has determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of this new rule will be an easier ability to locate DARS' rule on shift differentials.

Additionally, in accordance with Texas Government Code, §2001.022, Ms. Wright has determined that the proposed new rule will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Ms. Wright has determined that the proposed new rule will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposal may be submitted within 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to DARS.Rules@dars.state.tx.us.

The new rule is proposed pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.305. Payment of Shift Differentials.

(a) The Assistant Commissioner is authorized to pay a shift differential to eligible employees in the vocational rehabilitation program. The shift differential shall be paid in addition to the employee's regular base pay, exclusive of longevity and benefit replacement pay.

(b) The Assistant Commissioners are authorized to determine the agency positions which are eligible to receive shift differential payments. The rate of payment shall be a percentage of the employee's monthly regular base pay, not to exceed the maximum allowed by state law, in relation to the number of hours the employee regularly works outside the work hours of Monday through Friday, 8:00 a.m. to 5:00 p.m.

(c) This section shall not apply to those employees whose work hours have been adjusted according to agency policies concerning staggered work hours.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER E. FEDERAL, STATE, AND LOCAL PARTICIPATION

43 TAC §§15.51, 15.52, 15.55

The Texas Department of Transportation (department) proposes amendments to §§15.51, Definitions, 15.52, Agreements, and 15.55, Construction Cost Participation.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments to §§15.51, 15.52, and 15.55 address the requirements for local governments to participate in highway construction projects and federally funded programs. The revisions modify language to enhance readability, provide for the limited acceptance of "in-kind" contributions from local governments, reallocate decision making authority for department staff to issue special approvals, and make conforming changes.

Amendments to §15.51 revise the definition of "executive director" to expand the group of employees to which the executive director may delegate duties under the subchapter. Allowing the executive director to designate different agency executives to make decisions under the subchapter adds flexibility to the department's relationships with local governments. Other changes are made to update cross references.

Amendments to §15.52 revise existing language to enhance readability. In addition, the term "reservoir agencies" is deleted because a public reservoir agency that would enter into an agreement with the department under the rules is included in the definition of "local government."

Amendments to §15.52(3)(A) authorize the department to accept in-kind contributions if the agreement is for work other than highway construction and to allow the local government to count those contributions as matching funds. These changes allow the department to enter agreements with local governments that are unable to make financial contributions but can contribute other valuable resources. Changes to this subparagraph specifically authorize the department to refuse to enter an agreement if the local government has not complied with its financial obligations under other local participation agreements.

Amendments to §15.52(3)(B) require that for a fixed price funding arrangement to be used, it must be approved by the executive director. The former provision required only a request by the local government. The change allows the department to determine whether the use of the arrangement is appropriate for the project. The amendments also change the term "lump sum" to

"fixed price." Fixed price more accurately describes the business practices used for the type of contract in which a set price is paid on the completion of milestones.

Amendments to §15.52(3)(C) clarify that requests for periodic payments require approval of the executive director or the executive director's designee. The changes also address an issue related to funding approval in the current rules by deleting the reference to a schedule in the funding agreement because a funding agreement will not exist at that stage of the approval process.

Amendments to §15.52(3)(D) update cross references.

Amendments to §15.52(6)(E) add language providing that the valuation of in-kind contributions will be made in accordance with 49 C.F.R. §18.24, which establishes uniform administrative rules for matching or cost sharing related to federal grants and cooperative agreements and sub-awards to state and local governments.

Amendments to §15.52(8) restructure the paragraph to enhance its readability and clarity. The paragraph provides that the executive director may authorize local governments to perform certain types of work on state roadways under local participation agreements. However, the executive director may not authorize a local government's improvement of the freeway main lanes.

Amendments to §15.55 modify the existing language for clarity, and make conforming changes to accommodate the provision for in-kind contributions provided for in §15.52. Figure: 43 TAC §15.55(c) is amended to update contribution percentages for the Safe Routes to School Program to reflect current federal and state funding requirements.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Scott Burford, Director, General Services Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Burford has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be greater flexibility and efficiency in administering the department's initiatives to work with local governments. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§15.51, 15.52, and 15.55 may be submitted to Scott Burford, Director, General Services Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on January 30, 2012.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 221; Transportation Code, Chapter 222, Subchapter C; and Transportation Code, §224.033.

§15.51. Definitions.

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

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

(9) Executive director--The executive director of the department, or a designee [~~not below the level of deputy executive director or assistant executive director~~].

(10) - (41) (No change.)

(42) Texas Trunk System--A rural highway network as described [~~defined~~] in §16.56 [~~§15.41~~] of this title (relating to Texas Highway Trunk System [~~Definitions~~]).

(43) Transportation Enhancement Program--A federally mandated program identified in §11.200 et seq. of this title (relating to [~~Statewide~~] Transportation Enhancement Program), providing federal funding for activities that enhance the intermodal transportation systems and facilities within the state for the enjoyment of the users of those systems.

(44) - (46) (No change.)

(47) Utility relocation/adjustment costs--Costs of work related to the adjustment, relocation, and removal of utility facilities accomplished in accordance with §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and Chapter 21, Subchapter C [~~§21.31 et seq.~~] of this title (relating to Utility Accommodation).

§15.52. Agreements.

This section describes the contents of the department's joint participation agreement with a local government for a highway improvement project and the responsibilities of the parties to such an agreement. [~~When a local government or reservoir agency will be providing financial assistance for a highway improvement project, the department and the local government or reservoir agency shall enter into an agreement before any work is performed. The agreement will include, but not be limited to, the following provisions of this section~~].

(1) Right of entry. If the local government [~~or reservoir agency~~] is the owner of the project site, it shall permit the department or its authorized representative [~~access~~] to occupy the site to perform all activities required to execute the work.

(2) Right of way and [~~and/or~~] utility relocations and adjustments [~~relocation/adjustments~~]. The local government will provide all necessary right of way and utility relocations and adjustments [~~relocation/adjustments~~], whether publicly or privately owned, in accordance with §15.55 of this subchapter (relating to Construction Cost Participation). [~~When specified, the reservoir agency will provide all necessary right of way and utility/relocation adjustments, whether publicly or privately owned.~~] Existing utilities will be relocated and [~~and/or~~] adjusted by the local government with respect to location and type of installation in accordance with the requirements of the department under [~~as specified in~~] §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and Chapter 21, Subchapter C [~~§21.31 et seq.~~] of this title (relating to Utility Accommodation).

(3) Funding arrangement. The agreement will specify the [~~type of~~] funding [~~share~~] arrangement agreed upon by the department and the local government. The funding [~~share~~] arrangement shall include any adjustments required by §15.55 of this subchapter. The funding arrangement agreed upon by the department and the local government for drainage construction costs [~~reservoir agency~~] will be as specified under §15.54(e) of this subchapter (relating to Construction).

(A) Standard. The local government is responsible for all, or a specified percentage as shown in Figure: 43 TAC §15.55(c) [~~Appendix A of §15.55~~] of this subchapter, of the direct costs incurred by the department for preliminary engineering, construction engineering, construction, and right of way as well as the direct cost for any work included in the project which is ineligible for federal or state participation. For federally funded non-construction programs, the local government is responsible for any required match and for any work included that is ineligible for federal or state participation. The department will accept in-kind contributions for matching funds or other funds only under agreements that do not include highway construction. The department may refuse to enter into an agreement with a local government that has not previously complied with the financial obligations under an agreement authorized by this section. [~~When specified, the reservoir agency is responsible for all of the direct costs incurred by the department for preliminary engineering, construction engineering, construction, and right of way as well as the direct cost for any work included which is ineligible for federal or state participation.~~]

(B) Fixed price. For projects eligible for state participation, a fixed price funding arrangement may be used if approved by the executive director. The fixed price amount shall be based on the estimated cost of the work for which the funds are received. [~~A fixed price funding arrangement, based on the estimated cost of the work for which the funds are received, may be used if requested by the local government for projects that include state participation.~~]

(i) [~~Determination of lump sum.~~] A local government is responsible for the fixed price amount [~~lump sum price~~], not subject to adjustment except:

(I) in the event of changed site conditions;

(II) if work requested by the local government is ineligible for federal participation; or

(III) as mutually agreed upon by the department and the local government.

(ii) Approval. In approving a request for a fixed price, the executive director will consider:

(I) requests by the local government to include work which is ineligible for federal or state participation;

(II) need for expeditious project completion;

(III) type of work proposed and the ability to accurately estimate its cost; and

(IV) any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(C) Periodic [~~Incremental~~].

(i) The executive director [~~department~~] may approve a local government to make periodic payments of its funding share only if:

(I) the periodic [~~incremental~~] payments sought are based on the estimated cost for the work for which the funds are received and the local government proposes a schedule to repay the entire amount [~~payment is made in accordance with the schedule established in the funding agreement~~]; and

(II) the local government does not have a delinquent obligation to the department, as defined in §5.10 of this title (relating to Collection of Debts).

(ii) In approving a request for periodic [~~incremental~~] payments, the executive director will consider:

(I) inability of the local government to pay its total funding share prior to the department's scheduled date for contract letting, based upon population level, bonded indebtedness, tax base, and tax rate;

(II) past payment performance;

(III) need for expeditious project completion;

(IV) whether the project is located in a local government that consists of all or a portion of an economically disadvantaged county; and

(V) any other considerations relating to the benefit of the state, the public, and the operations of the department.

(D) Off-State Highway System Bridge Program. For projects funded in the Off-State Highway System Bridge Program, the local government is responsible for the specified percentage, as shown in Figure: 43 TAC §15.55(c) [~~Appendix A to §15.55~~] of this subchapter, of the estimated direct costs for preliminary engineering, construction engineering, and construction, and the actual direct costs for right of way and eligible utilities. The estimated direct costs are based on the department's estimate of the eligible work at the time of the agreement. The local government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the Highway Bridge Program, [~~Federal Highway Bridge Replacement and Rehabilitation Program under~~] 23 U.S.C. §144 and Highway Bridge Replacement and Rehabilitation Program, 23 C.F.R. §650 Subpart D. The local government is also responsible for any cost resulting from changes made at the request of the local government, either during preliminary engineering or construction.

(4) Interest. The department will not pay interest on funds provided by the local government [~~or the reservoir agency~~]. Funds provided by the local government [~~or the reservoir agency~~] will be deposited into, and retained in, the state treasury.

(5) Amendments. In the case of significantly changed site conditions or other mutually agreed upon changes in the scope of work authorized in the agreement, the department, and the local government [~~or reservoir agency~~] will amend the funding agreement, setting forth the reason for the change and establishing the revised participation to be provided by the local government [~~or reservoir agency~~].

(6) Payment provision. The agreement will establish the conditions for payment by the local government [~~or reservoir agency~~], including, but not limited to, the method of payment and the time of payment.

(A) Standard.

(i) Upon execution of the agreement or at a later date, unless periodic payments have been [~~if~~] requested by the local government and [~~as~~] approved by the executive director, the local government [~~or reservoir agency~~] will pay, as a minimum, its funding share for the estimated cost for any [~~of~~] right of way and preliminary engineering for the project. Unless periodic payments have been requested by the local government and approved by the executive director, the local government, before [~~Prior to~~] the department's scheduled date for contract letting, [~~the local government or reservoir agency~~] will remit

to the department an amount equal to the remainder of the local government's [~~or reservoir agency's~~] funding share for the project.

(ii) After the project is completed the final cost will be determined by the department, based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's [~~or reservoir agency's~~] funding share, then the department shall notify the local government [~~or reservoir~~ agency] which shall transmit the required amount to the department. If it is found that the amount received is in excess of the local government's [~~or reservoir agency's~~] funding share, the excess funds paid by the local government [~~or reservoir~~ agency] shall be returned.

(B) Fixed price. When a fixed price funding arrangement is used, the fixed [~~lump sum~~] price is not subject to adjustment except as provided for in paragraph (3)(B) of this section.

(C) Periodic [~~Incremental~~]. After a periodically [~~an incrementally~~] paid project is completed, the final cost will be determined by the department based on its standard accounting procedures. If it is found that the amount received is insufficient to pay the local government's funding share, then the department shall notify the local government which shall transmit the required amount to the department. If it is found that the amount received is in excess of the local government's funding share, the excess funds paid by the local government shall be returned.

(D) Off-State Highway System Bridge Program. For projects funded in the Off-State Highway System Bridge Program, the department will determine the final cost after the project is completed, based on its standard accounting procedures. The department will notify the local government of any amount due for payment of costs related to any ineligible items and for changes made at the request of the local government. The local government shall promptly transmit the required amount to the department. The department will return excess funds paid by the local government if it is found that the amount received is in excess of the local government's funding share required by §15.55(c) of this subchapter.

(E) Valuation of in-kind contributions. Before the department may enter an agreement under which goods, services, or real estate are accepted rather than financial consideration, the department will document a value for the in-kind contributions consistent with 49 C.F.R. §18.24.

(7) Termination. If the local government [~~or reservoir agency~~] withdraws from the project after the agreement is executed, it shall be responsible for all direct and indirect project costs incurred by the department for the items of work in which the local government [~~or reservoir agency~~] is participating.

(8) Responsibilities of the parties. The local government and the department shall identify in the agreement which party will prepare or provide construction plans, perform construction, advertise for bids, award a construction contract, and perform construction supervision. Activities assigned to the local government must comply with subparagraph (A) of this paragraph and have the approvals required by subparagraph (B) of this paragraph.

~~[(A) Agreement. The agreement shall identify which party shall the responsibilities of each party, including, but not limited to, preparing or providing construction plans, construction performance, advertising for bids, awarding a construction contract, and construction supervision.]~~

(A) [~~(B)~~] Local government performance and management of [~~highway improvement~~] projects. For state highway improvement projects and other projects using state or federal funds, the agreement between the department and a local government may provide for the local government to:

~~*[(i)* Request. If requested by a local government and approved by the department, an agreement with the governing body of a local government may provide for:]~~

(i) [~~(I)~~]perform, using [~~the performance by~~] employees under the direct control of the local government, [~~of~~] a highway improvement project on the state highway system; [~~other than a project to improve freeway mainlanes on the state highway system; or~~]

(ii) [~~(II)~~]outsource [~~outsourcing~~] preliminary project engineering and design for which reimbursement is requested, bid opening, award of construction to a contractor, and construction management by the local government or a consultant hired by the local government of a highway improvement project on the state highway system; or

(iii) perform other projects as authorized by law [~~, other than a project to improve freeway mainlanes on the state highway system~~].

~~*[(ii)* Maintenance activities. Maintenance activities that do not alter the physical character of the roadway surface, such as sweeping and debris removal, are not projects to improve freeway mainlanes for the purposes of clause (i) of this subparagraph.]~~

(B) [~~(iii)~~] Approval authority. Before a local government may perform an act described in subparagraph (A) of this paragraph, the [~~The~~] executive director must [~~may~~] authorize the [~~a~~] local government to perform that [~~an~~] act [~~described in of this section~~]. The executive director may also [~~delegate the authority to~~] approve[~~:~~]

~~*[(I)* the performance by employees of the local government of work on any facility not maintained by the department; and]~~

[~~(II)~~] the performance by employees of the local government of projects or activities appurtenant to a state highway, including drainage facilities, surveying, traffic counts, driveway construction, landscaping, guardrails, and other items incidental to the roadway itself, such as signing, pavement markings, signals, illumination, and traffic management systems.

(C) [~~(iv)~~] Conditions. A local government may perform an act described in subparagraph (A) of this paragraph [~~clause (i) of this subparagraph~~] only if:

(i) [~~(I)~~] the local government commits in the agreement to comply with all federal, state, and department requirements, standards, and specifications, and agrees to forfeit any claim to federal and [~~and/or~~] state reimbursement if they fail to comply;

(ii) [~~(II)~~] the project is authorized by the commission in the current Unified Transportation Program or by a specific minute order;

(iii) [~~(III)~~] a project on the state highway system performed or managed by a local government is operationally beneficial to the state;

(iv) [~~(IV)~~] a roadway construction project requested by the local government that is to be on the state highway system, for which local management is proposed, is funded with at least 50 percent [~~50%~~] of the funds not coming from federal or state highway funding;

(v) [~~(V)~~] the local government agrees to pay any cost overruns in addition to its local participation on an off-state highway system bridge program project for which local management is proposed; and

(vi) [~~(VI)~~] the department reviews and approves all plans, contract awards, and change orders.

(D) [~~(v)~~] Approval. The department will not approve any project that includes the local government improving freeway mainlanes on the state highway system. In approving a request, the department [~~executive director or designee~~] will consider:

(i) [~~(I)~~] previous experience of the local government in performing the type of work proposed;

(ii) [~~(II)~~] the capability of the local government to perform the type of work proposed or to award and manage a contract for that work in a timely manner, consistent with federal, state, and department regulations, standards, and specifications;

(iii) [~~(III)~~] need for expeditious project completion;

(iv) [~~(IV)~~] department resources available to perform or manage the highway improvement project in an efficient and timely manner;

(v) [~~(V)~~] cost effectiveness of local performance of the work as compared to awarding the highway improvement project through the competitive bidding process; and

(vi) [~~(VI)~~] any other considerations relating to the benefit of the state, the traveling public, and the operations of the department.

(9) Acknowledgment. The local government [~~or reservoir agency~~] must acknowledge in the agreement that while not an agent, servant, nor employee of the state, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work authorized in the contract.

(10) Local regulations. If any existing, future or proposed local ordinance, commissioners court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, that is more restrictive than state or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased cost to the department for a highway improvement project, the local government [~~or reservoir agency~~] must commit in the agreement to being responsible for all increased costs associated with the ordinance, order, policy, directive, or change.

§15.55. Construction Cost Participation.

(a) Required cost participation. The commission may require, request, or accept from a local government matching or other funds, rights-of-way, utility adjustments, additional participation, planning, documents, or any other local incentives.

(1) Participation ratios. Except as provided in subsections (b) and (d) of this section, the agreement between the local government and the department must include participation ratios as described in subsection (c) of this section.

(2) In-kind contributions. The department will accept in-kind contributions for local government matching or other funds only under agreements that do not include highway construction.

(b) Economically disadvantaged counties. In evaluating a proposal for a highway improvement project with a local government that consists of all or a portion of an economically disadvantaged county, the executive director shall, for those projects in which the commission is authorized by law to provide state cost participation, adjust the minimum local matching funds requirement after receipt of a request for adjustment under paragraph (3) of this subsection.

(1) Commission certification. The commission will certify a county as an economically disadvantaged county on an annual basis as soon as possible after the comptroller reports on the economic indicators listed under §15.51(7) of this subchapter (relating to Definitions).

(2) Local match adjustment. In determining the adjustment to the local matching funds requirement, and a local government's effort and ability to meet the requirement, the commission will consider a local government's:

(A) population level;

(B) bonded indebtedness;

(C) tax base;

(D) tax rate;

(E) extent of in-kind resources available; and

(F) economic development sales tax.

(3) Request for adjustment. The city council, county commissioners court, district board, or similar governing body of a local government that represents all or a portion of an economically disadvantaged county, shall submit a request for adjustment to the local district office of the department. The request will include, at a minimum:

(A) the proposed project scope;

(B) the estimated total project cost;

(C) a breakdown of the anticipated total cost by category (e.g., right-of-way, utility adjustment, plan preparation, construction);

(D) the proposed participation rate;

(E) the nature of any in-kind resources to be provided by the local government;

(F) the rationale for adjusting the minimum local matching funds requirement; and

(G) any other information considered necessary to support a request.

(4) Timing of determination. The executive director will determine whether to make an adjustment at the time the local government submits a proposal for a highway improvement project.

(5) Definition. For purposes of this subsection, "executive director" means the executive director or his or her designee, not below the level of district engineer or division or office director.

(c) Participation ratios. The following chart establishes federal, state, and local cost participation ratios for highway improvement projects, subject to the availability of funds to the department. In-kind participation will be valued as described in §15.52(6)(E) of this subchapter (relating to Agreements).

Figure: 43 TAC §15.55(c)

(d) (No change.)

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105580

Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER H. TRANSPORTATION CORPORATIONS

43 TAC §§15.86, 15.90, 15.95

The Texas Department of Transportation (department) proposes amendments to §15.86, Conflict of Interest, and §15.90, Reports and Audits, and new §15.95, Toll Project Corporations, all concerning Transportation Corporations.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

The department is currently undertaking competitive procurements for public-private partnership agreements for the portion of the Grand Parkway project in Harris and Montgomery counties and the I-35E project in Dallas and Denton counties. Those projects could potentially be developed under design-build contracts and financed in part through the issuance of toll revenue bonds, notes, or other obligations. New §15.95 authorizes the commission to create a transportation corporation for the purpose of developing, financing, designing, constructing, reconstructing, expanding, operating, or maintaining a department toll project. The corporation could contract directly for those services, or could be assigned existing department contracts. A toll equity loan commitment to pay for eligible project costs could be made to a corporation, which could allow the corporation to issue more debt than could otherwise be issued, and at a lower cost. This will allow the corporation to construct additional needed projects.

The amendments to §15.86 make certain changes relating to the eligibility of a person to act as a director of a transportation corporation as a result of legislation moving the responsibility for the regulation of automobile dealers to the Texas Department of Motor Vehicles. The amendments to §15.90 make certain changes relating to the reports to be submitted to the department and the commission by a transportation corporation, and to the content and timing of the submission of the required annual financial audit of a transportation corporation. The amendments to §15.90 are intended to make the reporting process more efficient while providing the commission and the department with the information needed to ensure the proper operation of a transportation corporation and development of department projects.

Section 15.86 is amended to remove the prohibition on a person serving as a director of a transportation corporation if that person or the person's spouse is an officer, employee, or paid consultant of a Texas trade association of automobile dealers. The commission and the department no longer regulate automobile dealers.

Section 15.90 is amended to remove the requirement for a transportation corporation to submit a quarterly financial report to the department. The information in that report is provided to the department in the annual financial audit. Section 15.90 is also amended to require the semi-annual project status report to be submitted quarterly during the construction of a project. Section 15.90 is amended to no longer require the corporation to appear before the commission annually to report on its condition, status of projects, and activities during the preceding 12 months. That information would have to be submitted in a written report to the commission, and the commission could require the corporation to appear before the commission to discuss the report.

Section 15.90 is amended to require the annual financial audit to be submitted within 120 days after the end of the state fiscal year, rather than 90 days, and to require the audit to include a statement regarding the transportation corporation's compliance with the Public Funds Investment Act, as applicable.

New §15.95 authorizes the creation of a corporation for the purpose of acting for or on behalf of the commission by developing, financing, designing, constructing, reconstructing, expanding, operating, or maintaining a toll project, as defined by Transportation Code, §201.001, or a system of toll projects. The creation, dissolution, and all powers, duties, and functions of a corporation are governed by the Transportation Corporation Act, and by the Nonprofit Corporations Act, as provided in the Transportation Corporation Act. The other sections of the department's rules relating to transportation corporations do not apply, except as provided by §15.95.

Section 15.95 requires a corporation to submit to the executive director for approval a contract for the financing, development, design, construction, reconstruction, expansion, operation, or maintenance of a project before the execution of the contract. A corporation is also required to submit to the executive director for approval all procurement documents associated with such a contract before the issuance of those documents. A corporation may not issue a request for qualifications or request for proposals for the construction, reconstruction, expansion, operation, or maintenance of a project until the corporation is authorized to do so by the commission.

Section 15.95 provides that a corporation may enter into an agreement with the department that identifies the responsibilities of each party for the development, financing, design, construction, reconstruction, expansion, operation, or maintenance of a project, and that defines the support to be provided to the corporation by the department. This would include the department's obligations in connection with providing a corporation a toll equity loan, such as oversight and inspection of construction, operations, and maintenance.

Section 15.95 provides that a corporation may assign a contract, including a contract described in §15.95(c), to another party for the benefit of a creditor, including the holders of bonds, notes, or other obligations issued by the corporation, and provides that the department may assign to a corporation a department contract for the design, construction, reconstruction, expansion, operation, or maintenance of a project for which the corporation was created.

Section 15.95 provides that a corporation may borrow money and the department may lend money to a corporation pursuant to state law, including making a loan to a corporation under Transportation Code, §222.103 to pay for or reimburse project costs. Section 15.95 requires a loan made by the department to be approved by the commission, but provides that such a loan is not subject to 43 TAC Chapter 27, Subchapter E, which relates to Financial Assistance for Toll Facilities.

Section 15.95 provides that only a full-time, permanent employee of the department may be appointed or serve as a director or a corporation, provides that §15.86 applies to the directors and employees of a corporation created under §15.95,

and provides that §15.90 applies to a corporation created under §15.95.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments and new section as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and new section.

Mr. Bass has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

PUBLIC BENEFIT AND COST

Mr. Bass has also determined that for each year of the first five years the amendments and new section are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be, for any toll project developed by a transportation corporation with the support of a toll equity loan from the department, the lowering of the cost of financing the project and the resultant lowering of the total cost of the project to the state. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §15.86 and §15.90 and new §15.95 may be submitted to James Bass, Chief Financial Officer, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on January 30, 2012.

STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §431.023, which authorizes the commission to approve the creation of a transportation corporation.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 431.

§15.86. Conflict of Interest.

(a) Prohibited conduct for directors and employees. Each director or employee of a corporation may not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence a director or an employee in the discharge of official duties or that the director or employee knows or should know is being offered with the intent to influence the director's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the director or employee might reasonably expect would require or induce the director or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the director's or employee's independence of judgment in the performance of the director's or employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the director's or employee's private interest and the interest of the corporation;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the director's or employee's official powers or performed the director's or employee's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the corporation.

(b) Eligibility of directors and chief administrative officer.

(1) A person is not eligible to serve as a director or chief administrative officer of a corporation if the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the department;

(B) directly or indirectly owns or controls more than 10% interest in a business entity or other organization that is regulated by or receives funds from the department;

(C) uses or receives a substantial amount of tangible goods, services, or funds from the department; or

(D) is required to register as a lobbyist under Government Code, Chapter 305, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(2) A person is not eligible to serve as a director or chief administrative officer of a corporation if the person is an officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, aviation, or outdoor advertising [~~or a Texas trade association of automobile dealers~~], or if the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, aviation, or outdoor advertising [~~or a Texas trade association of automobile dealers~~].

(3) Except as provided in §15.85(b)(3) of this title (relating to Board of Directors), a person is eligible to serve as a director or chief administrative officer of a corporation if the person has received funds from the department as compensation for acquisition of highway right of way.

§15.90. Reports and Audits.

(a) Written reports.

[~~(1) Financial report. Except as provided in paragraph (4) of this subsection, a corporation shall submit a quarterly financial report after the end of each of the state's fiscal quarters. The quarterly financial report must include a balance sheet as of the end of the quarter and a fiscal year-to-date statement of revenues, expenditures, and changes in fund balance prepared in accordance with generally accepted accounting practices.~~]

(1) [~~(2)~~] Project status report. Except as provided in paragraph (3) [~~(4)~~] of this subsection, for each transportation project, the corporation shall submit a quarterly [~~semi-annual~~] project status report after the end of each of the [~~mid-point of the~~] state's fiscal quarters during the construction of the project [~~year and after the end of the state's fiscal year~~], that must include, at a minimum:

(A) the scope of work authorized by the commission;

(B) the work that has been accomplished in that quarter;

(C) the anticipated completion date of the project, as well as anticipated completion dates for various segments of the project, if applicable;

(D) the status of coordinating activities with other governmental entities and with railroads, utilities and others;

(E) project fiscal data, including funds received, expended, available, and projected completion costs; and

(F) comments on significant accomplishments, problems, and concerns of the corporation.

(2) [~~(3)~~] Certification. Reports submitted under this subsection must be approved by official action of the board and certified as correct by the president of the corporation [~~Corporation~~].

(3) [~~(4)~~] Inactivity. If [~~no financial activity has taken place or~~] the project status has not changed in the preceding period, the corporation may submit, in lieu of the quarterly [~~financial report and semi-annual~~] project status report, a certification stating that no activity has taken place.

(4) [~~(5)~~] Submission dates. Reports or the certification required by this subsection must be submitted to the executive director within 60 days after the end of each of the state's fiscal quarter.

(b) Annual commission report. Every 12 months, the corporation shall submit to [~~appear before~~] the commission a [~~to~~] report on its current condition, status of projects, and activities undertaken the preceding 12 months, and shall be available to appear before the commission, at the commission's discretion, to discuss the report.

(c) Annual audits. The corporation [~~Corporation~~] shall submit reports of an annual financial audit in accordance with this subsection.

(1) Submission date. The annual audit shall be submitted to the executive director within 120 [~~90~~] days after the end of the state's fiscal year (August 31).

(2) Certification. The audit must be conducted by an independent certified public accountant in accordance with generally accepted auditing standards. The accompanying financial report shall be prepared according to pronouncements by the Government Accounting Standards Board.

(3) Content. The audit shall include, at a minimum:

(A) an evaluation of the corporation's internal accounting system and controls;

(B) a statement regarding the corporation's compliance with the guidelines established by the commission for its operation, including both the positive and negative compliance (summary of all instances of noncompliance, if any, must be included);

(C) a statement regarding the corporation's compliance with the Public Funds Investment Act, Government Code, Chapter 2256, as applicable;

(D) [~~(C)~~] a complete recapitulation of the corporation's income and expenditures as well as assets and liabilities; and

(E) [~~(D)~~] an unqualified certification by the certified public accountant.

(4) Paperwork retention period. All work papers and reports shall be retained for a minimum of four years from the date of the audit report, unless the certified public accountant is notified by the department in writing, to extend the retention period.

(5) Availability of audit work papers. If requested by the department, audit work papers shall be made available to the executive director at the completion of the audit.

(d) Other reports. The corporation will provide other reports and information regarding the corporation promptly when requested by the executive director.

§15.95. Toll Project Corporations.

(a) The commission by order may authorize the creation of a corporation under the Act for the purpose of acting for or on behalf of the commission by developing, financing, designing, constructing, reconstructing, expanding, operating, or maintaining a toll project, as defined by Transportation Code, §201.001, or a system of toll projects.

(b) The creation, dissolution, and all powers, duties, and functions of a corporation are governed by the Act and the Nonprofit Corporations Act, Business Organizations Code, Chapter 22, as provided in the Act. The other sections of this subchapter do not apply, except as provided by this section.

(c) A corporation shall submit to the executive director for approval a contract for the development, financing, design, construction, reconstruction, expansion, operation, or maintenance of a project before the execution of the contract. A corporation shall also submit to the executive director for approval all procurement documents associated with such a contract before the issuance of those documents. A corporation may not issue a request for qualifications or request for proposals for the construction, reconstruction, expansion, operation, or maintenance of a project until the corporation is authorized to do so by the commission.

(d) A corporation may enter into an agreement with the department that identifies the responsibilities of each party for the development, financing, design, construction, reconstruction, expansion, operation, or maintenance of a project, and that defines the support to be provided to the corporation by the department.

(e) A corporation may assign a contract, including a contract described in subsection (c) of this section, to another party for the benefit of a creditor, including the holders of bonds, notes, or other obligations issued by the corporation. The department may assign to a corporation a department contract for the design, construction, reconstruction, expansion, operation, or maintenance of a project for which the corporation was created.

(f) A corporation may borrow money and the department may lend money to a corporation pursuant to state law, including making a loan to a corporation under Transportation Code, §222.103 to pay for or reimburse project costs. A loan made by the department under this subsection must be approved by the commission but is not subject to Chapter 27, Subchapter E of this title (relating to Financial Assistance for Toll Facilities).

(g) Only a full-time, permanent employee of the department may be appointed or serve as a director of a corporation.

(h) Section 15.86 of this subchapter (relating to Conflict of Interest) applies to the directors and employees of a corporation.

(i) Section 15.90 of this subchapter (relating to Reports and Audits) applies to a corporation.

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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Bob Jackson
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) proposes amendments to 43 TAC Chapter 21, Subchapter I, Regulation of Signs along Interstate and Primary Highways, §§21.144, 21.146, 21.149, 21.152, 21.155, 21.158 - 21.160, 21.169, 21.172 - 21.174, 21.179, 21.180, 21.183, 21.187, 21.193, 21.198, and new 21.204 and amendments to Subchapter K, Control of Signs along Rural Roads, §§21.405, 21.409, 21.411, 21.416, the repeal of §21.419 and new §21.419, amendments to §§21.420 - 21.423, 21.429, and new 21.447-21.457, all concerning outdoor advertising.

EXPLANATION OF PROPOSED AMENDMENTS, REPEAL, AND NEW SECTIONS

The enactment of Senate Bill 1420 by the 82nd Legislature, 2011, resulted in amendments to Transportation Code, Chapters 391 and 394 dealing with the Outdoor Advertising Regulatory Compliance Program. The changes require the department to create a license process for sign owners under the rural road program. The changes also create administrative penalties for violations under Transportation Code, Chapter 391, allowing the department to develop a penalty matrix. In addition the department is making changes to address issues that have developed after the recent adoption of Subchapters I and K.

In this preamble, the abbreviation "OAS" is used for "outdoor advertising signs" and "program" is used for "outdoor advertising regulatory compliance program."

To address problems with receipt of applications and other correspondence, the department has obtained a post office box for the program. In §§21.152, 21.155, 21.159, 21.172 - 21.174, 21.409, 21.420 - 21.423, and 21.449 the department has included the new post office box address and required all correspondence be mailed to that address. Having all the correspondence sent to one postal box will eliminate current issues regarding lost correspondence due to the use of local and district office contact information. The department believes this requirement also will streamline the mail process and help address priority issues.

Amendments to §21.144, License Required, are made to comply with statutory changes related to the requirement of a license for an OAS permit issued under Transportation Code, Chapter 394. This change allows a person who holds a license issued under Chapter 21, Subchapter I to obtain a permit for a sign on a primary road, which is governed by Subchapter I, or on a rural road, which is governed by Chapter 21, Subchapter K. Similarly, a license issued under new §21.450 of Subchapter K will allow the licensee to obtain a permit under Subchapter I in addition a permit under Subchapter K.

Amendments to §21.146, Exempt Signs, increase the maximum size of a sign erected by a non-profit service club, charitable association, religious organization, chamber of commerce, non-profit museum, or governmental entity from 32 square feet to 50 square feet, making the maximum size consistent with other exempt signs. Having the same maximum size for all exempt signs will improve consistency and enforcement. The amendments also create an exempt sign for educational institutions. The rule sets the maximum area that the business entity's logo or emblem may occupy at twenty-five percent of the total area of the sign face, specifies the overall height limit to be 42 and one half feet to be consistent with all other outdoor advertising sign height restrictions, and sets the maximum total area of 200 square feet for an exempt sign face facing in a particular direction of travel. This rule exempts school, college, university, and non-profit agricultural fair signs, such as those acknowledging sports, scholastic, and agricultural achievements, regardless of who pays for the sign or where the sign is located. The size of an exempt sign for a ranch or farm is also expanded from 32 square feet to 50 square feet to be consistent with the limitations on other exempt signs.

Amendments to §21.149, Non-profit Sign Permit, clarify that a sign in a political subdivision may qualify as a non-profit sign if the sign is advertising or promoting that political subdivision or an adjacent subdivision. This change accommodates the current practice by the department to allow counties to have non-profit signs. These amendments also allow the sign owner to obtain a license under new §21.450 in order to convert a non-profit sign to a general OAS. This change accommodates the new license process under the rural road program.

Amendments to §21.158, License Revocation, alert license holders that the total number of enforcement proceedings that result in a revocation of a license including all permits issued under that license for signs under Transportation Code, Chapters 391 and 394. This change is needed to address the new license requirement for rural road OAS.

Amendments to §21.160, Applicant's Identification of Proposed Site, streamline the site review process and prevent errors in erecting the OAS structure. The identification requirement is changed so that the applicant identifies the location of the edge of the proposed sign structure by setting a stake or marking the concrete at the edge of the sign structure closest to the right of way line. This change assures that the sign face does not encroach into state right of way and addresses problems that may arise when the sign will not have a center pole.

Amendments to §21.169, Notice of Sign Becoming Subject to Regulation, allow a license issued under new §21.450 to be used for signs that become subject to regulation because of changes in circumstance. These amendments are necessary because of the statutory change requiring a license under Transportation Code, Chapter 394.

Amendments to §21.172, Permit Renewals, clarify the consequences of the failure to erect a sign structure within one year of the department's issuance of a permit with respect to the structure's dimensions, lighting, and number of faces. Added language allows the department to adjust the permit to reflect the dimensions, lighting, and number of faces as they exist on the date that is one year after the issuance of the permit. This language addresses problems that have developed with signs that are erected but not to the full extent of the permit. The department needs to have records that reflect the actual components of the sign structure for future enforcement and renewal actions. This change reflects current department policy on the treatment of new signs.

Amendments to §21.173, Transfer of Permit, recognize that licenses may now be issued under new §21.450. This change allows the transfer of a sign to a licensee under either program.

Amendments to §21.174, Amended Permit, strengthen the overall OAS permit process by requiring a permit holder to receive the department's written approval for the amended permit before proceeding with the change. This change is needed to address the problem of a permit holder beginning to change a sign in a manner that may not be approved. The change makes that requirement clear and puts the sign owner on notice regarding what is expected. Added language strengthens the permit process by setting a one year time limit from the date of the de-

partment's approval for the sign owner to complete the maintenance or alterations to the sign, which parallels the one year requirement currently in place for permit applications and is consistent with the one-year completion provision relating to the issued permits.

Amendments to §21.179, Un-zoned Commercial or Industrial Area, add language to expand the category of qualifying commercial or industrial activities to include governmental activities. The department has considered government activities as qualifying activities. This change reflects departmental policy.

Amendments to §21.180, Commercial or Industrial Activity, remove the requirement that a qualifying commercial or industrial activity must post the hours during which the activity is conducted. The department found the requirement did not address the issue as intended. For example, the requirement excluded businesses, such as hotels, that do not post hours. The department concluded that the information can be gained in other ways and the posting of hours should not be required.

Amendments to §21.183, Signs Prohibited at Certain Locations, add language that alerts the reader that a sign may not be erected or maintained in a manner that is inconsistent with Health and Safety Code, Chapter 752 relating to the proximity of overhead electrical or communication circuits, lines, or conductors and their supporting structures and associated equipment. This is an issue that has recently been brought to the department's attention. It is not a new requirement on sign owners. However, the department believes that by adding it to the rules we will increase awareness of the existence of these restrictions.

Amendments to §21.187, Spacing of Signs, clarify that the spacing requirements apply to permitted signs only. The department did not intend to limit spacing by the location of an on-premise or exempt sign. This amendment clarifies the department's current interpretation. The amendments also remove language that limited the minimum 1,500 foot spacing requirements to freeways that are located outside of incorporated municipality boundaries. That limitation was inadvertently added in the last rule revision. The department did not intend to remove this spacing limitation for signs on freeways that are inside city limits and is unable to justify such a deletion. The Federal State Agreement requires the department to have a minimum spacing requirement between billboards. This amendment returns the spacing requirements to the limits that have been in use since the start of the program. Additionally, the amendments specify that no sign, other than an exempt sign, may be erected within five feet of any highway right of way line and that the distance is measured from the end of the sign face nearest the right of way. The department has always used the five foot buffer provision to ensure the signs do not encroach into the right of way. This new language formalizes that policy. Finally, the amendments clarify that in determining whether an application for the relocation of a sign because of a highway construction project conforms to spacing requirements, the distance of the proposed site to a former site will not be considered. The recently adopted relocation provisions resulted in the consideration of permits for signs that are no longer located at the permitted location when determining the spacing requirements for permit applications. The amendments allow the sign owners to use spacing from erected signs rather than permitted signs that are in the process of being relocated.

Amendments to §21.193, Location of Relocated Sign, add language that alerts the reader that a relocated sign may not be erected or maintained in a manner that is inconsistent with Health and Safety Code, Chapter 752 relating to the proximity of overhead electrical or communication circuits, lines, or conductors and their supporting structures and associated equipment. This change is consistent with the change to §21.183. The amendments clarify that a governmental activity qualifies as a commercial or industrial activity in the relocation of a sign displaced by a highway construction project to provide consistency with other sections in Subchapter I. The amendments also remove the requirement that a relocated sign provide information about an activity that the sign was relocated near. This requirement was inadvertently added in the last rule revision and is not consistent with department procedures.

Amendments to §21.198, Order of Removal, increase the number of days for removal from 30 days to 45 days after the date that notice is sent to be consistent with all other enforcement action time lines. Having 45 days for all notices and enforcement actions provides the department and sign owner one consistent time frame.

New §21.204, Administrative Penalties, is added to comply with statutory changes. The new rule provides the process for imposing administrative penalties to correlate to administrative penalties in §21.426. A permit plate violation is set at $150 per violation. A registration or location violation is set at $250 per violation. The rule provides a $500 penalty for maintenance from the right of way or performing maintenance without obtaining an amended permit and a $1,000 penalty for erecting the sign from the right of way. The Sunset Commission review for the 2009 legislative session recommended that the department develop a penalty matrix and the department believes it will help eliminate some of the contested cases by offering a set penalty for the violation.

Amendments to §21.405, Exemptions, provide consistency between the rural road and primary program rules. The section is changed to correspond with §21.146. The maximum size of a sign erected by a non-profit service club, charitable association, religious organization, chamber of commerce, non-profit museum, or governmental entity is 50 square feet. The language was also amended to add an exemption for advertising on school bus benches to be consistent with §21.416. In addition, the same language regarding the educational institution exempt sign is added to allow the same exemption for all school signs.

In addition to specifying the official address to which all permit applications and fees must be sent, amendments to §21.409, Permit Application, require original signatures on the application document.

Amendments to §21.411, Applicant's Identification of Proposed Site, streamline the site review process and prevent errors in erecting the OAS structure in the same manner as changes to §21.160.

Amendments to §21.416, Commercial or Industrial Activity, provide consistency with §21.179 and §21.180. Language that required a qualifying commercial or industrial activity to post the hours during which the activity is conducted is removed. In addition language is added to this section to require the activity to be within 200 feet of the highway right of way line. This language is consistent with the requirements under §21.179.

New §21.419, Request for a Variance, is added to comply with new statutory requirements. This section replaces the current Board of Variance process. Senate Bill 1420 eliminated the

Board of Variance. The new statute allows the executive director or the executive director's designee the authority to grant a variance to the requirements of Transportation Code, Chapter 394. The new section provides that the executive director or the executive director's designee at a level of senior management may make the variance decision. The section also sets out the process for requesting the review and how the decision will be provided. This process is similar to other review processes to maintain consistency throughout the program.

Amendments to §21.420, Permit Expiration, comply with the statutory requirements of an OAS owner maintaining a license under Transportation Code, Chapter 394. New language is added to provide that a permit automatically expires on the date that the license under which the permit was issued expires or is revoked. This language is consistent with the language in §21.176.

Amendments to §21.421, Permit Renewals, add language that the sign structure must be fully erected within one year of the department's issuance of a permit with respect to dimensions, lighting, and number of faces. Additional language allows the department to adjust the permit to reflect the dimensions, lighting, and number of faces as it exists on the date that is one year after the issuance of the permit. The language is added to be consistent with §21.172.

Amendments to §21.422, Transfer of Permit, address issues with the new license requirements. Due to the addition of a license requirement and the new non-profit sign language, the department needs the ability to transfer sign permits to accommodate the license requirement. The changes match the language in §21.173 regarding the transfer of permits under the primary program.

Amendments to §21.423, Amended Permit, strengthen the overall OAS permit process by requiring a permit holder to receive the department's written approval for the amended permit before proceeding with the change. This change is needed to address the problem of a permit holder beginning to change a sign in a manner that may not be approved. The change makes that requirement clear and puts the sign owner on notice regarding what is expected. Added language strengthens the permit process by setting a one year time limit from the date of the department's approval for the sign owner to complete the maintenance or alterations to the sign, which parallels the one year requirement currently in place for permit applications and is consistent with the one-year completion provision relating to the issued permits.

Amendments to §21.429, Spacing of Signs, address the same issue as discussed previously in §21.187, regarding the spacing of signs. The same changes have been made to this section to maintain consistency.

New §21.447, Complaint Procedures, is added to comply with new statutory requirements. The section is the same as §21.203, which outlines the current compliant process for all outdoor advertising signs. The section states that the department will accept and investigate all written complaints, will notify the sign owner of the pending investigation, and will provide all parties the results of the investigation. The section provides timelines and the specific process.

New §21.448, License Required, is added to comply with statutory changes requiring a license for the issuance of OAS permits under the rural road program. To maintain consistency and allow interchangeability of either license, the language of this new section matches the license requirements of §21.144.

New §21.449, License Application, is added to comply with statutory license requirements. To maintain consistency and allow interchangeability of either license, the language of this new section matches the license requirements of §21.152.

New §21.450, License Issuance, is added to comply with new statutory license requirements. To maintain consistency and allow interchangeability of either license, the language of this new section matches the license requirements of §21.153.

New §21.451, License Not Transferable, is added to comply with new statutory license requirements and provide program consistency. To maintain consistency and allow interchangeability of either license, the language of this new section matches the license requirements of §21.154.

New §21.452, License Renewals, is added to comply with new statutory license requirements. To maintain consistency and allow interchangeability of either license, the language of this new section matches the license requirements of §21.155.

New §21.453, License Fees, is added to comply with new statutory license requirements. To maintain consistency and allow interchangeability of either license, the language of this new section matches the license requirements of §21.156.

New §21.454, Temporary Suspension of License, is added to comply with new statutory license requirements. To maintain consistency and allow interchangeability of either license, the language of this new section matches the license requirements of §21.157.

New §21.455, License Revocation and Non-Renewal, is added to comply with new statutory license requirements. To maintain consistency and allow interchangeability of either license, the language of this new section matches the license requirements of §21.158, as amended.

New §21.456, Exception to License Requirement for Non-profit Signs, is added to comply with new statutory license requirements. To maintain consistency and allow interchangeability of either license, the language of this new section matches the license requirements of §21.148.

New §21.457, Non-profit Sign Permit, is added to comply with new statutory requirements. To maintain consistency and allow interchangeability of either license, the language of this new section matches the license requirements of §21.149.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

The amendments do not create a cost for a municipality that participates as a certified city. Federal and state laws allow a municipality to regulate outdoor advertisement within its jurisdictional boundaries if it meets minimal requirements.

John Campbell, Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments, repeal, and new sections.

PUBLIC BENEFIT AND COST

Mr. Campbell has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to continue the restructuring of the Outdoor Advertising Regulatory Compliance Program to achieve maximum efficiency and to comply with federal and state law. The proposed amendments, repeal, and new sections implement rule changes in order to comply with statutory changes to Transportation Code, Chapters 391 and 394 due to the enactment of Senate Bill 1420 by the 82nd Legislature. The amendments provide a continuation of the streamlining of the current regulations, and increase consistency between the primary and rural road programs.

There are anticipated economic costs for persons required to comply with the new sections as proposed. There will also be an economic effect on small businesses.

The new statutory changes requiring a license and surety bond for owners of OAS located along rural roads outside the incorporated boundaries of a municipality do result in an economic impact to small businesses, but the fee increases will provide a more efficient, streamlined, and responsive program to all the citizens of Texas and the outdoor advertising industry.

TAKINGS IMPACT ASSESSMENT

The department has evaluated the proposed amendments, repeal, and new sections to determine whether Government Code, Chapter 2007 (Private Real Property Rights Preservation Act) requires the department to complete a takings assessment. The department has determined that the proposed amendments, repeal, and new sections do not affect private real property in a manner that requires the takings assessment. To constitute a taking the governmental action must cause a reduction of at least 25 percent in the market value of the affected private real property. The department has determined that any reduction in property value resulting from the proposed rules would be significantly less than that amount.

SMALL BUSINESS IMPACT STATEMENT

Under Government Code, §2006.002 a state agency must prepare an Economic Impact Statement (EIS) to assess the potential impact of a proposed rule on small businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses.

To determine if the economic impact would have an adverse economic effect on small business, the department first had to determine how many small businesses are regulated under the program. The department reviewed its program database and culled duplications and multiple permit holders resulting in a list of 670 entities holding 1,850 individual permits along rural roads would be required to apply for a license under Transportation Code, Chapter 394. Recent surveys indicate 70-80% of the 670 entities meet the definition of a small business.

During the drafting of the proposed rules the department carefully reviewed the proposed changes to determine which, if any, could potentially result in an economic impact that would burden a small outdoor advertising company. The department determined that the requirement of a license and surety bond would have an economic impact on the regulated community as they would increase costs of small business operations. However, the surety bond for OAS located along rural roads outside the incorporated boundaries of a municipality are unavoidable as it is required by law enacted by Senate Bill 1420 by the 82nd Legislature and therefore, not considered in this analysis.

The revenue from the license fee structure aids in providing the basis of a revenue-neutral program that will meet the program goals for streamlining current regulations, providing increased consistency between the primary and rural road programs, and improving consistent enforcement. The new license application fee provides a one-time cost of $125 and an annual cost of renewal of $75, identical to the license fee structure of Chapter 21, Subchapter I.

The proposed rules do not increase fees established under the current rules for replacement permit plates, transfer of permits, or sign permits for non-profit entities.

In preparing the proposed rules the department considered alternative methods of achieving the amount of revenue necessary to fund the program. With each alternative, the department's considerations included analyzing whether the alternate option would minimize the adverse impacts on a small business and yet allow the department to operate a revenue neutral program.

The first alternative considered was to base the fee structure on the total number of permits held by a company. Under this scenario, three levels were considered. The department would set the license fee based on whether the company had fewer than 100 permits, between 100 and 500 permits, or more than 500 permits. Current data indicates less than 40 percent of the total number of license holders has fewer than 100 signs and that number appears to be the best indicator of small sign companies. In a controlled environment, this alternative would appear to be the good alternative in terms of minimizing adverse economic effects to small sign companies. The department would be able to vary the permit fee based on the size of the company's billboard business. However, a sign company may hold multiple licenses under different corporate entities creating problems with this type of system. Without a determination of each license holder's corporate structure, it is highly possible that a number of entities would fall in the lower category of the range due to the use of different corporate names.

The second alternative considered by the department was a license fee as a direct prorated share. Under this the department looked at basing the fee on the number of permits the licensee held as compared to the number of total permits. In an effort to maintain a revenue-neutral program the department could potentially determine how much each sign owner owed. This alternative has the same issues as discussed under the previous alternative. In addition, the department determined that the license application and review require the same amount of time from the department regardless of the number of permits.

Based on a review of both of these options the department determined that it did not have adequate information to develop a fee structure based on the number of sign permits held by a sign company. The department also concluded, based on its lack of complete ownership information, that it is not known if this approach would lessen adverse economic impacts on small sign companies.

The third alternative was to use the license fee currently established for sign owners under the primary program. This alternative allows the department to maintain the relatively low initial application and renewal fees for both programs. If the department established another fee structure under the rural road program the department would have had to adjust the current license fee to maintain a revenue neutral program.

In summary, the department concludes the rules as proposed accomplish the objectives needed to improve the safety of the general public and the economic welfare of the state with the least amount of economic impact on the regulated industries. The department further concludes that the rules are necessary to achieve a sound system of management and administration of the program and are required to comply with statutory changes.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on Tuesday, January 24, 2012, at 200 East Riverside Drive, Building 200, Room 1A-1, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the Government and Public Affairs Division, (512) 463-6086 at least five working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§21.144, 21.146, 21.149, 21.152, 21.155, 21.158 - 21.160, 21.169, 21.172 - 21.174, 21.179, 21.180, 21.183, 21.187, 21.193, 21.198, and new 21.204 and amendments 21.405, 21.409, 21.411, 21.416, the repeal of 21.419 and new 21.419, amendments to 21.420 - 21.423, 21.429, and new 21.447 - 21.457 may be submitted to John Campbell, Director, Right of Way Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on January 30, 2012.

SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY HIGHWAYS

DIVISION 1. SIGNS

43 TAC §§21.144, 21.146, 21.149, 21.152, 21.155, 21.158 - 21.160, 21.169, 21.172 - 21.174, 21.179, 21.180, 21.183, 21.187, 21.193, 21.198, 21.204

STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads, Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses, Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.144. License Required.

(a) Except as provided by this division, a person may not obtain a permit for a sign under this division unless the person holds a currently valid license issued under §21.153 of this division (relating to License Issuance) or under §21.450 of this chapter (relating to License Issuance) applicable to the county in which the sign is to be erected or maintained.

(b) A license is valid for one year from the date of issuance or most recent renewal.

§21.146. Exempt Signs.

(a) The following signs are exempt from this division:

(1) an on-premise sign that meets the criteria provided by §21.147 of this division (relating to On-premise Sign) except as provided by subsection (c) of this section;

(2) a sign that has the purpose of protecting life or property;

(3) a sign that provides information about underground utility lines;

(4) an official sign that is erected by a public officer, public agency, or political subdivision under the officer's, agency's, or political subdivision's constitutional or statutory authority;

(5) a sign required by the Railroad Commission of Texas at the principal entrance to or on each oil or gas producing property, well, tank, or measuring facility to identify or to locate the property if the sign is no larger than necessary to comply with the Railroad Commission's regulations;

(6) a sign of a nonprofit service club, charitable association, religious organization, chamber of commerce, nonprofit museum, or governmental entity, other than an entity to which paragraph (8) of this subsection applies, that gives information about the meetings, services, events, or locations of the entity and that does not exceed an area of 50 [~~32~~] square feet;

(7) a public service sign that:

(A) is located on a school bus stop seating bench or shelter;

(B) identifies the donor, sponsor, or contributor of the shelter;

(C) contains a public service message that occupies at least 50 percent of the area of the sign;

(D) has no content other than that described by subparagraphs (B) and (C) of this paragraph;

(E) is authorized or approved by the law of the entity that controls the highway involved, including being located at a place approved by the entity;

(F) has a sign face that does not exceed an area of 50 [~~32~~] square feet; and

(G) is not facing the same direction as any other sign on that seating bench or shelter;

(8) a sign that is erected and maintained by a public school, a college or university, or a non-profit agricultural fair, but only if:

(A) any business entity's logo or emblem occupies less than 25 percent of the total area of the sign face;

(B) the sign's overall height does not exceed 42 and one half feet; and

(C) the total area of the sign's face facing a particular direction of travel does not exceed 200 square feet;

(9) [~~(8)~~] a sign that shows only the name of a ranch on which livestock are raised or a farm on which crops are grown, and the directions to, telephone number, or internet address of the ranch or farm, and that has a sign face that does not exceed an area of 50 [~~32~~] square feet;

(10) [~~(9)~~] a sign that:

(A) relates only to a public election;

(B) is located on private property;

(C) is erected after the 91st day before the date of the election and is removed before the 11th day after the election date;

(D) has a sign face that does not exceed an area of 50 square feet; and

(E) contains no commercial endorsement; and

(11) [~~(10)~~] a sign identifying the name of a recorded subdivision located at an entrance to the subdivision or on property owned by or assigned to the subdivision, home owners association, or other entity associated with the subdivision.

(b) This division does not apply to a sign that was erected before October 23, 1965 and that the commission, with the approval of the Secretary of the United States Department of Transportation, has determined to be a landmark sign of such historic or artistic significance that preservation would be consistent with the purposes of the Highway Beautification Act of 1965, 23 United States Code §131.

(c) An on-premise sign cannot be erected earlier than one year before the date that the business for which the sign is erected will open and conduct business.

§21.149. Nonprofit Sign Permit.

(a) A nonprofit service club, charitable association, religious organization, chamber of commerce, nonprofit museum, or governmental entity may obtain a permit under this section to erect or maintain a nonprofit sign.

(b) To qualify as a nonprofit sign, the sign must:

[~~(1) be in a municipality or the extraterritorial jurisdiction of a municipality;~~]

(1) [~~(2)~~] advertise or promote only:

[~~(A) the municipality;~~]

(A) [~~(B)~~] a political subdivision in whose jurisdiction the sign is [~~wholly or partially~~] located or a political subdivision that is adjacent to such a political subdivision [~~in the municipality~~]; or

(B) [~~(C)~~] the entity that will hold the permit, but may only give information about the meetings, services, events, or location of the entity; and

(2) [~~(3)~~] comply with each sign requirement under this division from which it is not specifically exempted.

(c) An application for a permit under this section must be in a form prescribed by the department and must include, in detail, the content of the message to be displayed on the sign.

(d) After a permit is issued, the permit holder must obtain approval from the department to change the message of the sign. The department may issue an order of removal of the sign if the permit holder fails to obtain that approval.

(e) If a sign ceases to qualify as a nonprofit sign, the permit for the sign is subject to cancellation under §21.176 of this division (relating to Cancellation of Permit).

(f) If the holder of a permit issued under this section loses its nonprofit status or wishes to change the sign so that it no longer qualifies as a nonprofit sign the permit holder must:

(1) obtain a license under §21.153 of this division (relating to License Issuance) or §21.450 of this chapter (relating to License Issuance); and

(2) convert the sign permit to a permit for a sign other than a nonprofit sign and pay the original permit and renewal fees provided by §21.175 of this division (relating to Permit Fees).

§21.152. License Application.

(a) To apply for a license under this division, a person must file an application in a form prescribed by the department. The application must include at a minimum:

(1) the complete legal name, mailing address, and telephone number of the applicant; and

(2) designation of each county in which the applicant's signs are to be erected or maintained.

(b) The application must be signed, notarized, and filed with the department and be accompanied by:

(1) a fully executed outdoor advertiser's surety bond:

(A) in the amount of $2,500 for each county designated under subsection (a)(2) of this section up to a maximum of $10,000;

(B) payable to the commission to reimburse the department for removal costs of a sign that the license holder unlawfully erects or maintains; and

(C) in a form prescribed by the department, executed by a surety company authorized to transact business in this state;

(2) a duly certified power of attorney from the surety company authorizing the surety company's representative to execute the bond on the effective date of the bond; and

(3) the license fee prescribed by §21.156 of this division (relating to License Fees).

(c) The documentation and the fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.155. License Renewals.

(a) To continue a license in effect, the license must be renewed.

(b) To renew a license, the license holder must file a written application in a form prescribed by the department accompanied by each applicable license fee prescribed by §21.156 of this division (relating to License Fees). The application must be received by the department before the 46th day after the date of the license's expiration and must include at a minimum:

(1) the complete legal name, mailing address, and telephone number of the license holder;

(2) number of the license being renewed;

(3) proof of current surety bond coverage; and

(4) the signature of the license holder or person signing on behalf of the business entity.

(c) A license is not eligible for renewal if the license holder is not authorized to conduct business in this state.

(d) The documentation and the fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.158. License Revocation.

(a) The department will revoke a license and will not issue or renew permits or transfer existing permits under the license if:

(1) the surety bond is not provided within the time specified by the department under §21.152 of this division (relating to License Application) or §21.155 of this division (relating to License Renewals);

(2) surety bond coverage is terminated under §21.157 of this division (relating to Temporary Suspension of License);

(3) the number of final enforcement actions of this subchapter, Subchapter K of this chapter (relating to Control of Signs Along Rural Roads), or Transportation Code, Chapters [~~Chapter~~] 391 and 394, committed by the license holder in the aggregate equal or exceed:

(A) 10 percent of the number of valid permits held by the license holder if the license holder holds more than 1,000 sign permits;

(B) 20 percent of the number of valid permits held by the license holder if the license holder holds at least 500 but fewer than 1,000 sign permits;

(C) 25 percent of the number of valid permits held by the license holder if the license holder holds at least 100 but fewer than 500 sign permits; or

(D) 30 percent of the number of valid permits held by the license holder if the license holder holds fewer than 100 sign permits; or

(4) the license holder has not complied with previous final administrative enforcement actions regarding the license or any permit held under the license.

(b) The department will send notice by certified mail of an action under this section to the address of record provided by the license holder.

(c) The notice will clearly state:

(1) the reasons for the action;

(2) the effective date of the action;

(3) the right of the license holder to request an administrative hearing; and

(4) the procedure for requesting a hearing including the period in which the request must be made.

(d) A request for an administrative hearing under this section must be made in writing to the department within 45 days after the date that the notice is mailed.

(e) If timely requested, an administrative hearing will be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case).

§21.159. Permit Application.

(a) To obtain a permit for a sign, a person must file an application in a form prescribed by the department. The application must include, at a minimum:

(1) the complete name and address of the applicant;

(2) the original signature of the applicant;

(3) the proposed location and description of the sign;

(4) the complete legal name and address of the owner of the designated site;

(5) a statement of whether the requested sign is located within an incorporated city or within the city's extraterritorial jurisdiction;

(6) the site owner's or the owner's authorized representative's original signature on the application demonstrating:

(A) consent to the erection and maintenance of the sign; and

(B) right of entry onto the property of the sign location by the department or its agents;

(7) a document from the city that provides the city's current zoning map or the portion of that map applicable to the sign's location; and

(8) information that details how and the location from which the sign will be erected and maintained.

(b) If the sign is a nonprofit sign, the application must include verification of the applicant's nonprofit status.

(c) If the sign is to be located within the jurisdiction of a municipality, including the extraterritorial jurisdiction of the municipality, that is exercising its authority to regulate outdoor advertising, a certified copy of the permit issued by the municipality must be submitted with the application unless documentation is provided to show that the municipality requires:

(1) the issuance of a department permit before the municipality's; or

(2) the erection of the sign within a period of less than twelve months after the date of the issuance of the municipal permit.

(d) The application must be:

(1) notarized;

(2) sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043 [~~filed with the department's division responsible for the outdoor advertising program in Austin~~]; and

(3) accompanied by the fee prescribed by §21.175 of this division (relating to Permit Fees).

(e) The application must include a sketch that shows:

(1) the location of the poles of the sign structure;

(2) the exact location of the sign faces in relation to the sign structure;

(3) the means of access to the sign; and

(4) the distance from the buildings, landmarks, right of way line, other signs, and other distinguishable features of the landscape.

§21.160. Applicant's Identification of Proposed Site.

(a) An applicant for a permit for a new sign must identify the proposed site of the sign by setting a stake or marking the concrete at the proposed location of the edge [~~center pole~~] of the sign structure, including the sign face, that is nearest to the right of way [~~or if there is no center pole, at each pole of the sign structure~~].

(b) At least two feet of the [~~a~~] stake must be visible above the ground. The stake or the mark [~~and~~] must be distinguished from any other stake or mark at the location.

(c) A stake or mark on the concrete may not be moved or removed until the application is denied or if approved, until the sign has been erected.

§21.169. Notice of Sign Becoming Subject to Regulation.

(a) The department will send notice by certified mail to the owner of a sign that becomes subject to Transportation Code, Chapter 391 because of the construction of a new highway, the change in designation of an existing highway, or decertification of a certified city. If the owner of the sign cannot be identified from the information on file with the department, the department will give notice by prominently posting the notice on the sign for a period of 45 consecutive days.

(b) If the owner of a sign described by subsection (a) of this section does not hold a license issued under §21.153 of this division (relating to License Issuance) or §21.450 of this chapter (relating to License Issuance), the owner must obtain the license within 60 days after the day that:

(1) the department sends notice under subsection (a) of this section; or

(2) the 45-day posting period under subsection (a) of this section ends.

§21.172. Permit Renewals.

(a) To be continued in effect, a sign permit must be renewed.

(b) A permit is eligible for renewal if the sign for which it was issued continues to meet all applicable requirements of this division and Transportation Code, Chapter 391.

(c) To renew the permit, the permit holder must file with the department a written application in a form prescribed by the department accompanied by the applicable fees prescribed by §21.175 of this division (relating to Permit Fees). The application must be received by the department before the 46th day after the date of the permit's expiration.

(d) A permit may not be renewed if the sign for which it was issued is not erected to the extent that it includes a sign face before the first anniversary of the date that the permit was issued.

(e) The department will provide a renewal notification to the license holder at least 30 days before the date of the permit expiration and if the permit is not renewed before it expires the department within 20 days after the date of expiration will provide notification to the license holder of the opportunity to file a late renewal.

(f) If one year after the date the department issues the permit the sign structure is not built to the full extent approved by the permit with respect to dimensions, lighting, or number of faces, the department will adjust the permit to reflect the dimensions, lighting, and number of faces of the sign structure as they exist on that date. The permit will be eligible for renewal only for the dimensions, lighting, and number of faces as adjusted by the department.

(g) The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.173. Transfer of Permit.

(a) A sign permit may be transferred only with the written approval of the department.

(b) At the time of the transfer, both the transferor and the transferee must hold a valid license issued under §21.153 of this division (relating to License Issuance) or §21.450 of this chapter (relating to License Issuance), except as provided in subsections (e) - (g) of this section.

(c) To transfer one or more sign permits, the permit holder must send to the department a written request in a form prescribed by the department accompanied by the prescribed transfer fee.

(d) If the request is approved, the department will send to the transferor and to the transferee a copy of the approved permit transfer form.

(e) A permit issued to a nonprofit organization under §21.149 of this division (relating to Nonprofit Sign Permit) may be transferred to another nonprofit organization that does not hold a license issued under §21.153 of this division or §21.450 of this chapter if the sign will be maintained as a nonprofit sign.

(f) A permit issued to a nonprofit organization under §21.149 of this division may be converted to a regular permit and transferred to a person that is not a nonprofit organization if the transferee holds a license for the county in which the sign is located at the time of the transfer and the sign meets all requirements of this division.

(g) The department may approve the transfer of one or more sign permits from a transferor whose license has expired to a person who holds a license, with or without the signature of the transferor, if the person provides to the department:

(1) legal documents showing the sign has been sold; and

(2) documents that indicate that the transferor is dead or cannot be located.

(h) The department will not approve the transfer of a permit if cancellation of the permit is pending or has been abated awaiting the outcome of an administrative hearing.

(i) The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.174. Amended Permit.

(a) To perform customary maintenance or to make substantial changes to the sign or sign structure under §21.191 of this division (relating to Repair and Maintenance) a permit holder must obtain [~~submit~~] an amended permit [~~application~~]. To change the sign face of an existing permitted sign to an electronic sign under Division 2 of this subchapter (relating to Electronic Signs) a permit holder must obtain [~~submit~~] an amended permit [~~application~~].

(b) To obtain an amended permit, the permit holder must submit an [~~The~~] amended permit application [~~must be submitted~~] on a form prescribed by the department. The amended permit application [~~and~~] must provide the information required under §21.159 of this division (relating to Permit Application) applicable to an amended permit and

indicates the change from the information in the original application for the sign permit. The amended application is not required to contain the signatures of the land owner or city representative.

(c) The new sign face size, configuration, or location must meet all applicable requirements of this division and if the amended permit is to erect an electronic sign, the requirements of Division 2 of this subchapter.

(d) The holder of a permit for a nonconforming sign may apply for an amended permit to perform eligible customary maintenance under §21.191(b) of this division. An amended permit will not be issued for a substantial change as described by §21.191(c) of this division to a nonconforming sign.

(e) Making a change to a sign that requires an amended permit without first obtaining an amended permit is a violation of this division, except as provided by subsection (g) of this section and will result in an administrative enforcement action.

(f) The department will make a decision on an amended permit application within 45 days of the date of the receipt of the amended permit application. If the decision cannot be made within the 45 day period the department will notify the applicant of the delay, provide the reason for the delay and provide an estimate of when the decision will be made.

(g) If maintenance or changes authorized under this section are being made on a conforming sign because of a natural disaster, the department may waive the requirement that the required amended permit be issued before the work begins. If the department grants a waiver under this subsection, the permit holder shall submit the amended permit application within 60 days after the date that the work is completed. If the maintenance or changes violate this section or the permit holder fails to submit the amended permit application as required by this subsection, the sign is subject to enforcement and removal actions.

(h) An amended permit is valid for one year after the date of the department's approval of the amended permit application. The provisions of this subchapter relating to a permit, including §21.172(f) of this division (relating to Permit Renewals), apply to the amended permit. The date of the department's approval of the amended permit application is considered to be the amended permit's date of issuance.

(i) The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.179. Unzoned Commercial or Industrial Area.

(a) An unzoned commercial or industrial area is an area that:

(1) is within 800 feet, measured along the edge of the highway right of way perpendicular to the centerline of the main-traveled way, of and on the same side of the highway as the principal part of at least two adjacent recognized governmental, commercial, or industrial activities that meet the requirements of subsection (c) of this section;

(2) is not predominantly used for residential purposes; and

(3) has not been zoned under authority of law.

(b) A part of the regularly used buildings, parking lots, or storage or processing areas of each of the governmental, commercial, or industrial activities must be within 200 feet of the highway right of way and portion of the permanent building in which the activity is conducted must be visible from the main-traveled way.

(c) For governmental, commercial, or industrial activities to be considered adjacent for the purposes of subsection (a)(1) of this section, the regularly used buildings, parking lots, storage or processing areas of the activities may not be separated by a vacant lot, an undeveloped area that is more than 50 feet wide, a road, or a street.

(d) Two activities that occupy the same building qualify as adjacent activities for the purposes of subsection (a)(1) of this section, if:

(1) each activity:

(A) has at least 400 square feet of floor space dedicated to that activity; and

(B) is an activity that is customarily allowed only in a zoned commercial or industrial area;

(2) the two activities are separated by a dividing wall constructed from floor to ceiling;

(3) the two activities have access to the restroom facilities during all hours the activity is staffed or opened; and

(4) the two activities operate independently of one another.

(e) For the purposes of subsection (d) of this section, two separate product lines offered by one business are not considered to be two activities.

(f) To determine whether an area is not predominantly used for residential purposes under subsection (a)(2) of this section, not more than 50 percent of the area, considered as a whole, may be used for residential purposes. A road or street is considered to be used for residential purposes only if residential property is located on both of its sides. The area to be considered is the total of actual or projected frontage of the commercial or industrial activities plus 800 feet on each side of that frontage, measured along the highway right of way to a depth of 660 feet. The depth of an unzoned commercial or industrial area is measured from the nearest edge of the highway right of way perpendicular to the centerline of the main-traveled way of the highway.

(g) The length of an unzoned commercial or industrial area is measured from the outer edge of the regularly used building, parking lot, storage, or processing area of the commercial or industrial activity and along or parallel to the edge of the pavement of the highway. If the business activity does not front the highway, a projected frontage is measured from the outer edge of the regularly used building, parking lot, storage, or processing area to a point perpendicular to the centerline of the main-traveled way.

(h) A sign is not required to meet the requirements of subsection (d)(1)(A), (2), or (3) of this section or §21.180 of this division (relating to Commercial or Industrial Activity) to maintain conforming status if the permit for the sign was issued before the effective date of this section.

§21.180. Commercial or Industrial Activity.

(a) For the purposes of this division, a commercial or industrial activity is an activity that:

(1) is customarily allowed only in a zoned commercial or industrial area; and

(2) is conducted in a permanent building or structure permanently affixed to the real property that:

(A) has an indoor restroom, running water, functioning electrical connections, and permanent flooring, other than dirt, gravel, or sand;

(B) is visible from the traffic lanes of the main-traveled way;

(C) is not primarily used as a residence; and

(D) has at least 400 square feet of its interior floor space devoted to the activity.

(b) The following are not commercial or industrial activities:

(1) agricultural, forestry, ranching, grazing, farming, and related activities, including the operation of a temporary wayside fresh produce stand;

(2) an activity that is conducted only seasonally;

(3) an activity that has not been conducted at its present location for at least 180 days;

(4) an activity that is not conducted by at least one person who works for the business at the activity site for at least 25 hours per week on at least five days per week [~~and for which the hours during which the activity is conducted are posted at the activity site~~];

(5) the operation or maintenance of:

(A) an outdoor advertising structure;

(B) a recreational facility, such as a campground, golf course, tennis court, wild animal park, or zoo, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(C) an apartment house or residential condominium;

(D) a public or private preschool, secondary school, college, or university, other than a trade school or corporate training campus;

(E) a quarry or borrow pit, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(F) a cemetery; or

(G) a place that is primarily used for worship;

(6) an activity that is conducted on a railroad right of way; and

(7) an activity that is created primarily or exclusively to qualify an area as an unzoned commercial or industrial area.

(c) For the purposes of this section, a building is not primarily used as a residence if more than 50 percent of the building's square footage is used solely for the business activity.

(d) A sign is not required to meet the requirements of subsections (a)(2)(C) (as clarified by subsection (c) of this section), (a)(2)(D), (b)(3), or (b)(4) of this section to maintain conforming status if the permit for the sign was issued before the effective date of this section.

§21.183. Signs Prohibited at Certain Locations.

(a) A sign may not be located in a place that creates a safety hazard, including a location that:

(1) causes a driver to be unduly distracted;

(2) obscures or interferes with the effectiveness of an official traffic sign, signal, or device; or

(3) obscures or interferes with the driver's view of approaching, merging, or intersecting traffic.

(b) A sign may not be erected or maintained in a location that violates Health and Safety Code, Chapter 752.

§21.187. Spacing of Signs.

(a) Permitted signs [~~Signs~~] on the same side of a regulated freeway, including freeway frontage roads, [~~that are outside of incorporated municipal boundaries~~] may not be erected closer than 1,500 feet apart.

(b) For a highway on a non-freeway primary system and outside the incorporated boundaries of a municipality, permitted signs on the same side of the highway may not be erected closer than 750 feet apart.

(c) For a highway on a non-freeway primary system highway and within the incorporated boundaries of a municipality, permitted signs on the same side of the highway may not be erected closer than 300 feet apart.

(d) For the purposes of this section, the space between signs is measured between points along the right of way of the highway perpendicular to the center of the signs.

(e) For the purposes of this section, a municipality's extraterritorial jurisdiction is not considered to be included within the boundaries of the municipality.

(f) This section does not apply to directional signs, on-premise signs, or official signs that are exempted from the application of Transportation Code, §391.031.

(g) The spacing requirements of this section do not apply to signs separated by buildings, natural surroundings, or other obstructions in a manner that causes only one of the signs to be visible within the specified spacing area.

(h) A permitted sign may not be erected within five feet of the highway right of way line. The distance shall be measured from the end of the sign face nearest the right of way line.

(i) A permitted sign that is being displaced by a highway construction project will not be considered in determining the spacing for a new sign application.

§21.193. Location of Relocated Sign.

(a) To receive a new permit for relocation, an existing sign must be relocated on a part of the same parcel of land on which the sign was situated before relocation in a location that is allowed under this section.

(b) If the sign owner can demonstrate that the location under subsection (a) of this section is not physically or economically feasible for a sign structure, the sign owner, on approval by the department, may relocate the sign to any other location that is allowed under this subsection. The owner is not entitled to additional relocation benefits under §21.196 of this division (relating to Relocation Benefits) if the sign structure is relocated further than 50 miles from the location of the existing sign.

(c) The location of the relocated sign must be within a zoned commercial or industrial area as described by §21.178 of this division (relating to Zoned Commercial or Industrial Area) or an unzoned commercial or industrial area, as described by §21.179 of this division (relating to Unzoned Commercial or Industrial Area) except that an unzoned commercial or industrial area may include only one recognized commercial or industrial activity.

(d) A sign may not be relocated to a place where it:

(1) can cause a driver to be unduly distracted in any way;

(2) will obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device; or

(3) will obstruct or interfere with the driver's view of approaching, merging, or intersecting motor vehicle or rail traffic.

(e) A sign may not be relocated to a place that is:

(1) within 500 feet of a public park that is adjacent to a regulated highway, with the limitation provided under this paragraph applying:

(A) on either side of a regulated highway that is on a nonfreeway primary system; or

(B) on the side of the highway adjacent to the public park if the regulated highway is on an interstate or freeway primary system;

(2) if outside of an incorporated municipality along a regulated highway, adjacent to or within 500 feet of:

(A) an interchange, intersection at grade, or rest area; or

(B) a ramp or the ramp's acceleration or deceleration lane;

(3) for a highway on the interstate or freeway primary system, closer than 500 feet to another permitted sign on the same side of the highway;

(4) for a highway on the nonfreeway primary system and outside of a municipality, closer than 300 feet to another permitted sign on the same side of the highway;

(5) for a highway on the nonfreeway primary system and within the incorporated boundaries of a municipality, closer than 100 feet to another permitted sign on the same side of the highway; or

(6) within five feet of any highway right of way line.

(f) A sign, at the time of and after its relocation, must be within 800 feet of at least one recognized governmental, commercial, or industrial activity [~~about which the sign provides information and~~] that is located on the same side of the highway.

(g) The spacing limitations provided in subsection (e) of this section do not apply to on-premise signs or directional or official signs that are exempted from the application of Transportation Code, §391.031.

(h) A sign may not be relocated from a road regulated under this division to a rural road regulated by Subchapter K of this chapter (relating to Control of Signs along Rural Roads).

(i) A relocated sign may not be erected or maintained in a location that violates Health and Safety Code, Chapter 752.

§21.198. Order of Removal.

(a) If a sign permit expires without renewal or is canceled or if the sign is erected or maintained in violation of this division, the owner of the sign, on a written demand by the department, shall remove the sign at no cost to the state.

(b) If the owner does not remove the sign within 45 [~~30~~] days of the day that the demand is sent, the department will remove the sign and will charge the sign owner for the cost of removal, including the cost of any court proceedings.

(c) The department will rescind a removal demand if the department determines the demand was issued incorrectly.

§21.204. Administrative Penalties.

(a) The department may impose administrative penalties against a person who intentionally violates Transportation Code, Chapter 391 or this subchapter.

(b) The amount of the administrative penalty may not exceed the maximum amount of a civil penalty that may be imposed under Transportation Code, §39.035 and will based on the following:

(1) $150 for a violation of a permit plate requirement under §21.165 of this division (relating to Sign Permit Plate);

(2) $250 for a violation of:

(A) a registration requirement of §21.162 of this division (relating to Permit Application for Certain Preexisting Signs); or

(B) erecting the sign at the location other than the location specified on the application, except that if the actual sign location does not conform to all other requirements the department will seek cancellation of the permit;

(3) $500 for:

(A) maintaining or repairing the sign from the state right of way; or

(B) performing customary maintenance on any sign or substantial maintenance on a conforming sign without first obtaining an amended permit; or

(4) $1,000 for erecting a sign from the right of way.

(c) In addition to the penalties assessed under subsection (b) of this section, the department may seek to recover the cost of repairing any damage to the right of way done by the sign owner or on the sign owner's behalf.

(d) Before initiating an enforcement action under this section, the department will notify the sign owner in writing of a violation of subsection (b)(1) or (2)(B) of this section and will give the sign owner 60 days to correct the violation and provide proof of the correction to the department.

(e) Upon determination to seek administrative penalties the department will mail a notice of the administrative penalties to the last known address of the permit holder. The notice must clearly state:

(1) the reasons for the administrative penalties;

(2) the amount of the administrative penalty; and

(3) the right of the holder of the permit to request an administrative hearing.

(f) A request for an administrative hearing under this section must be made in writing and delivered to the department within 45 days after the date of the receipt of the notice.

(g) If timely requested, an administrative hearing shall be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case), and the imposition of administrative penalties will be abated unless and until that action is affirmed by order of the 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 December 16, 2011.

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Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

43 TAC §§21.405, 21.409, 21.411, 21.416, 21.419 - 21.423, 21.429, 21.447 - 21.457

STATUTORY AUTHORITY

The amendments and new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads, Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses, Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.405. Exemptions.

(a) The following are exempt from the requirements of this subchapter:

(1) a sign, the erection and maintenance of which is allowed under the highway beautification provisions of the Transportation Code, Chapter 391;

(2) a sign in existence before September 1, 1985, that was properly registered and maintains a valid registration under §21.407 of this subchapter (relating to Existing Off-Premise Signs);

(3) a sign that has as its purpose the protection of life and property;

(4) a directional or other official sign authorized by law, including a sign pertaining to a natural wonder or scenic or historic attraction;

(5) a sign or marker giving information about the location of an underground electric transmission line, telegraph or telephone property or facility, pipeline, public sewer, or waterline;

(6) a sign erected by a governmental entity;

(7) a sign erected solely for and relating to a public election, but only if:

(A) the sign is on private property;

(B) the sign is erected after the 91st day before the election and is removed before the 11th day after the election;

(C) the sign is constructed of lightweight material;

(D) the surface area of the sign is not larger than 50 square feet; and

(E) the sign is not visible from the main-traveled way of an interstate or federal-aid primary highway;

(8) an off-premise directional sign for a small business, as defined by Government Code, §2006.001, that is on private property and is no larger than 50 square feet;

(9) a sign that is required by the Railroad Commission of Texas at the principal entrance to or on each oil or gas producing property, well, tank, or measuring facility to identify or to locate the property, that is no larger in size than is necessary to comply with the Railroad Commission's regulations, and that has no advertising or information content other than the name or logo of the company and the necessary directions;

(10) a sign that shows only the name of a ranch on which livestock are raised or a farm on which crops are grown and the directions to, telephone number, or internet address of the ranch or farm and that has a sign face that does not exceed an area of 32 square feet; and

(11) a sign identifying the name of a recorded subdivision located at an entrance to the subdivision or on property owned by or assigned to the subdivision, home owners association, or other entity associated with the subdivision;[.]

(12) a sign of a nonprofit service club, charitable association, religious organization, chamber of commerce, or nonprofit museum that gives information about the meetings, services, events, or locations of the entity and that does not exceed an area of 50 square feet;

(13) a public service sign that:

(A) is located on a school bus stop seating bench or shelter;

(B) identifies the donor, sponsor, or contributor of the shelter;

(C) contains a public service message that occupies at least 50 percent of the area of the sign;

(D) has no content other than that described by subparagraphs (B) and (C) of this paragraph;

(E) is authorized or approved by the law of the entity that controls the highway involved, including being located at a place approved by the entity;

(F) has a sign face that does not exceed an area of 50 square feet; and

(G) is not facing the same direction as any other sign on that seating bench or shelter; and

(14) a sign that is erected and maintained by a public school, or a college or university, or a non-profit agricultural fair, but only if:

(A) any business entity's logo or emblem occupies less than 25 percent of the total area of the sign face;

(B) the sign's overall height does not exceed 42 and one half feet; and

(C) the total area of the sign's face facing a particular direction of travel does not exceed 200 square feet.

(b) An on-premise sign cannot be erected earlier than one year before the date that the business for which the sign is erected will open and conduct business.

§21.409. Permit Application.

(a) To obtain a permit for a sign, a person must file an application in a form prescribed by the department. The application at a minimum must include:

(1) the complete name and address of the applicant;

(2) the original signature of the applicant;

(3) the proposed location and description of the sign;

(4) the complete legal name and address of the owner of the designated site;

(5) a statement of whether the requested sign is located within an incorporated city or a city's extraterritorial jurisdiction;

(6) the site owner's or the owner's authorized representative's original signature on the application demonstrating consent to the erection and maintenance of the sign and right of entry onto the property of the sign location by the department or its agents;

(7) information that details how and the location from which the sign will be erected and maintained; and

(8) additional information the department considers necessary to determine eligibility.

(b) The application must be:

(1) notarized;

(2) sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043 [~~filed with the department's division responsible for the Outdoor Advertising Program in Austin~~]; and

(3) accompanied by the fee prescribed by §21.424 of this subchapter (relating to Permit Fees).

(c) The application must include a sketch that shows:

(1) the location of the poles of the sign structure;

(2) the exact location of the sign faces in relation to the sign structure;

(3) the means of access to the sign; and

(4) the distance from the buildings, landmarks, right of way line, other signs, and other distinguishable features of the landscape.

§21.411. Applicant's Identification of Proposed Site.

(a) An applicant for a permit for a new sign must identify the proposed site of the sign by setting a stake or marking the concrete at the proposed location of the edge of the sign structure, including the sign face, that is nearest the right of way [~~center pole of the sign structure or if there is no center pole, at each pole of the sign structure~~].

(b) At least two feet of the [~~a~~] stake must be visible above the ground. The stake or the mark must be distinguished from any other stake or mark at the location.

(c) A stake or marking may not be moved or removed until the application is denied or, if approved, until the sign has been erected.

§21.416. Commercial or Industrial Activity.

(a) For the purposes of this subchapter, a commercial or industrial activity is an activity that:

(1) is customarily allowed only in a zoned commercial or industrial area; and

(2) is conducted in a permanent building or structure affixed to the real property that:

(A) has an indoor restroom, running water, functioning electrical connections, and permanent flooring, other than dirt, gravel, or sand;

(B) is visible from the traffic lanes of the main-traveled way;

(C) is not primarily used as a residence; [~~and~~]

(D) has at least 400 square feet of its interior floor space devoted to the activity; and[~~.~~]

(E) is within 200 feet of the highway right of way.

(b) The following are not commercial or industrial activities:

(1) agricultural, forestry, ranching, grazing, farming, and related activities, including the operation of a temporary wayside fresh produce stand;

(2) an activity that is conducted only seasonally;

(3) an activity that has not been conducted at its present location for at least 180 days;

(4) an activity that is not conducted by at least one person who works for the business at the activity site for at least 25 hours per week on at least five days per week [~~and for which the hours during which the activity is conducted are posted at the activity site~~];

(5) the operation or maintenance of:

(A) an outdoor advertising structure;

(B) a recreational facility, such as a campground, golf course, tennis court, wild animal park, or zoo, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(C) an apartment house or residential condominium;

(D) a public or private preschool, secondary school, college, or university, other than a trade school or corporate training campus;

(E) a quarry or borrow pit, other than the related activities conducted in a building or structure that meets the requirements of subsection (a)(2) of this section and the parking facilities for that building or structure;

(F) a cemetery; or

(G) a place that is primarily used for worship;

(6) an activity that is conducted on a railroad right of way; and

(7) an activity that is created primarily or exclusively to qualify an area as an unzoned commercial or industrial area.

(c) For the purposes of this section, a building is not primarily used as a residence if more than 50 percent of the building's square footage is used solely for the business activity.

(d) A sign is not required to meet the requirements of subsections (a)(2)(C) (as clarified by subsection (c) of this section), (a)(2)(D), (b)(3), or (b)(4) of this section to maintain conforming status if the permit for the sign was issued before the effective date of this section.

§21.419. Request for a Variance.

(a) An applicant may request that the executive director approve a variance from the requirements of this subchapter if the applicant believes that a minor exception to this subchapter is required to prevent a substantial injustice.

(b) The executive director or the executive director's designee, who must be a person who holds a senior leadership position of the department and reports directly to the executive director, will consider all relevant written evidence submitted by the applicant and collected by the department relating to the request.

(c) The executive director or the designee will make a final determination on the request for a variance within 60 days of the receipt of the request.

(d) If the executive director or the designee is unable to make a final determination on the request within the 60-day period, the department will notify the applicant by mail of the delay and provide an estimated time in which a final determination will be made.

(e) If the variance is granted and the other applicable requirements are satisfied, the department will issue the permit.

(f) A denial of a variance is final and is not appealable.

§21.420. Permit Expiration.

(a) A permit is valid for one year.

(b) A permit automatically expires on the date that the license issued under which the permit was issued expires or is revoked by the department under §21.158 of this chapter (relating to License Revocation) or §21.455 of this subchapter (relating to License Revocation).

§21.421. Permit Renewals.

(a) To continue in effect, a permit must be renewed.

(b) A permit is eligible for renewal if the sign for which it was issued continues to meet all applicable requirements of this subchapter and Transportation Code, Chapter 394.

(c) To renew the permit, the permit holder must file with the department a written application in a form prescribed by the department accompanied by the applicable fees prescribed by §21.424 of this subchapter (relating to Permit Fees). The application must be received by the department before the 46th day after the date of the permit expiration.

(d) A permit may not be renewed if the sign for which it was issued is not erected to the extent that it includes a sign face before the first anniversary of the date the permit was issued.

(e) The department will provide a renewal notification to the licensee at least 30 days before the date of the permit expiration and if the permit is not renewed before it expires the department within 20 days after the date of expiration will provide notification to the licensee of the opportunity to file a late renewal.

(f) If one year after the date the department issues the permit, the sign structure is not built to the full extent approved by the permit with respect to dimensions, lighting, or number of faces, the department will adjust the permit to reflect the dimensions, lighting, and number of faces of the sign structure as they exist on that date. The permit will be eligible for renewal only for the dimensions, lighting, and number of faces as adjusted by the department.

(g) The documentation and the fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.422. Transfer of Permit.

(a) A sign permit may be transferred only with the written approval of the department.

(b) To transfer one or more sign permits, the permit holder must send to the department a written request in a form prescribed by the department accompanied by the prescribed transfer fee prescribed by §21.424 of this subchapter (relating to Permit Fees).

(c) At the time of the transfer, both the transferor and the transferee must hold a valid license issued under §21.153 of this chapter (relating to License Issuance) or §21.450 of this subchapter (relating to License Issuance), except as provided by subsections (f) - (h) of this section.

(d) The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

(e) [~~(c)~~] If the request is approved, the department will send to the transferor and to the transferee a copy of the approved permit transfer form.

(f) A permit issued to a nonprofit organization under §21.457 of this subchapter (relating to Nonprofit Sign Permit) may be transferred to another nonprofit organization that does not hold a license issued under §21.153 of this chapter or §21.450 of this subchapter, if the sign will be maintained as a nonprofit sign.

(g) A permit issued to a nonprofit organization under §21.457 of this subchapter may be converted to a regular permit and transferred to a person that is not a nonprofit organization if the transferee holds a license for the county in which the sign is located at the time of the transfer and the sign meets all of the requirements of this subchapter.

(h) The department may approve the transfer of one or more sign permits from a transferor whose license has expired to a person who holds a license, with or without the signature of the transferor, if the person provides to the department:

(1) legal documents showing the sign has been sold; and

(2) documents that indicate that the transferor is dead or cannot be located.

(i) [~~(d)~~] The department will not approve the transfer of a permit if cancellation of the permit is pending or has been abated awaiting the outcome of an administrative hearing.

§21.423. Amended Permit.

(a) To perform customary maintenance or to make substantial changes to the sign or sign structure under §21.434 of this subchapter (relating to Repair and Maintenance), a permit holder must obtain [~~submit~~] an amended permit [~~application~~].

(b) To obtain an amended permit the permit holder must submit an [~~The~~] amended permit application [~~must be submitted~~] on a form prescribed by the department that provides the information required under §21.409 of this subchapter (relating to Permit Application) that is applicable to an amended permit and indicates the change from the information in the original application for the sign permit. The amended permit will not require the signature of the land owner or city representative.

(c) The new sign face size, configuration, or location must meet all applicable requirements of this subchapter.

(d) The holder of a permit for a nonconforming sign may apply for an amended permit to perform eligible customary maintenance under §21.434 of this subchapter. An amended permit will not be issued for a substantial change, as described by §21.434(c) of this subchapter, to a nonconforming sign.

(e) Making a change to a sign that requires an amended permit without first obtaining an amended permit is a violation of this subchapter and will result in an administrative enforcement action.

(f) The department will make a decision on an amended permit application within 45 days of the date receipt of the amended permit application. If the decision cannot be made within the 45 day period the

department will notify the applicant of the delay, provide the reason for the delay, and provide an estimate for when the decision will be made.

(g) In the event of a natural disaster the department may waive the requirement that a required amended permit be issued prior to the repair of a conforming sign. If the department waives this requirement the amended permit must be submitted within 60 days of the completion of the repairs. If the repairs are in violation of these rules or the permit holder fails to submit the amended permit application the sign is subject to enforcement and removal actions.

(h) An amended permit is valid for one year after the date of the department's approval of the amended permit application. The provisions of this subchapter relating to a permit, including §21.421(f) of this subchapter (relating to Permit Renewals), apply to the amended permit. The date of the department's approval of the amended permit application is considered to be the amended permit's date of issuance.

(i) The documentation and fee required under this section must be sent to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.429. Spacing of Signs.

(a) A permitted [~~An~~] off-premise sign having a sign face area of at least 301 square feet may not be located within 1,500 feet of another permitted off-premise sign on the same side of the roadway.

(b) A permitted [~~An~~] off-premise sign having a sign face area of at least 100 but less than 301 square feet may not be located within 500 feet of another permitted off-premise sign having a sign face within that range or within 1500 feet of a permitted [~~an~~] off-premise sign that has a sign face of at least 301 square feet and is on the same side of the roadway.

(c) A permitted [~~An~~] off-premise sign having a face area of less than 100 square feet may not be located within 150 feet of another permitted off-premise sign having a sign face of less than 100 square feet, within 500 feet of a permitted sign with a face area of at least 100 but less than 301 square feet, or within 1,500 feet of a permitted [~~an~~] off-premise sign with a face area of at least 301 square feet that is on the same side of the roadway.

(d) Two signs located at the same intersection do not violate this section if they:

(1) are located so that their messages are not directed toward traffic flowing in the same direction; and

(2) are not visible from the main-traveled way of an interstate or federal-aid primary highway.

(e) For the purposes of this section, the space between signs is measured between points along the right of way of the roadway perpendicular to the center of the signs.

(f) The spacing requirements of this section do not apply to signs separated by buildings, natural surroundings, or other obstructions in a manner that causes only one of the signs to be visible within the specified spacing area.

(g) An off-premise sign may not be erected within five feet of a rural road right-of-way line. This distance will be measured from the edge of the sign face nearest to the right of way line.

(h) An off-premise sign must be erected within 800 feet of at least one recognized commercial or industrial activity. The commercial or industrial activity must be on the same side of the rural road as the sign.

(i) Distance from the commercial or industrial activity is measured from the outer edges of the regularly used buildings, parking lots, storage facilities, or processing areas of the commercial or industrial activity. Measurements are not made from the property line unless the property lines coincide with the regularly used portions of the activity.

(j) A sign may not be located in a place that creates a safety hazard, including a location that:

(1) is likely to cause a driver to be unduly distracted;

(2) obscures or interferes with the effectiveness of an official traffic sign, signal, or device; or

(3) obstructs or interferes with the driver's view of approaching, merging, or intersecting roadway or rail traffic.

(k) A sign may not be located in an area that is adjacent to or within 1,000 feet of a rest area.

(l) The distance from a rest area is measured along the right of way line from the outer edges of the rest area boundary abutting the right of way.

(m) The center of a sign may not be located within 250 feet of the nearest point of the boundary of a public park.

(n) This subsection applies only if a public park boundary abuts the right of way of a regulated highway. A sign may not be located within 1,500 feet of the boundary of the public park, as measured along the right of way line from the nearest common point of the park's boundary and the right of way. This limitation applies on both sides of the rural road.

(o) A permitted sign that is being displaced by a highway construction project will not be considered in determining the spacing for a new sign application.

§21.447. Complaint Procedures.

(a) The department will accept and investigate all written complaints on a specific sign structure, sign company, or any other issue under the jurisdiction of the outdoor advertising program.

(b) The complaints can be filed via the department's website, www.txdot.gov, or by mail to Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

(c) If the complaint involves a sign structure or a sign company the department will notify the owner of the sign structure or sign company of the complaint and the pending investigation within 15 days of receipt of the complaint. This notification will include a copy of the complaint and complaint investigation procedures.

(d) If the complaint included contact information, the department will provide the complainant with a copy of the complaint procedures within 15 days of the receipt of the complaint.

(e) If the complaint involves fewer than 10 sign structures the department will investigate the complaint and make a finding within 30 days of the receipt of the complaint. If the complaint involves 10 or more sign structures or is an investigation of a sign company or other outdoor advertising matter the department will make a finding within 90 days of the receipt of the complaint.

(f) If the department is unable to meet the deadlines in subsection (e) of this section, the department will notify the complainant, the sign owner, or sign company of the delay and will provide a date for the completion of the investigation.

(g) The department will provide the complainant, sign owner, or sign company the findings of the investigation, which will include whether administrative enforcement actions are being initiated.

§21.448. License Required.

(a) Except as provided by this subchapter, a person may not obtain a permit for a sign under this subchapter unless the person holds a currently valid license issued under §21.153 of this chapter (relating to License Issuance), or under §21.450 of this subchapter (relating to License Issuance), applicable to the county in which the sign is to be erected or maintained.

(b) A license is valid for one year after its date of issuance or most recent renewal.

§21.449. License Application.

(a) To apply for a license under this subchapter, a person must file an application in a form prescribed by the department. The application must include at a minimum:

(1) the complete legal name, mailing address, and telephone number of the applicant; and

(2) designation of each county in which the applicant's signs are to be erected or maintained.

(b) The application must be signed, notarized, and filed with the department and be accompanied by:

(1) a fully executed outdoor advertiser's surety bond:

(A) in the amount of $2,500 for each county designated under subsection (a)(2) of this section up to a maximum of $10,000;

(B) payable to the commission to reimburse the department for removal costs of a sign that the license holder unlawfully erects or maintains; and

(C) in a form prescribed by the department, executed by a surety company authorized to transact business in this state;

(2) a duly certified power of attorney from the surety company authorizing the surety company's representative to execute the bond on the effective date of the bond; and

(3) the license fee prescribed by §21.453 of this subchapter (relating to License Fees).

(c) The documentation and fee required under this section must be sent by certified or regular mail to: Texas Department of Transportation, Outdoor Advertising, P.O. Box 13043, Austin, Texas 78711-3043.

§21.450. License Issuance.

(a) The department will issue a license if the requirements of §21.152 of this chapter (relating to License Application), or if the requirements of §21.449 of this subchapter (relating to License Application), are satisfied.

(b) The department will not issue a license to an entity that is not authorized to conduct business in this state.

§21.451. License Not Transferable.

A license issued under this subchapter is not transferable.

§21.452. License Renewals.

(a) To continue a license in effect, the license must be renewed.

(b) To renew a license, the license holder must file a written application in a form prescribed by the department accompanied by each applicable license fee prescribed by the subchapter under which the license was issued. The application must be received by the department before the 46th day after the date of the license's expiration and must include at a minimum:

(1) the complete legal name, mailing address, and telephone number of the license holder;

(2) the number of the license being renewed;

(3) proof of current surety bond coverage; and

(4) the signature of the license holder or person signing on behalf of the business entity.

(c) A license is not eligible for renewal if the license holder is not authorized to conduct business in this state.

(d) A license is not eligible for renewal unless the license holder has complied with the permit requirements of this subchapter, Subchapter I of this chapter (relating to Regulation of Signs Along Interstate and Primary Highways), or Transportation Code, Chapters 391 and 394.

§21.453. License Fees.

(a) The amount of the fee for the issuance of a license under this subchapter is $125.

(b) The amount of the annual renewal fee is $75.

(c) In addition to the $75 annual renewal fee, an additional late fee of $100 is required for a renewal license application that is received before the 45th day after the expiration date of the license.

(d) A license fee is payable by check, cashier's check, or money order made payable to the state highway fund, and must be submitted with the application. If the check or money order is dishonored upon presentment, the license is voidable.

(e) The department will provide a renewal notification to the license holder at least 45 days before the date of the license expiration and if the license is not renewed before it expires, the department within 20 days after the date of expiration will provide notification to the license holder of the opportunity to file a late renewal application.

§21.454. Temporary Suspension of License.

If the department is notified by a surety company that a bond is being canceled, the department will notify the license holder by certified mail that a new bond must be obtained and filed with the department before the bond cancellation date or the 30th day after the day of the receipt of the notice, whichever is later.

§21.455. License Revocation and Non-Renewal.

(a) The department will initiate an enforcement proceeding, as described in this section, to revoke a license holder's license if:

(1) the license holder does not provide the department with the required surety bond within the time specified in §21.449 of this subchapter (relating to License Application) or §21.452 of this subchapter (relating to License Renewals);

(2) the license holder's surety bond coverage is terminated under §21.454 of this subchapter (relating to Temporary Suspension of License);

(3) the number of final enforcement actions of this subchapter, Subchapter I of this chapter (relating to Regulation of Signs Along Interstate and Primary Highways), or Transportation Code, Chapters 391 and 394, committed by the license holder in the aggregate equal or exceed:

(A) 10 percent of the number of valid permits held by the license holder, if the license holder holds more than 1,000 sign permits;

(B) 20 percent of the number of valid permits held by the license holder, if the license holder holds at least 500 but fewer than 1,000 sign permits;

(C) 25 percent of the number of valid permits held by the license holder if the license holder holds at least 100 but fewer than 500 sign permits; or

(D) 30 percent of the number of valid permits held by the license holder if the license holder holds fewer than 100 sign permits; or

(4) the license holder has not complied with any administrative orders or agreements arising out of and relating to previous enforcement actions initiated against the license holder under this section.

(b) The department will send notice by certified mail of an action under this section to the address of record provided by the license holder.

(c) The notice will clearly state:

(1) the reasons for the action;

(2) the effective date of the action;

(3) the right of the license holder to request an administrative hearing; and

(4) the procedure for requesting a hearing including the period in which the request must be made.

(d) A request for an administrative hearing under this section must be made in writing to the department within 45 days after the date that the notice is mailed.

(e) If timely requested, an administrative hearing will be conducted in accordance with Chapter 1, Subchapter E of this title (relating to Procedures in Contested Case).

§21.456. Exception to License Requirement for Nonprofit Signs.

A nonprofit organization may erect or maintain a nonprofit sign without obtaining an outdoor advertising license, but the organization must obtain a permit under either §21.457 of this subchapter (relating to Nonprofit Sign Permit) before it may erect or maintain such a sign.

§21.457. Nonprofit Sign Permit.

(a) A nonprofit service club, charitable association, religious organization, chamber of commerce, nonprofit museum, or governmental entity may obtain a permit under this section to erect or maintain a nonprofit sign.

(b) To qualify as a nonprofit sign, the sign must:

(1) advertise or promote:

(A) a political subdivision in whose jurisdiction the sign is located or a political subdivision that is adjacent to such a political subdivision; or

(B) the entity that will hold the permit, but may only give information about the meetings, services, events, or location of the entity; and

(2) comply with each sign requirement under this subchapter from which it is not expressly exempted.

(c) An application for a permit under this section must be in a form prescribed by the department and must include, in detail, the content of the message to be displayed on the sign.

(d) After a permit is issued, the permit holder must obtain approval from the department to change the message of the sign. The department may issue an order of removal of the sign if the permit holder fails to obtain that approval.

(e) If a sign ceases to qualify as a nonprofit sign, the permit for the sign is subject to cancellation under §21.425 of this subchapter (relating to Cancellation of Permit).

(f) If the holder of a permit issued under this section loses its nonprofit status or wishes to change the sign so that it no longer qualifies as a nonprofit sign the permit holder must:

(1) obtain a license under §21.153 of this chapter (relating to License Issuance) or §21.450 of this subchapter (relating to License Issuance); and

(2) convert the sign permit to a permit for a sign other than a nonprofit sign and pay the original permit and renewal fees provided by §21.424 of this subchapter (relating to Permit 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.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105584
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 463-8683

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43 TAC §21.419

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

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads, Transportation Code, §391.063, which provides authority for the commission to set fees for the issuance of an outdoor advertising license; Transportation Code, §391.065, which provides authority to establish rules to standardize forms and regulate the issuance of outdoor advertising licenses, Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads; and Transportation Code, §394.025, which provides authority for the commission to set fees for the issuance of an outdoor advertising license.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

§21.419. Board of Variance.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105583

Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 463-8683

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CHAPTER 31. PUBLIC TRANSPORTATION
SUBCHAPTER B. STATE PROGRAMS

43 TAC §31.11

The Texas Department of Transportation (department) proposes amendments to §31.11, concerning Formula Program.

EXPLANATION OF PROPOSED AMENDMENTS

In the General Appropriations Act, the 82nd Texas Legislature, Regular Session, 2011, appropriated additional state funds for public transportation grants that may be used to assist rural and urban transit districts with impacts resulting from the use of 2010 census data in state grant formula allocations. The amendments to §31.11 allow the Texas Transportation Commission (commission) to target the distribution of additional grant funding by adjusting the total funding amount subject to a funding split between rural and urban transit districts to $57,482,135, which historically is the average level of appropriated state grant funds, and by adding, if funds are available, an additional allocation for systems realizing decreased funding allocations from using the 2010 census data in the need and performance based allocations portion of the formula. Also, clarification is added regarding any remaining funds to provide that the commission may award funds needed to initiate public transportation service in new designated urbanized areas.

Amendments to §31.11(b) add new paragraph (1) that specifies that the maximum amount of appropriated funds subject to a 35 percent urban and 65 percent rural transit district funding split is $57,482,135, which is the historical average biennial amount of state funds appropriated for public transportation grants. The addition of this new paragraph causes the redesignation of the current subdivisions within subsection (b).

Amendments to §31.11(b) redesignate current paragraph (1) as paragraph (1)(A) and specify the urban systems that are eligible to receive state funding under this program, as stated in Transportation Code, Chapter 456.

Amendments to §31.11(b) redesignate current paragraph (1)(A) as paragraph (1)(A)(i) and conform the language within that clause to changes made elsewhere in subsection (b).

Amendments to §31.11(b) redesignate current paragraph (1)(B) as paragraph (1)(A)(ii), conform the language within that clause to changes made elsewhere in subsection (b), and delete outdated references to requirements for prior fiscal years.

Amendments to §31.11(b) redesignate current paragraph (1)(C) as paragraph (1)(A)(iii), conform the language within that clause to changes made elsewhere in subsection (b), and delete outdated references to requirements for prior fiscal years. The amendments also change the symbol "%" to the word "percent" to conform to the style currently used for rules.

Amendments to §31.11(b) redesignate current paragraph (2) as paragraph (1)(B) and clarify that the appropriated funds allocated under subsection (b)(1) to rural transit districts will be allocated only to rural transit districts in nonurbanized areas.

Amendments to §31.11(b) redesignate current paragraph (2)(A) as paragraph (1)(B)(i), delete outdated references to requirements for a prior fiscal year, and change the symbol "%" to the word "percent" to conform to the style currently used for rules.

Amendments to §31.11(b) redesignate current paragraph (2)(B) as paragraph (1)(B)(ii) and delete outdated references to requirements for a prior fiscal year.

Amendments to §31.11(b) redesignate current paragraph (3) as paragraph (1)(C), redesignate divisions within that subparagraph appropriately, and change the symbol "%" to the word "percent" to conform to the style currently used for rules. The amendments clarify that the percentages specified within the subparagraph provide the maximum amounts for which a designated recipient that is not included in a transit authority but that is located in an urbanized area that includes one or more transit authorities may use the allocated funds.

Amendments to §31.11 redesignate current subsection (c) as subsection (b)(1)(D), conform the language within that subparagraph to changes made in subsection (b), and change the symbol "%" to the word "percent" to conform to the style currently used for rules. The amendments also delete language providing for the allocation of funds in excess of $57,482,135. The allocation of those funds is addressed in new §31.11(b)(2) and (3).

Amendments to §31.11 add new §31.11(b)(2) that provides the process to be used for determining an additional allocation for systems realizing decreased funding allocations from using the 2010 census data in the need and performance based allocations portion of the formula. The process will be used only if the amount of the funds appropriated for a state fiscal biennium for public transportation to which §31.11(b) applies is more than $57,482,135. The allocation will be calculated by comparing the summed need and performance based allocations using the 2000 census data and 2010 performance data, to the summed need and performance based allocations using the 2010 census data and 2010 performance data. Subparagraph (A) provides the allocation for urban transit districts and subparagraph (B) for rural transit districts. Subparagraph (C) specifies that the additional allocations are not subject to new §31.11(b)(1)(D). Subsection (b)(2) expires on August 31, 2023.

Amendments to §31.11 add new §31.11(b)(3) that provides for the commission award of any remaining state grant funds after allocations under §31.11(b)(1) and (2) have been considered. In addition, clarification language is also added regarding the type of awards the commission may make by including funds needed to initiate public transportation service in new designated urbanized areas. After an award is made under paragraph (3) it is not subject to new §31.11(b)(1)(D) in succeeding fiscal years.

Amendments to §31.11 redesignate current subsections (d) - (f) as subsections (c) - (e). The amendments also redesignate current subsection (g) as subsection (f) and delete text referring to the department's districts because former district personnel who were performing public transportation duties now are employees of the Public Transportation Division. Finally, the amendments redesignate current subsection (h) as subsection (g).

The statutory duties of the Public Transportation Advisory Committee (PTAC) include advising the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating public transportation funds, and providing feedback on rule changes involving public transportation matters during development and prior to final adoption.

PTAC met on November 2, 2011, and by motion recommended to the commission all of the above amendments in the allocation funding formula. PTAC further recognizes the immediate need to address the allocation of the additional appropriated state funds and that as an advisory committee they will need to reevaluate the Formula Program rules in conjunction with the release of 2010 census data and with any federal reauthorization.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Eric Gleason, Director, Public Transportation Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Gleason has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a more fair and equitable allocation of public transportation funding as administered by the subchapter. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:30 a.m. on January 11, 2012, Texas Department of Transportation/Texas Department of Motor Vehicles, Lone Star Room, First Floor, Building 1, 4000 Jackson Avenue, Austin, Texas 78731 and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 9:00 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Government and Public Affairs Division, (512) 463-6086 at least five working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §31.11 may be submitted to Eric Gleason, Director, Public Transportation Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on January 30, 2012.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §456.022, which requires the commission to adopt rules establishing a formula allocating funds among eligible public transportation providers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 456.

§31.11. Formula Program.

(a) Purpose. Transportation Code, Chapter 456 requires the commission to allocate, at the beginning of each fiscal biennium, certain amounts appropriated for public transportation. This section sets out the policies, procedures, and requirements for that allocation.

(b) Formula allocation. At the beginning of each state fiscal biennium, an amount equal to the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation, other than federal funds and amounts specifically appropriated for coordination, technical support, or other costs of administration, will be allocated to urban and rural transit districts. [~~The commission will allocate 35% of the funding to urban transit districts and 65% of the funding to rural transit districts.~~]

(1) If the appropriated amount to which this subsection applies is $57,482,135 or less, the commission will allocate 35 percent of the appropriated amount to urban transit districts and 65 percent of the appropriated amount to rural transit districts.

(A) [~~(1)~~] Urban funds available under this section will be allocated to urban transit districts that are designated recipients or transit providers in urbanized areas that are not served by an authority and to designated recipients that received state transit funding during the fiscal biennium ending August 31, 1997, that are not served by an authority but are located in urbanized areas that include one or more authorities. A transit authority is ineligible to participate in the formula program provided by this section unless the authority was created under Transportation Code, Chapter 453 or former Article 1118z, Revised Statutes, by a municipality having a population of less than 200,000. [~~Any local governmental entity having the power to operate or maintain a public transportation system, except an authority, may receive formula program funds.~~] The commission will distribute the money in the following manner.

(i) [~~(A)~~] Urban funds allocated under this paragraph will be divided into two tiers. Tier one will include urban transit districts that restrict transit eligibility for all public transportation services to the elderly and persons with disabilities. Funding available in tier one is calculated by multiplying the available urban funding by the population of elderly and persons with disabilities in tier one providers, divided by the service eligible population of urbanized areas receiving funding under this subchapter. Tier two will include urban transit districts that provide any service to the general population. The funds for tier two will be the remaining balance of the available funds after the funds for tier one have been allocated. [~~Funds within each tier will be allocated to urban transit districts based on subparagraphs (B) and (C) of this paragraph~~].

(ii) [~~(B)~~] One-half of the funds allocated within each tier provided under clause (i) of this subparagraph will be allocated to urban transit districts as a need based allocation [~~The need based allocation is determined as follows: 65% for the 2008- 2009 biennium, and 50 % for each biennium thereafter,~~] based on population by using the latest census data available from, and as defined by, the U.S. Census Bureau for each urbanized area relative to the sum of all urbanized areas. Any urban transit district whose urbanized area population is 200,000 or greater will have the population adjusted to reflect a population level of 199,999; except that any urban transit district receiving funds in tier one, as described in clause (i) of this subparagraph [~~(A) of this paragraph~~], will have the population adjusted to reflect a population level of 199,999, or the urbanized area population of the place as defined by the U.S. Census Bureau, whichever is less.

(iii) [~~(C)~~] One-half of the funds allocated within each tier provided under clause (i) of this subparagraph will be allocated to urban transit districts as a performance based allocation [~~The performance based allocation will be 35% for the 2008- 2009 biennium, and 50 % for each biennium thereafter~~]. An urban transit district is eligible for funding under this clause [~~subparagraph~~] if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the funding based on the following weighted criteria: 30 percent [~~30%~~] for local funds per operating expense, 20 percent [~~20%~~] for ridership per capita, 30 percent [~~30%~~] for ridership per revenue mile, and 20 percent [~~20%~~] for revenue miles per operating expense. These criteria may be calculated using the urban transit district's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(B) [~~(2)~~] Rural funds allocated under this paragraph [~~available under this section~~] will be allocated only to rural transit districts in nonurbanized areas[~~. Any eligible recipient may receive formula program funds. The funding will be allocated to rural transit districts~~] based upon need and performance as described in clauses (i) and (ii) of this subparagraph [~~subparagraphs (A) and (B) of this paragraph~~].

(i) [~~(A)~~] Sixty-five percent of the funding under this subparagraph will be allocated to rural transit districts as a need based allocation [~~The need based allocation is determined as follows: 80% will be awarded for fiscal year 2008, and 65% for each fiscal year thereafter~~] giving consideration to population weighted at 75 percent [~~75%~~] and on land area weighted at 25 percent [~~25%~~] for each nonurbanized area relative to the sum of all nonurbanized areas.

(ii) [~~(B)~~] Thirty-five percent of the funding under this subparagraph will be allocated to rural transit districts as a performance based allocation [~~The performance based allocation will be 20% for fiscal year 2008, and 35% for each biennium thereafter~~]. A rural transit district is eligible for funding under this clause [~~subparagraph~~] if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the funding by giving equal consideration to local funds per operating expense, ridership per revenue mile, and revenue miles per operating expense. These criteria may be calculated using the rural transit district's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(C) [~~(3)~~] Funds allocated under this section and any local funds may be used for any transit-related activity except that a designated recipient not included in a transit authority but located in an urbanized area that includes one or more transit authorities may [~~only~~] use funds allocated under this section only to provide up to:

(i) [~~(A)~~] 65 percent [~~65%~~] of the local share requirement for federally financed projects for capital improvements;

(ii) [~~(B)~~] 50 percent [~~50%~~] of the local share requirement for projects for operating expenses and administrative costs;

(iii) [~~(C)~~] 50 percent [~~50%~~] of the total cost of a public transportation capital improvement, if the designated recipient certifies that federal money is unavailable for the proposed project and the commission finds that the proposed project is vitally important to the development of public transportation in the state; and

(iv) [~~(D)~~] 65 percent [~~65%~~] of the local share requirement for federally financed planning activities.

(D) [~~(c) Funding stability.~~] Subject to available appropriation, no award to an urban or rural transit district under this paragraph [~~section~~] will be less than 90 percent [~~90%~~] of the award to that transit district for the previous fiscal year. All allocations under subsection (b)(1)(A) and (B) [~~(b)(1) and (2)~~] of this section are subject to revision to comply with this standard. [~~If available funding exceeds $57,482,135, additional funding will be awarded by the commission on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include, but is not limited to, coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, adjustment for reductions in purchasing power, and reductions in air pollution. These additional awards are not subject to the funding stability allocation process in succeeding fiscal years.~~]

(2) If the appropriated amount to which this subsection applies exceeds $57,482,135, the commission will allocate $57,482,135 in accordance with paragraph (1) of this subsection and will allocate all or a part of the excess amount, as necessary to mitigate changes in formula allocations described by subparagraph (A) or (B) of this paragraph, as appropriate, resulting from the application of the 2010 census data.

(A) For an urban transit district, a formula allocation impact may be mitigated if, using 2010 performance data, the total allocation to the district for the need based allocation, as described in subsection (b)(1)(A)(ii) of this section, plus the performance based allocation, as described in subsection (b)(1)(A)(iii) of this section, obtained using 2010 census data, is less than the total corresponding allocation to the district obtained using 2000 census data.

(B) For a rural transit district, a formula allocation impact may be mitigated if, using 2010 performance data, the total allocation to the district for the need based allocation, as described in subsection (b)(1)(B)(i) of this section, plus the performance based allocation, as described in subsection (b)(1)(B)(ii) of this section, obtained using 2010 census data, is less than the total corresponding allocation obtained using 2000 census data.

(C) Allocations under this paragraph are not subject to subsection (b)(1)(D) of this section.

(D) This paragraph expires August 31, 2023.

(3) The commission will award on a pro rata basis, competitively, or using a combination of both any appropriated amount that remains after other allocations made under this subsection. In awarding funds under this paragraph, consideration may be given to coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, funds needed to initiate public transportation service in new designated urbanized areas, adjustment for reductions in purchasing power, reductions in air pollution, or any other appropriate factor. Awards under this paragraph are not subject to subsection (b)(1)(D) of this section in succeeding fiscal years.

(c) [~~(d)~~] Change in service area. If part of an urban or rural transit district's service area is changed due to declaration by the U.S. [~~United States~~] Census Bureau, or if the service area is otherwise altered, the department and the urban or rural transit district shall negotiate an appropriate adjustment in the funding awarded to that urban or rural transit district for that funding year or any subsequent year, as appropriate. This negotiated adjustment is not subject to subsection (b)(1)(D) [~~the minimum and maximum standards set forth in subsection (c)~~] of this section.

(d) [~~(e)~~] Unobligated funds. Any money under this section that the designated recipient has not applied for before the November commission meeting in the second year of a state fiscal biennium will be administered by the commission under the discretionary program described in §31.13 of this subchapter (relating to Discretionary Program).

(e) [~~(f)~~] Returned funds. Any money under this section that the designated recipient agrees to return to the department will be administered by the commission under the discretionary program described in §31.13 of this subchapter.

(f) [~~(g)~~] Application. To receive funds allocated under this section, a designated recipient must first submit a completed application, in the form prescribed by the department [~~, to the appropriate district~~]. The application must include certification that the proposed public transportation project is consistent with continuing, cooperating, and comprehensive regional transportation planning implemented in accordance with 49 U.S.C. §5301 [~~49 USC §5301~~]. Federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met.

(g) [~~(h)~~] Project evaluation. In evaluating a project under this section, the department will consider the need for fast, safe, efficient, and economical public transportation and the approval of the FTA, or its successor.

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

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105594
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 29, 2012
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

SUBCHAPTER C. INTENDED USE PLAN

31 TAC §371.21

The Texas Water Development Board withdraws the emergency amendments to §371.21 which appeared in the October 7, 2011, issue of the *Texas Register* (36 TexReg 6585).

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105689
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: January 9, 2012
For further information, please call: (512) 463-8061

♦ ♦ ♦

SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

31 TAC §§371.40 - 371.42, 371.51

The Texas Water Development Board withdraws the emergency amendments to §§371.40 - 371.42 and new §371.51 which appeared in the October 7, 2011, issue of the *Texas Register* (36 TexReg 6585).

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105690
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: January 9, 2012
For further information, please call: (512) 463-8061

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.9

The Texas Ethics Commission (the commission) adopts an amendment to §18.9, concerning corrected campaign finance reports. The amendment to §18.9 is adopted with changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7221). The rule will be republished.

Section 18.9 relates to corrected campaign finance reports and generally provides that a report may be corrected at any time and that in certain instances these reports are not subject to a late fine. House Bill 3093 (HB 3093), 82nd Legislature, Regular Session, generally provides that certain semiannual reports may be amended without incurring a fine. The term amended as used in HB 3093 is interchangeable with the term corrected as used in Ethics Commission Rule §18.9. The adopted rule amends the existing rule to reflect that.

Section 18.9 also provides that a correction filed in response to a complaint or an audit is not required to include an affidavit to clearly identify how the corrected report is different from the report being corrected. Requiring this information on all corrections would provide more transparency to the public. Section 18.9 amends the existing rule to also require the information on reports filed in response to a complaint or an audit.

No comments were received regarding the proposed rule during the comment period.

The amendment to §18.9 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

§18.9. Corrected/Amended Reports.

(a) A filer may correct/amend a report filed with the commission or a local filing authority at any time.

(b) A corrected/amended report must clearly identify how the corrected/amended report is different from the report being corrected/amended.

(c) A filer who files a corrected/amended report must submit an affidavit identifying the information that was corrected/amended.

(d) A corrected/amended report is not subject to a late fine if filed in accordance with §571.0771 or §305.033(f) of the Government Code or §254.0405 of the Election Code, as applicable.

(e) Except as provided by subsections (b) and (c), this section does not apply to a corrected/amended report filed under §571.069, Government Code, or a corrected/amended report filed in response to a sworn complaint.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105700
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: January 8, 2012
Proposal publication date: October 28, 2011
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.63

The Texas Ethics Commission (the commission) adopts an amendment to §20.63, concerning reporting the use and reimbursement of personal funds. The amendment to §20.63 is adopted without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7222).

Section 20.63 relates to reporting the use and reimbursement of personal funds. Senate Bill 1, 82nd Legislature, Special Session, amended the law by creating a new method for disclosing political expenditures made from personal funds. Specifically, the new law allows a candidate or officeholder to deposit personal funds in a political account. The new law also requires that amount to be disclosed as a loan and allows reimbursement from political funds. Section 20.63 sets out the methods for reporting political expenditures made from personal funds and the proper way to disclose a reimbursement from political contributions.

No comments were received regarding the proposed rule during the comment period.

The amendment to §20.63 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105701
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: January 8, 2012
Proposal publication date: October 28, 2011
For further information, please call: (512) 463-5800

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CHAPTER 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

1 TAC §40.3

The Texas Ethics Commission (the commission) adopts the repeal of §40.3, concerning reporting expenditures reported under Title 15 of the Election Code. The repeal of §40.3 is adopted without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7223).

Section 40.3 provides that a person who discloses as a political contribution the acceptance of conference transportation, meals, or lodging expense permitted under Penal Code §36.07 is not required to also disclose that information on their personal financial statement. Senate Bill 1269 (S.B. 1269), 82nd Legislature, Regular Session, amended the law to provide that transportation, meals, or lodging accepted under Penal Code §36.07 are not political contributions. Therefore, the rule is unnecessary.

No comments were received regarding the proposed repeal during the comment period.

The repeal of §40.3 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105702
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: January 8, 2012
Proposal publication date: October 28, 2011
For further information, please call: (512) 463-5800

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §354.1041, concerning Benefits for Medicare/Medicaid Recipients; §354.1143, concerning Coordination of Title XIX with Parts A and B of Title XVIII; and §354.1149, concerning Exclusions and Limitations. The amendments are adopted without changes to the proposed text as published in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7057) and will not be republished.

Background and Justification

The Texas Medicaid program pays the coinsurance and deductibles for Medicare services provided to certain individuals, referred to as dual eligibles, who are eligible for both Medicare and Medicaid. The amendments align Medicaid policies on payment of cost sharing for Medicare Parts A and B services provided to dual eligibles, pursuant to the 2012-2013 General Appropriations Act (Article II, House Bill (HB) 1, 82nd Legislature, Regular Session, 2011).

The amendments limit payments for Medicare Part B services provided to dual eligibles to no more than the Medicaid payment amount for the same service, with the exception of renal dialysis services. This is currently the policy for Medicare Part A hospital services, but not for Medicare Part B physician and other outpatient services.

If the Medicare payment amount equals or exceeds the Medicaid payment rate for a Part B service, HHSC will not make a cost sharing payment under the amendments. If the Medicare payment amount is less than the Medicaid payment rate, HHSC will pay the lesser of: (1) the Medicare deductible/coinsurance amount; or (2) the difference between the Medicaid and Medicare rates. For renal dialysis services, cost sharing payments are reduced by five percent pursuant to HB 1, which phases in the policy for renal dialysis services.

The amendments also apply to services provided through Medicare Part C. Texas makes monthly capitation payments to Medicare Advantage Plans (MAPs) that contract with the state for Medicare Part C services. The monthly capitation payment amount will be changed to $10 based on the policy change for cost sharing for Part B services. For dual eligibles enrolled in MAPs that do not contract with the state, cost sharing payments are made on a fee-for-service basis.

The Medicaid state plan also will be updated to reflect these changes.

Comments

The 30-day comment period ended November 21, 2011. During this period, HHSC received written comments from the Bexar County Medical Society; Harris County Medical Society; Houston Neurological Institute; Organogenesis; 43 providers with the Physician Network Services; Texas Ophthalmological Association; Texas Podiatric Medical Association; Texas Radiological Society; Texas Society of Anesthesiologists; Texas Society of Clinical Oncology; Texas Urological Society; The Center for Cancer and Blood Disorders; and 13 individual providers. In addition, HHSC received public comments from AARP and the Texas Medical Association at the November 4, 2011, public hearing.

The comments from the above groups opposed adoption of the proposed rules and did not include recommendations for specific changes to the proposed rules. A summary of the comments and HHSC's responses follow.

Comments: In general, the comments indicated that the rule changes will negatively impact access to providers and services for dual eligible individuals who are medically and financially more vulnerable than other individuals with Medicare. According to the comments, some providers may limit or end participation in Medicare and/or Medicaid because the rule changes will reduce provider payment amounts. Some comments indicated that the rule changes could reduce access to specific outpatient services (such as chemotherapy, advanced wound therapy, and imaging services) and will disproportionately impact specific specialties and geographic areas of the state (such as rural, inner city, and border areas). If access to outpatient providers and services is reduced, the comments indicated clients may receive emergency services instead of outpatient services, which could increase state costs.

Response: Medicare is the primary payor and Medicaid is a secondary payor for Medicare Part B services provided to qualified dual eligibles. The rule changes will ensure that the Texas Medicaid Program does not make a payment for a Medicare Part B service if the total payment for the service would exceed the Texas Medicaid payment rate. Texas Medicaid payment rates are developed through a public rate hearing process that includes input from providers and other stakeholders on any potential access to care issues. In addition, HHSC monitors and reviews Medicaid payment rates on an ongoing basis for access to care issues. HHSC will continue to follow its rate setting and monitoring processes to identify and respond to any access to care issues related to Texas Medicaid payment rates. However, the federal government has the authority for establishing and monitoring Medicare rates. HHSC did not change the proposed rule language in response to the comments.

Comments: Some comments indicated that the rule changes will eliminate Medicaid coinsurance and deductible payments for Medicare Part B services provided to dual eligibles.

Response: Under the rule changes, HHSC will continue to make a cost sharing payment if the Medicare payment amount is less than the Medicaid payment rate. The amount of the HHSC cost sharing payment will equal the lesser of: (1) the Medicare deductible/coinsurance amount; or (2) the difference between the Medicaid and Medicare rates. HHSC did not change the proposed rule language in response to the comments.

Comments: Some comments indicated that access to outpatient providers and services will decrease because clients will not be able to afford Medicare cost sharing payments.

Response: Pursuant to Social Security Act §1902(n)(3), providers may not charge qualified dual eligibles for Medicare coinsurance and deductibles. Providers must accept the Medicare payment plus the Medicaid payment (if any) as payment in full. HHSC did not change the proposed rule language in response to the comments.

Comment: One commenter requested clarification on the payment process when a dual eligible member is enrolled in a MAP that does not contract with HHSC.

Response: A health care provider who provides services to a dual eligible individual who is enrolled in a MAP that does not contract with HHSC may submit a claim for cost sharing obligations to the Texas Medicaid claims administrator. The claim must comply with HHSC's requirements for electronic or manual claims adjudication. The health care provider may not seek payment for cost sharing obligations from the dual eligible individual. HHSC did not change the proposed rule language in response to this comment.

Comments: Some comments requested that HHSC identify and implement alternatives to the rule changes, including a partial cut, to achieve cost savings.

Response: The Texas Legislature considered cost savings alternatives during the legislative session and directed HHSC to implement Medicare Equalization in the 2012-2013 General Appropriations Act (HB 1, 82nd Legislature, Regular Session, 2011). HB 1 only includes a provisional allowance for HHSC to phase in the policy for dialysis services. HHSC did not change the proposed rule language in response to the comments.

Comments: Some comments requested that HHSC conduct a study of access to care to evaluate the impact of the rule changes.

Response: HHSC will continue to use its existing processes for monitoring and evaluating access to care. HHSC did not change the proposed rule language in response to the comments.

DIVISION 3. MEDICAID HOME HEALTH SERVICES

1 TAC §354.1041

Statutory Authority

The amendments are adopted 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2011.

TRD-201105518
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 1, 2012
Proposal publication date: October 21, 2011
For further information, please call: (512) 424-6900

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DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1143, §354.1149

Statutory Authority

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of Texas Health and Human Services Commission (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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2011.

TRD-201105519
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 1, 2012
Proposal publication date: October 21, 2011
For further information, please call: (512) 424-6900

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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, §25.9

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §25.3, concerning contract forms for sale of prepaid funeral benefits; and new §25.9, concerning package sales of prepaid funeral contracts. New §25.9 is adopted with changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7431). Amendments to §25.3 are adopted without changes and will not be republished.

Changes made to the proposed rule are in response to public comments received in writing, and are described in the summary of comments and responses section of this preamble.

The amendments to §25.3 update the model form for prepaid funeral benefits contracts, and update the rule reference in §25.3(k). New §25.9 clarifies procedures for selling funeral goods and services that are bundled together as packages.

The amendment to the model form in §25.3 changes Figure: 7 TAC §25.3(k)(1), the model complaint disclosure notice for prepaid funeral contracts. This amendment updates the website addresses for the Texas Funeral Service Commission and the Texas Department of Insurance and corrects the instructions regarding the placement of the notice to make them consistent with the requirements provided in the rule itself. The amendment to the model notice removes the inconsistent language. The amendment to §25.3(k) updates a reference to the name of rule §25.41, which the commission recently changed.

New §25.9 arises from difficulties in ensuring compliance with Finance Code Chapter 154. Some sellers and funeral providers offer bundles or packages of various funeral goods and services at a single price. However, because items included in such packages do not have individual values listed on the prepaid funeral contract, providers have no guidance as to how to comply with Finance Code §154.1551 in the event of modification of the contract at the time of the beneficiary's death. Specifically, §154.1551 allows reasonable modifications at the time of the funeral, to the funeral goods and services provided under the contract, but prohibits such modifications from exceeding 10% of the original purchase price. Furthermore, §154.1551 places requirements on calculating the value of substituted or surrendered goods and services. It is difficult to comply with these provisions when funeral goods and services have no individual values listed in the contract because they were included in a package sale. In addition, consumers may not understand that unused items in the package are lost, and no refund credit may be available. The new rule clarifies the steps a seller must take to ensure compliance with the Finance Code, and to ensure consumers receive appropriate notice regarding package pricing.

Subsection (d) of new §25.9 establishes that the rule is effective for contracts executed after January 31, 2012. This delayed application will allow sellers to deplete their stock of printed contracts before being required to include the new package pricing notations in contracts.

The Department received two comments regarding the new rule from SCI Texas Funeral Services, Inc.

Summaries of the comments and commission responses follow:

COMMENT: With respect to subsection (c) of new §25.9, commenter proposed inserting language to make the disclosure statement only necessary if a funeral provider does not offer refunds or credits for unused items in a package sale. Commenter contended that the proposed language would allow a provider the ability to provide or not provide a refund at the provider's discretion.

RESPONSE: The commission disagrees. The proposed language is unnecessary. The rule as proposed does not prohibit a funeral provider from offering refunds or credits to a purchaser of a package sale. If a provider routinely offers refunds or credits for items included in a package sale, listing an individual price for each item as provided under subsection (b) would be the more appropriate practice, but the language of subsection (c) does not prevent a provider from refunding or crediting consumers for unused items. Typically, a funeral provider only opts not to itemize prices in a package sale when refunds are not offered. It is important to ensure that customers have notice of the fact that unused items which are not individually priced in a package sale are not required to be refunded or credited. If, having had such notice, a customer receives a credit or refund from the provider anyway, no harm has occurred.

COMMENT: With respect to subsection (c) of new §25.9, commenter proposed inserting language to ensure consistency with subsection (c)(1). Commenter observed that the language "pro-

vided that the contract should include the following disclosure statement" implies that the disclosure statement must appear on the contract itself, which is inconsistent with subsection (c)(1).

RESPONSE: The commission agrees and has revised new §25.9(c) to make it consistent with subsection (c)(1).

The amendment and new rule are adopted pursuant to Finance Code, §154.051, which authorizes the commission to adopt rules to enforce and administer Finance Code Chapter 154.

§25.9. Package Sales.

(a) For purposes of this section, the term "package sale" means a grouping of multiple funeral goods and services which is offered to the purchaser at a single price.

(b) Each good or service included in a package sale may have its individual value listed on the prepaid contract.

(1) If individual values are listed, and the package price is different than the sum of the listed values of each good or service included in the package sale, the contract must represent the package sale by listing a discount, credit, or price adjustment representing the difference.

(2) If individual values are listed, the value assigned to any funeral good or service included in a package sale, minus a proportional fraction of the package discount or credit, must be used:

(A) for purposes of compliance with Finance Code §154.1551 in the event of modification after the death of the beneficiary; and

(B) as the "agreed price" for purposes of preparing a written pre-need to at-need reconciliation under Finance Code §154.161(a)(2)(B).

(c) If individual values are not listed for each good or service included in a package sale, the word "included" must be listed for each item, provided that the following disclosure statement be made: "No refund or credit will be issued for package sale goods or services which remain unused by the customer at the time of need."

(1) Such disclosure statement may be included in the contract form, the provider's price list, or provided as an addendum. If included in the contract form, the disclosure statement must be included on page one or two of the contract. If included on the price list, the disclosure statement must be on each package price page. If provided as an addendum to the contract, it must be signed by both parties.

(2) In the event of modification after the death of the beneficiary, prices of funeral goods and services at the time of death must be used for purposes of compliance with Finance Code §154.1551.

(d) This section is effective for contracts executed after January 31, 2012.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105614

A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: January 5, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 475-1300

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.53

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §33.53, concerning exemption from licensing for debt management service (DMS) providers, without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7432).

The new rule is adopted to allow an exemption from money transmission licensing for DMS providers that are registered with the Office of the Consumer Credit Commissioner (OCCC).

Texas Finance Code Chapter 394 concerns debtor assistance, and specifically Subchapter C (§394.201 et seq.) regulates consumer debt management services under the authority of the OCCC. Debt management services are essentially when a person, on behalf of a consumer, interacts with the consumer's creditors to seek more favorable repayment terms. Sometimes as part of this service, DMS providers accept funds from consumers and distribute them to creditors on behalf of the consumers. In March 2011, the department received an inquiry from the National Policy Group, on behalf of members of the credit counseling industry, regarding the application of the Money Services Act to DMS providers. Specifically, the letter inquired about arrangements where a consumer pays a single monthly payment to a DMS provider, the provider negotiates concessions from the consumer's creditors such as reduced interest rates or fees, then pays the creditors on behalf of the consumer. This model is similar to third party bill payment, which the Money Services Act expressly includes within the meaning of money transmission. (Finance Code §151.301(b)(4)(A)(iii).)

Under Finance Code Chapter 151, a person who engages in money transmission must obtain a money transmission license from the department. As a result, the Finance Code would require such DMS providers who receive consumer funds for distribution to creditors, to both register with the OCCC and to obtain a money transmission license from the department. Certain DMS providers are thus subject to regulation by two administrative agencies with discrete regulatory schemes.

The regulatory scheme under Chapter 394 requires DMS providers to register with the OCCC and obtain security in the form of a bond or an insurance policy. To perform DMS, registered DMS providers must enroll a consumer in a debt management plan, which requires a written agreement that conforms to a list of statutory requirements. If the DMS provider accepts funds from the consumer for distribution to creditors, the funds must be placed in a trust account, and the provider must give the consumer written reports containing detailed information regarding all payments and deductions made with the funds. A registered DMS provider must also annually renew its registration and file a report with the OCCC disclosing its assets and liabilities, total number of debt management plans in

place, and total average fees charged to consumers. Regarding fees, Chapter 394 also imposes substantial restrictions on the fees a DMS provider may charge a consumer.

Currently, there are 56 registered DMS providers, and the OCCC reports minimal consumer complaints regarding DMS activity. In part for this reason, the department has not required DMS providers registered with the OCCC to obtain money transmission licenses, provided the transmission only occurred in connection with its debt management services. The National Policy Group inquiry has revealed a need for clarification and formalization of the department's policy regarding these DMS providers. New §33.53 codifies this policy.

The new rule exempts from money transmission licensing a DMS provider that is registered and in good standing with the OCCC, so long as the DMS provider remains in compliance with Chapter 394 and all OCCC rules, and only performs money transmission as part of its DMS activities. This exemption more efficiently achieves the purposes of the Finance Code, minimizes regulatory burden on these DMS providers, and facilitates more efficient use of department resources. Because registered DMS providers are already under the oversight authority of the OCCC, and have met the qualifications and requirements of Chapter 394, including the provisions described above, requiring a money transmission license of these DMS providers is not necessary to further protect consumers. Moreover, as long as a DMS provider only performs money transmission in connection with its DMS activities, and only to the extent necessary to conduct those activities, requiring a money transmission license in addition to the requirements of Chapter 394 is not necessary to achieve the purposes of the Money Services Act.

The department received no comments regarding the proposed new rule.

The new rule is adopted pursuant to Finance Code, §151.003(10), which grants the commission authority to exclude from licensing a class of persons if licensing is not necessary to achieve the purposes of the Money Services Act, and pursuant to Finance Code §151.102, which authorizes the commission to adopt rules to administer the Money Services Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105615
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: January 5, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 475-1300

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PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 76. MISCELLANEOUS

The Finance Commission of Texas (the Commission) adopts new 7 TAC Chapter 76, §§76.1 - 76.7, 76.12, 76.21 - 76.26, 76.41 - 76.47, 76.61, 76.71 - 76.73, 76.91 - 76.103, 76.105 - 76.110, 76.121, and 76.122, concerning Miscellaneous. Sections 76.1 - 76.7, 76.12, 76.21 - 76.26, 76.41 - 76.47, 76.61, 76.71 - 76.73, 76.91 - 76.103, 76.105 - 76.110, and 76.121 are adopted without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7433) and will not be republished. Section 76.122, regarding consumer complaint procedures, is adopted with changes to the proposed text as published.

A non-substantive change to §76.122 is adopted. The email address is replaced with the web address of the Consumer Complaint Procedures on the Department's website.

The new sections under Chapter 76 are adopted to allow the department to reorganize its rules and provide for additional rules.

The 30-day comment period ended December 4, 2011, during which no comments were received on the proposed sections.

SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §§76.1 - 76.7, 76.12

The new sections are adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Effective date: January 5, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 475-1350

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SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§76.21 - 76.26

The new sections are adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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SUBCHAPTER C. HOLDING COMPANIES

7 TAC §§76.41 - 76.47

The new sections are adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-1350

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SUBCHAPTER D. FOREIGN SAVINGS BANKS

7 TAC §76.61

The new section is adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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SUBCHAPTER E. HEARINGS

7 TAC §§76.71 - 76.73

The new sections are adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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SUBCHAPTER F. FEES AND CHARGES

7 TAC §§76.91 - 76.103, 76.105 - 76.110

The new sections are adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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Douglas B. Foster
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Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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SUBCHAPTER G. STATEMENTS OF POLICY

7 TAC §76.121

The new section is adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Effective date: January 5, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 475-1350

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SUBCHAPTER H. CONSUMER COMPLAINT PROCEDURES

7 TAC §76.122

The new section is adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§76.122. Consumer Complaint Procedures.

(a) Definitions.

(1) "Privacy notice" means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Texas Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 475-1505, or via electronic submission on the Department's website at http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html.

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required 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 customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) If a state savings bank maintains a website, the required notice must be included in a screen which the consumer must view whenever the site is accessed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201105632
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Effective date: January 5, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 475-1350

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CHAPTER 79. MISCELLANEOUS

The Finance Commission of Texas (the Commission) adopts the repeal of 7 TAC Chapter 79, §§79.1 - 79.7, 79.12, 79.21 - 79.26, 79.41 - 79.47, 79.61, 79.71 - 79.73, 79.91 - 79.103, 79.105 - 79.110, 79.121, and 79.122, concerning Miscellaneous. The repeal is adopted without changes to the proposal as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7441), and will not be republished.

The repeal of Chapter 79, and the separate adoption of the rules under new Chapter 76, are adopted to allow the department to reorganize its rules and provide for additional rules.

The 30-day comment period ended December 4, 2011, during which no comments were received on the proposed repeal.

SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §§79.1 - 79.7, 79.12

The repeal is adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the

advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§79.21 - 79.26

The repeal is adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Effective date: January 5, 2012
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For further information, please call: (512) 475-1350

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SUBCHAPTER C. HOLDING COMPANIES

7 TAC §§79.41 - 79.47

The repeal is adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Effective date: January 5, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 475-1350

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SUBCHAPTER D. FOREIGN SAVINGS BANKS

7 TAC §79.61

The repeal is adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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Douglas B. Foster
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Texas Department of Savings and Mortgage Lending
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Proposal publication date: November 4, 2011
For further information, please call: (512) 475-1350

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SUBCHAPTER E. HEARINGS

7 TAC §§79.71 - 79.73

The repeal is adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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Douglas B. Foster
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For further information, please call: (512) 475-1350

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SUBCHAPTER F. FEES AND CHARGES

7 TAC §§79.91 - 79.103, 79.105 - 79.110

The repeal is adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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Douglas B. Foster
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For further information, please call: (512) 475-1350

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SUBCHAPTER G. STATEMENTS OF POLICY

7 TAC §79.121

The repeal is adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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Douglas B. Foster
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For further information, please call: (512) 475-1350

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SUBCHAPTER H. CONSUMER COMPLAINT PROCEDURES

7 TAC §79.122

The repeal is adopted under Texas Finance Code §11.302 and §92.201, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

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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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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Proposal publication date: November 4, 2011
For further information, please call: (512) 475-1350

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CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

The Finance Commission of Texas (the Commission) adopts new 7 TAC Chapter 79, §§79.1 - 79.5, 79.20, 79.30, 79.40, and 79.50, concerning Residential Mortgage Loan Servicers. Sections 79.1, 79.3 - 79.5, 79.20, 79.30, 79.40, and 79.50 are adopted without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7444). Section 79.2 is adopted with changes to the proposed text as published.

The new sections will implement the provisions of Senate Bill 17 as passed by the 82nd Legislature.

New §79.1, concerning Definitions, provides definitions needed to correctly interpret Chapter 79, including those for "Department," "Nationwide Mortgage Licensing System and Registry," "Commissioner," "Commissioner's designee," and "person."

New §79.2, concerning Required Disclosure, sets forth the required notice that must be provided to a residential mortgage loan borrower within 30 days after the registrant begins servicing the loan.

New §79.3, concerning Registration - General, sets forth the method of submitting applications, the requirement that applicants submit a complete application, the term of a valid registration, the method for establishing application fees, and notification requirements placed on the applicant if information contained on the application is no longer correct.

New §79.4, concerning Bond Requirement, outlines the prescribed requirements for bonds submitted by applicants for the Residential Mortgage Loan Servicer registration. Bonds must comply with Finance Code §158.055(b) or (c) and must be payable to the Commissioner. The provisions also describe

requirements for the name of the principal insured on the bond and the documents that must accompany a submitted bond.

New §79.5, concerning Renewal of Registration, outlines the process an applicant must complete in order to renew a registration and the requirement that an applicant must continue to meet minimum requirements for registration in order to be granted a renewal.

New §79.20, concerning Complaints and Investigations, outlines the procedures followed by the Commissioner upon the receipt of a complaint, including a description of the investigation that may take place should the Commissioner determine that a complaint warrants such. The provisions also set forth the maximum that may be assessed against a person required to be registered under the Act who is the subject of an investigation.

New §79.30, concerning Appeals and Hearings, designates the hearing officer for the Finance Commission, cites 7 TAC Chapter 9 as the governing rules, and sets Austin, Texas as the default location of such hearings.

New §79.40, concerning Interpretations, states that the Commissioner may publish written interpretations of the Act and these regulations to provide clarification on their construction and implementation.

New §79.50, concerning the Savings Clause, states that "if any portion or provision of this chapter is found to be illegal, invalid, or unenforceable, such illegality, invalidity, or lack of enforceability shall not affect or impair the legality, validity, and enforceability of the remainder thereof, all of which shall remain in full force and effect."

The Department received no comments regarding the proposed new sections.

SUBCHAPTER A. REGISTRATION

7 TAC §§79.1 - 79.5

The new sections are adopted under Finance Code §158.003, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 158.

§79.2. Required Disclosure.

(a) A registrant shall provide to the borrower of each residential mortgage loan the disclosure contained in the following figure not later than the 30th day after the registrant begins servicing the loan.

(b) In order to let borrowers know how to file complaints with the Department, Residential Mortgage Loan Servicer registrants must include the disclosure contained in the following figure in all correspondence provided to borrowers:
Figure: 7 TAC §79.2(b)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201105663
Caroline Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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Proposal publication date: November 4, 2011
For further information, please call: (512) 475-1352

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SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

7 TAC §79.20

The new section is adopted under Finance Code §158.003, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 158.

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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Caroline Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1352

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SUBCHAPTER C. HEARINGS AND APPEALS

7 TAC §79.30

The new section is adopted under Finance Code §158.003, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 158.

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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Caroline Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1352

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SUBCHAPTER D. INTERPRETATIONS

7 TAC §79.40

The new section is adopted under Finance Code §158.003, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 158.

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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Caroline Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1352

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SUBCHAPTER E. SAVINGS CLAUSE

7 TAC §79.50

The new section is adopted under Finance Code §158.003, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 158.

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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Caroline Jones
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For further information, please call: (512) 475-1352

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3012

The Finance Commission of Texas (commission) adopts new §83.3012, concerning provisional licenses for credit access businesses, with changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7446).

The commission received no written comments on the proposal.

In general, the purpose of the new rule is to facilitate the implementation of House Bill (HB) 2594, as enacted by the 82nd Texas Legislature. HB 2594 requires credit access businesses that provide payday or title loans under Texas Finance Code, Chapter 393 to obtain a license with the Office of Consumer Credit Commissioner. The new rule provides a provisional license procedure that will assist the industry and the agency in complying with the statutory provisions effective January 1, 2012.

The agency believes that approximately 900 applications for 3,500 locations will be filed before January 1, 2012. The licensing process contains several time-consuming elements, including conducting criminal background investigations, establishing net assets, and processing other required licensing information. The agency believes that a transition period is necessary and appropriate to fulfill HB 2594. Thus, the adopted rule will allow a credit access business applicant to provide certain information to obtain a provisional license and maintain operation while its permanent license is pending. The individual purposes of each subsection are provided in the following paragraphs.

Subsection (a) describes the effects of a provisional license, which authorizes the holder to operate as a credit access business during the provisional period. In addition, the holder of a provisional license must comply with all legal requirements (aside from those involving permanent licensure) as if the holder had been issued a permanent license.

The information required to obtain a provisional license is outlined by §83.3012(b). The applicant must submit five items in order to be granted a provisional license: the application for license form (including location information, responsible person, registered agent, and owners and principal parties), the consent form, entity documents, a financial statement and supporting financial information, and new license fees. The details for each requirement are provided by permanent licensing rules, §83.3002, concerning Filing of New Application, and §83.3010, concerning Fees.

Subsection (c) provides the provisional period for provisional licenses granted before January 1, 2012. A provisional license granted before January 1 will be effective through March 30, 2012, or until the applicant's permanent license is either granted or a denial becomes final.

Section 83.3012(d) delineates the provisional period for provisional licenses granted on or after January 1 but before April 1, 2012. Provisional licenses issued during this "grace period" will be effective for 90 days from the date issued, or until the applicant's permanent license is either granted or a denial becomes final. Additionally, during the 90-day grace period of January 1 through March 31, 2012, a person may continue to operate as a credit access business under Chapter 393.

Since the proposal, the verb "will" has been replaced with "may" in §83.3012(d)(1). Issuance of a provisional license is a discretionary act involving the judgment of the commissioner. The agency believes this change is necessary as there may be unanticipated facts or circumstances that would cause the issuance of provisional license to not be in the public interest.

The provisional period may be extended by the commissioner for good cause under §83.3012(e). A provisional license holder may receive an extension of 30 days for one or more terms.

Subsection (f) outlines the due process rights of applicants who receive notice of the denial of their permanent licenses during the provisional period. A provisional license holder has a right to request a hearing to challenge the denial of the permanent license. Upon notice of the denial, the provisional period is tolled until the permanent license is either granted or the denial is final. Section 83.3012(f) also describes the status of the provisional license when the applicant requests a hearing, or when the applicant does not request a hearing.

Section 83.3012(g) provides the additional requirement for applicants that engage in unlicensed activity. Paragraph (1) defines the circumstances that will constitute "unlicensed activity" under the rule. Under paragraph (2), applicants having engaged in unlicensed activity must specifically establish that the business will be operated lawfully and fairly in a sworn written statement.

The new section is adopted under Texas Finance Code, §393.622, which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Subchapter G, Licensing and Regulation of Certain Credit Services Organizations, under Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.3012. Provisional License.

(a) Effects of provisional license.

(1) Authorized activities. A provisional license granted under this section authorizes the person receiving the provisional license to operate as a credit access business under Texas Finance Code, Chapter 393 during the provisional period as determined by subsection (c) or (d) of this section, as applicable.

(2) Laws applicable to provisional license holder. Aside from the licensing provisions not included in subsection (b) of this section, the holder of a provisional license is required to comply with all requirements of Texas Finance Code, Chapter 393 and other applicable laws for credit access businesses as if the provisional license holder had been issued a permanent license.

(b) Required information. If an applicant for a credit access business license provides all information required by the following provisions of this title, the applicant will be issued a provisional license under this section. The information required for a provisional license is:

(1) Application for license as provided in §83.3002(1)(A) of this title (relating to Filing of New Application), including location information, responsible person, registered agent, and owners and principal parties;

(2) Consent form as provided in §83.3002(1)(E) of this title, signed by an authorized individual;

(3) Entity documents as provided in §83.3002(2)(B) of this title;

(4) Financial statement and supporting financial information as provided in §83.3002(2)(C) of this title; and

(5) Fees for new licenses as provided in §83.3010(a) of this title (relating to Fees), including a $200 investigation fee, assessment fees of $600 per active license and $250 per inactive license, and a fee not to exceed $200 for the Texas financial education endowment.

(c) Provisional period for provisional license granted before January 1, 2012. If an application including the required information under subsection (b) of this section is received before January 1, 2012, the applicant will be issued a provisional license effective through March 30, 2012, or until the applicant's permanent license is either granted or a denial becomes final.

(d) Provisional period for provisional license granted on or after January 1 but before April 1, 2012.

(1) If an application including the required information under subsection (b) of this section is received on or after January 1 but before April 1, 2012, the applicant may be issued a provisional license effective for 90 days after the date issued, or until the applicant's permanent license is either granted or a denial becomes final.

(2) Grace period. During the 90-day grace period provided in paragraph (1) of this subsection, a person may continue to operate as a credit access business under Texas Finance Code, Chapter 393.

(e) Extension of provisional period. The commissioner may extend a license holder's provisional period for one or more terms of 30 days for good cause.

(f) Due process.

(1) Right to hearing on permanent license denial. If a provisional license holder receives notice during the provisional period that its application for a permanent license has been denied, the provisional license holder has a right to request a hearing to challenge the denial of its permanent license as provided in §83.3007(d) of this title (relating to Processing of Application).

(2) Effect of permanent license denial on provisional period. If a provisional license holder receives notice during the provisional period that its application for a permanent license has been denied, the provisional period is tolled from the date the denial is received by the holder until its permanent license is either granted or the denial becomes final.

(3) No hearing requested. If the provisional license holder does not request a hearing after denial of its permanent license, the denial will become final and the provisional license will be canceled the date the final order is effective.

(4) Hearing requested. If the provisional license requests a hearing after denial of its permanent license and:

(A) the permanent license is subsequently granted, the provisional license will convert to a permanent license, providing the business continuous authority to operate under Texas Finance Code, Chapter 393.

(B) the denial of the permanent license is subsequently upheld, the provisional license will be canceled the date the final order is effective.

(g) Additional requirement for applicant that engaged in unlicensed activity under Texas Finance Code, Chapter 393.

(1) Unlicensed activity. An applicant or person that operates under Texas Finance Code, Chapter 393 under the following circumstances will be engaged in unlicensed activity:

(A) operating on or after April 1, 2012, without submitting an application;

(B) operating on or after April 1, 2012, if the applicant has filed an application but has not provided the required information under subsection (b) of this section;

(C) operating after cancellation of the applicant's provisional license; or

(D) operating after denial of the applicant's permanent license becomes final.

(2) Additional requirement to specifically establish lawful and fair operation. If an applicant engaged in unlicensed activity under Texas Finance Code, Chapter 393, the applicant must provide specific information to establish that the applicant will command the confidence of the public and that the applicant will warrant the belief that the business will be operated lawfully and fairly. This information must be provided in a sworn written statement signed by an authorized individual for the applicant.

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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Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: November 4, 2011
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DIVISION 6. CONSUMER DISCLOSURES AND NOTICES

7 TAC §§83.6001 - 83.6008

The Finance Commission of Texas (commission) adopts new §§83.6001 - 83.6008, concerning the disclosure and notice requirements of credit access businesses. Sections 83.6003 and 83.6006 - 83.6008 are adopted with changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7448). Sections 83.6001, 83.6002, 83.6004 and 83.6005 are adopted without changes.

The commission received eleven written comments on the proposal, consisting of two formal letters and nine emails submitted in response to the consumer disclosure feedback tool posted on the agency's website. Those submitting web comments were the following: Tracy Armstrong, EZ Corp; Tommy Young, Genesis Financial Software; Meghan Holder, Denise Gonzales Cates, Shannon Kendrick, and Christi Osborne, Heart of Texas Goodwill Industries, Inc.; Michael Hetrick; Miro Posavec; and an anonymous commenter. One formal letter was submitted by the Consumer Service Alliance of Texas, and the other formal letter is a joint comment submitted on behalf of these organizations: AARP, El Paso Affordable Housing, National Council of Jewish Women, One Voice Central Texas, RAISE Texas, Texans Care for Children, Texas Appleseed, Texas Association of Goodwills, Texas Impact, and Texas NAACP.

Overall, the comments offer recommendations to improve the proposed rules, with the majority of the comments relating to specific suggestions for the consumer disclosure forms under §83.6007. One formal letter is from an industry trade association and the other is a joint comment submitted on behalf of several consumer groups. These two comments provide views from both sides of a credit access business transaction. The commission's responses to the comments received are addressed following the purpose paragraph for the provisions receiving comments.

In general, the purpose of the rules is to implement House Bill (HB) 2592, as enacted by the 82nd Texas Legislature. HB 2592 requires the commission to prescribe a consumer disclosure to be used by credit access businesses that engage in payday or auto title loans. The bill also requires credit access businesses to post certain fee information and notices. The purpose of the adopted rules is to provide the content of the consumer disclosures, related procedural rules, and rules concerning the posting of fee schedules and notices.

As a note of background regarding these rules, credit access businesses (CABs) will be an industry newly regulated by the agency. The agency decided that it would be in the best interest of consumers as well as the industry to gather information from interested stakeholders in order to prepare an informed and well-balanced proposal for the commission. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and received written comments from interested stakeholders. Subsequently, the agency held a stakeholders meeting where stakeholders provided verbal testimony and elaborated on their written comments to the ANPR.

Upon review of all the commentary provided, the agency also distributed a draft consumer disclosure to the growing list of stakeholders for specific early or precomment prior to the presentation of the rules to commission. The agency believes that this early participation of stakeholders in the rulemaking process has greatly benefited the resulting adoption.

The agency carefully evaluated the stakeholders' comments and incorporated numerous recommendations offered by the stakeholders.

During the development of the consumer disclosures, the agency reviewed and incorporated concepts from the Federal Reserve. *See* Jeanne M. Hogarth and Ellen A. Merry, "Designing Disclosures to Inform Consumer Financial Decisionmaking: Lessons Learned from Consumer Testing," Federal Reserve Bulletin, Vol. 97, No. 3 (August 2011). As recommended by the Federal Reserve, the agency sought to create disclosures that would have plain but meaningful language, use thoughtful design to guide consumer understanding (e.g., titles, headings, tables, charts), and provide contextual information to show the consumer how the different parts of the disclosure relate to the whole form.

To provide a consistent discussion of the disclosures as they have evolved from proposal to adoption, the following terms will be used in reference to the statutorily required disclosure items under Texas Finance Code, §393.223, as enacted by HB 2592: "CAB Transaction Terms" refers to the first part of subsection (a)(1), "Alternatives Comparison Data" refers to the second part of subsection (a)(1), "Accumulated CAB Fees" refers to subsection (a)(2), "Typical Pattern of Repayment" refers to subsection (a)(3), and "Car Loss Consumer Warning" refers to subsection (b). Additional disclosure items will usually be referenced using either the title found on the draft form or a general description of the disclosure item content.

Since the proposal, in response to informal comments received and internal agency review, revisions were made to the single payment payday loan disclosure ("single payday disclosure"). The agency determined that focusing on interim revisions for one product disclosure would be most efficient, as the general content and layout of all four product disclosures are similar in nature. Changes to the single payday disclosure will be outlined throughout this discussion for illustration purposes. Any use of

the singular term disclosure will usually encompass all four disclosure forms. For any final adoption revisions, parallel changes have been made to the other three product disclosures as well (multiple payment payday loan, single payment auto title loan, multiple payment auto title loan). Specific changes relating to only the auto title loan product disclosures or the multi-payment disclosures will be noted where appropriate.

Beginning with Figure: 7 TAC §83.6007(a) as proposed, the revisions will be described as incorporated into the web draft labeled "Version A." The first changed item is the title of the form. In response to informal comments received, the phrase "repaid in one payment" has been removed, using an interim form title of "Single Payment Payday Loan" to provide a more neutral description of the loan product. The proposed "My Loan" and "Terms of My Loan" boxes (CAB Transaction Terms), and Accumulated CAB Fees disclosure, all of which had included dynamic terms, were reworked into a combined static example and placed more prominently as the first chart in Version A. The title of this chart was revised as follows: "How much could a two-week $500 payday loan cost?" This interim title and disclosure location reflect a suggestion from an informal comment that the most important thing to borrowers is how much the loan will cost. Also in response to informal comments, a clarification footnote was added stating that "payment amounts are approximated and based on a 30-day month." Additionally, the proposal included a boxed arrow containing three "must pay" or "do not pay" statements. This information was removed as unnecessary.

The information in the "Consumer Disclosure" box proposed on the top right of page one was slightly reworded and included in an untitled box below the form title in Version A. A statement regarding payday loans possibly being one of the more expensive borrowing options was moved from the middle of the proposed form's page one to the top box in Version A. A note including other terminology used for payday loans was also added to this top box.

The narrative language proposed in the middle of page one was streamlined and combined with the third statement from the proposed "Consumer Disclosure" box regarding the consumer's freedom of choice with respect to loan options. In addition, this language was coupled with a triangular warning symbol.

On page two of the proposed form, a list of questions for the consumer to consider was provided as the top third of the page under the title "Is a Payday Loan Right for Me?" In Version A, these questions remain on page two but were condensed into one-third the size and listed under the title "Ask Yourself . . . ." The wording within some of the questions was modified to accommodate multiple payment loans.

The Typical Pattern of Repayment proposed as the middle chart of page two was relocated to become the bottom chart on page one of Version A under the new title "How Long Could It Take to Repay a Loan?" Informal comments received indicated that this chart would be useful to consumers and should be more prominent. Also due to informal comments received, a clarifying footnote was added stating that repayment patterns may be different in different areas.

The final chart containing the Alternatives Comparison Data was proposed as the bottom third of page two. This disclosure remained in the same location in Version A but was modified in its presentation. The proposed vertical format was turned horizontally to present the least expensive alternatives to the most expensive alternatives from left to right. The labels "Least Expensive" and "Most Expensive" were also added at each end for clarity. In addition, an APR range was included for the payday loan rates to better reflect market variances. Adjoining the Alternatives Comparison Data chart was a modified version of the proposed "Terms of My Loan" chart so that a direct comparison could be made between the payday loan terms and other alternatives. This modified payday loan comparison box was titled "Loan Calculation" in Version A and was further changed in presentation to reduce confusion with the Truth in Lending box on the consumer's contract.

Other items added to Version A since the proposal were as follows: a list of "Other Considerations" for borrowers (e.g., the use of personal checks), a reference to the agency's financial literacy resource webpage, a list of resources for "Questions" regarding terms or costs, complaints, or general information regarding payday loans. This resource list included the agency's email and toll-free consumer helpline. Additionally, a statement that the form has been provided in accordance with HB 2592 was also added to Version A.

In order to obtain input on these interim revisions, the agency posted an online consumer disclosure feedback tool on its website to seek comments from industry and consumers on interim drafts of the disclosure forms. Two revised versions of the single payday disclosure were posted for review, differing in the presentation and layout of the disclosures. An email was also sent to stakeholders including a link to the feedback tool.

In general, the web comments were almost evenly split with five web commenters favoring Version A, and four web commenters favoring Version B. Specific written comments regarding particular disclosure provisions, both from web commenters and the two formal letter comments, will be discussed following the purpose paragraph of §83.6007, Consumer Disclosures.

Section 83.6001 outlines the purpose of the new rules in Division 6, which is to provide disclosures and notices for credit access business transactions under Texas Finance Code, Chapter 393.

Section 83.6002 provides general definitions to be used throughout the division, including the incorporation of definitions contained in the Texas Finance Code. The section also provides acceptable acronyms and alternate terminology. These definitions will help ensure consistent treatment and application of the defined terms.

Section 83.6003 delineates the manner in which fee schedules and other notices are to be posted as required by Texas Finance Code, §393.222. In general, the fees and notices must be prominently posted in a conspicuous location whether for in-person sales or business conducted via the Internet. Specific provisions for Internet business include guidelines for direct links to the posted information.

One commenter pointed out that proposed §83.6003(a)(3) included a statutory citation error to subsection (a)(1) instead of (a)(3) of Texas Finance Code, §393.222. The commission agrees and has corrected the citation for this adoption.

Section 83.6004 outlines the particular types of fees to be included in a credit access business's fee schedule. For three to five examples of the most common loans transacted by the credit access business, the business must list the standard fee rate, the APR, any additional fees charged at inception of the loan, the standard loan term, and any late fees or nonsufficient funds fees, if charged. The examples must be provided for each loan product offered. Additional information may be included on

the fee schedule at the option of the business as long as it is not misleading.

Section 83.6005 explains the relationship of federal law to the state requirements. The section describes how any conflicts or inconsistencies will be resolved.

Section 83.6006 prescribes the general format of the consumer disclosures under Texas Finance Code, §393.223, including readable typefaces and the requirement that the forms be provided in a separate document.

In response to informal comments received, the language in §83.6006(c) has been modified to allow the CAB to print the disclosure either on a single sheet of paper (front and back), or on two sheets of paper printed only on the front sides of each page. This option will provide flexibility to the industry resulting in more cost efficient methods of compliance.

Two commenters raise concerns about the disclosure being either dynamic or static. The purpose of HB 2592 is to provide consumers with appropriate and relevant information to determine whether a payday or auto title loan would be the correct option for their financial needs. Texas Finance Code, §393.223(a) states that the disclosure must be provided by the CAB "[b]efore performing services." While a dynamic disclosure would be specific to the borrower, some "services" will likely be provided in order to accurately complete a dynamic disclosure. Furthermore, a consumer is much more invested in a particular transaction and company simply due to the extra time required to prepare a dynamic disclosure. Thus, in order to best fulfill the intent of HB 2592, the agency decided that an upfront static disclosure would be the most appropriate format.

With the assumption of the disclosure form being static, one commenter states that the forms "can be pre-printed" and that "no change to the proposed rule is necessary."

Another commenter asks that the agency "consider developing a dynamic web-based tool that would allow potential borrowers to compare loan pricing among various consumer loan products." While such a web-based tool is outside the scope of HB 2592, the agency will take this suggestion under consideration for the future.

Section 83.6007 provides the required disclosures under Texas Finance Code, §393.222 to be provided to consumers before a credit application is provided or before a financial evaluation occurs in conjunction with a payday or auto title loan. Four disclosures are contained in the figures accompanying subsections (a) - (d) to accommodate the four main products offered by the industry: single payment payday loan, multiple payment payday loan, single payment auto title loan, and multiple payment auto title loan.

Since the proposal, the phrases "to be repaid in one payment" or "to be repaid in multiple payments" have been deleted throughout §83.6007 in response to informal comments. These changes are intended to address potential confusion with single payment loans that are refinanced. Parallel changes have been made in subsections (a) - (d) to use the terminology outlined in the preceding paragraph to describe each type of loan product.

Three commenters presented concerns regarding the timing of the delivery of the disclosure. The commenters offer similar positions with one stating "the disclosure needs to be provided *before* the application process begins," and the other stating that each customer should receive the disclosure "prior to [the CAB] performing services." A web commenter states: "With regard to all the statistics, I think those facts would be better served to the customer [if] they were prepared on a form that the customer could review prior to entering into a loan."

The commission agrees with the commenters regarding when the disclosure should be delivered. Therefore, throughout subsections (a) - (d) of §83.6007, "before consummation of" has been replaced with the following phrase for this adoption: "before a credit application is provided or a before a financial evaluation occurs in conjunction with" a loan.

One commenter states that the disclosure must be provided with each new loan, renewal, or refinance transaction. All three transactions would constitute an "extension of consumer credit" under HB 2592, thus triggering the required disclosure. Therefore, while the commission agrees with the commenter, no revisions to the rule are necessary on this issue.

One commenter requests that the disclosure be "easily available for potential customers" and that copies be "conspicuously displayed in store locations or on Internet sites." The commission believes that the changes to §83.6007 discussed in the preceding paragraph inherently make the disclosure "easily available" due to the delivery prior to credit application or financial evaluation. Hence, while the commission agrees with the commenter's concept, further revisions to the rule are not needed. With regard to the request for the disclosure to be "conspicuously displayed," this suggestion goes beyond the scope of HB 2592. The commission declines to incorporate this display recommendation as it outside the scope of and is not required by the statute.

One commenter recommends "a uniform disclosure based on a cost per $100 transaction amount for each of the four primary types of loans" offered. Another commenter believes that for a static document to be meaningful, an average or median loan amount should be used. The commission agrees with the commenters in part and believes that some type of representative loan amount should be used. A $100 loan amount is not common and informal comments indicate that borrowers do not find it useful or have difficulty in multiplying the $100 amount by a factor to obtain their loan amount. Although the commission declines to utilize the $100 amount, the commission agrees with the first commenter in the use of a "uniform disclosure." However, a disclosure with one average or median amount as suggested by the second commenter would be limited as well. To strike the appropriate balance, the commission has incorporated the use of typical loan amounts with the addition of subsection (e) to §83.6007. New subsection (e) outlines the requirement of three to five example disclosures that credit access businesses must develop for each of their payday and auto title loan products. These examples correspond with the fee schedule examples required by §83.6004. The business must provide the disclosure for the product and amount most related to the consumer's loan request.

One commenter requests that the disclosure "be made available in English, Spanish, and the language used in the marketing of payday and auto title loans." A Spanish or other language disclosure is not required by the statute. The commission declines to incorporate a Spanish-language disclosure for this adoption. However, the commission recommends that CABs conducting business in Spanish make a Spanish disclosure available to their Spanish-speaking customers. The agency will assist CABs in the industry's efforts to have a Spanish translation accessible when appropriate.

One commenter states: "The 'My Loan' box and the 'Terms of Loan' box on the first page looks very similar to the Truth-in-Lending Act ('TILA') disclosures that will appear on the customer's promissory [note]. None of the terms on the proposed form match the terms in the TILA disclosure. This could be very confusing to the customer who is attempting to reconcile the disclosure form to the TILA disclosures in the promissory note." Regarding the commenter's statement that the disclosure terms do not match the TILA terms, the agency disagrees as the HB 2592 disclosure falls under the TILA advertisement provisions found in 12 C.F.R. §226.24. Under this regulation, the disclosure of the cost of the loan, i.e. interest and fees, triggers the disclosure of the APR and repayment terms. While the HB 2592 disclosure is not itself a TILA disclosure, there are common items that must be disclosed in both.

Though the agency recognizes the potential confusion, the TILA advertisement regulation requires that certain information be provided along with the statutory information. As discussed earlier, the proposed "My Loan" and "Terms of My Loan" boxes (CAB Transaction Terms) and Accumulated CAB Fees disclosure were reworked into a combined static example. The changes are intended to make this disclosure look different than the TILA disclosure to reduce any confusion.

In the Accumulated CAB Fees disclosure, one commenter "recommends that the chart either list 30, 60 and 90 days in lieu of 1, 2 and 3 months, or include a footnote indicating payment amounts are based on a 30 day month with interest calculated on a daily basis." Although the commission maintains the statutory language of one, two, and three months, a footnote clarifying that "payment amounts are approximated and based on a 30-day month" has been added to the single payday disclosure for this adoption. The other three disclosure forms include a footnote simply regarding the approximate payment amounts, as these calculations were based on a 28-day month. However, use of a 30-day month is permissible for all four loan products.

Also in relation to the Accumulated CAB Fees disclosure, on the multi-payment forms in §83.6007(b) and (d) the columns and numbers have been revised to respond to an informal comment and to incorporate agency corrections. A column entitled "Payment Number" has been added to illustrate how certain payments are not shown within the chart. The column regarding fees and interest has been renamed "Accumulated Interest & Fees" to maintain consistency with the statute. The numbers within that column have been revised to include both interest and CAB fees. The column entitled "Total amount paid with this payment" has been removed and the payment amount has been restated as part of the CAB Transaction Terms disclosure. The last column on the proposed forms reflected a payoff amount at the time of the payment listed, showing a declining balance. The agency has replaced that column with one entitled "Total Paid Principal + Accumulated Interest & Fees." This is increasing balance information, as the customer would have to have paid the entire CAB fee, the full borrowed amount, and the earned interest. Each payment number rises slightly with the accrued interest.

With regard to the Typical Pattern of Repayment disclosure, one commenter "recommends consideration of a narrative disclosure explaining that some people will pay the loan in one payment, others will renew the loan one or two times, etc. . . . If similar information is not available for all four types of transactions . . . a narrative disclosure would be less confusing to most customers." The agency acknowledges that one proposed form did include some blanks reserved for this information. While Texas data for this disclosure has not been collected, studies have been conducted in other states. The information reviewed clearly reflects a strong pattern of payday and auto title loans being renewed several times, regardless of the exact number of renewals. Further, many companies that operate nationwide own CABs in Texas; these national lending trends are relevant to Texas. The agency must work with the data currently available and believes that a narrative disclosure would be much less effective in delivering this information to the consumer. For this adoption, the closest repayment pattern for the loan product will be included in each disclosure. Notations have been added to reflect the source and any limitations of the data. Although the commission declines this comment, upon collection of quarterly data from the CAB industry, more accurate data representative of Texas consumers will be added to the disclosures.

Also concerning the Typical Pattern of Repayment disclosure, one commenter states that the data must "capture back to back loans in addition to simple loan refinances. The standard for a renewal or refinance should be taken from the language of the negotiated bill from the most recent legislative session, HB 2593 . . . ." House Bill 2593 did not pass and the commission does not agree to use a standard from failed legislation. However, a joint work group of industry and consumer representatives has developed a definition of "refinance" in conjunction with the development of the data reporting forms. As noted in earlier discussion, once data is collected from Texas CABs, the repayment information will be updated and will reflect the work group's definition.

The commenter also requests that a "summary statement about refinance patterns for most borrowers" be included. The commission declines to incorporate the suggested summary statement as this data is simply not available for Texas and is not required by the statute. The commission will reserve this comment for future study when more accurate data has been collected as a result of the industry's quarterly reports.

One commenter states that the comparative rates in the Alternatives Comparison Data disclosure "are not an accurate reflection of the Texas marketplace." The agency has conducted additional research concerning these rates and discovered more representative data for auto title loans. An analysis was performed of rates and fees posted by Texas businesses on their websites. Thus, for this adoption, the comparison numbers provided in the Alternatives Comparison Data disclosure have been changed to reflect a range of 180% to 590% annual percentage rate (APR) and a range of $4.43 to $15.42 of interest and fees per $100 borrowed over two weeks. Additionally, once quarterly data information has been collected under Texas Finance Code, §393.627, the agency will be in a position to amend the disclosure with more accurate information next year.

One commenter "recommends other, more realistic debt alternatives" such as "credit card cash advances (including 'over the limit advances') . . . and purposely bouncing a check and incurring the NSF charges" be included in the Alternatives Comparison Data disclosure. Texas Finance Code, §393.223(1) requires that comparison information for "other alternative forms of consumer debt" be disclosed. While credit cards are already included in the chart, over the limit credit card fees are not an "alternative form [ ] of consumer debt." Likewise, NSF charges on bounced checks are also not a form of consumer debt. Therefore, the commission declines the commenter's suggestion as outside the scope of the statute.

One commenter states: "Focus group testing of different disclosure presentations is essential to ensure that the information and the presentation are clear, understandable and adequately implement HB 2592." The agency acknowledges the value of focus group testing. In that vein, the agency employed the consumer disclosure feedback tool in order to obtain immediate input from consumers as to the clarity and level of comprehension of the information presented. This approach was utilized with the goal of having the disclosure forms available to the industry by the statute's implementation date of January 1, 2012. The agency will continue to pursue focus group testing in the future to refine and improve the disclosures.

The remaining comments relate to formatting, display, and labeling of particular disclosures. One commenter "recommends the disclosure form include a label, logo or tag line identifying the form as a state-mandated form to differentiate it from other disclosures provided by the CAB." The commission agrees with this comment and has incorporated a state seal and accompanying language stating: "Official State of Texas Notice: This consumer disclosure has been provided in accordance with Section 393.223 of the Texas Finance Code."

One commenter states that the disclosure should be "streamlined" in order to have "a clear document in a large, readable font" with the removal of "excess text that does not add to the disclosure." In light of all comments received, the agency has sought to streamline the disclosure, including large fonts as much as possible, and removing unnecessary information.

One commenter requests headings that are "simple and clear, not technical in nature." The commenter offers two suggestions for the form's title: "How Much Does This Payday Loan Cost," or "Consumer Disclosure: Payday Loan." With two different payday loan products commonly offered, the suggested headings do not provide any distinction between a single payment payday loan and a multiple payment payday loan. The agency believes that the single payment and multiple payment language is necessary in order for the CAB to provide the disclosure for the correct product. Although the commission declines the commenter's suggested headings, the headings have been modified in the order of the wording, which the agency believes provides better clarity. Thus, to illustrate, the two payday loan forms will have the following titles for this adoption: "Payday Loan - Single Payment" and "Payday Loan - Multiple Payment."

One web commenter states: "I like the cost disclosure right on the front, big and bold. That's the most important information in my opinion." Two other web commenters agree that the cost of the loan should be prominent. As outlined earlier, the CAB Transaction Terms and Accumulated CAB Fees have been combined and placed as the first chart on page one. Two web commenters prefer having the Typical Pattern of Repayment in a prominent location. Both of these charts have been maintained on page one for this adoption.

One web commenter did not like "that the calculation of the loan amount appears twice on the form which could be confusing to the customer." The commenter appears to be referring to the CAB Transaction Terms on page one and the "Loan Calculation and Cost Comparison" on page two, which adjoins the Alternatives Comparison Data. While similar, the agency believes that both of these disclosures are necessary. The CAB Transaction Terms are emphasized on page one as part of the cost of the loan. The Loan Calculation data is then needed in conjunction with the review of the alternative forms of debt. The commission has maintained the inclusion of both of these disclosures for this adoption.

One web commenter asked that "the form [be provided] in a word form and limit the use of images as they are often hard to duplicate in our lending systems." The agency believes that this issue has been resolved with the decision to make the forms static in nature. Furthermore, an informal commenter stated that charts and graphs are extremely beneficial to consumer comprehension.

One web commenter preferred that the form draw "the [reader's] attention to a list of easily understood questions a potential borrower should ask him or herself, before entering into any debt agreement . . . ." Another web commenter "liked that the questions people should consider before taking out a payday loan are on the first page of the document." Although the loan cost has been placed at the top of the form for this adoption, the "Ask Yourself . . ." questions remain prominent on page one.

Section 83.6008 describes the permissible changes that may be made to each of the disclosures. The disclosures are strict, prescribed forms that may only be changed according to the exclusive list outlined in §83.6008(a). One permissible change involves the ability of the credit access business to add an optional, dated signature block to record the consumer's acknowledgment of receipt of the disclosure. In addition, subsection (b) states that certain information within the disclosures will be updated periodically.

Since the proposal, §83.6008(a)(1) has been revised as the disclosure forms will no longer include dynamic terms specific to individual consumers. The adopted language incorporates the changes that each business will make to the forms in order to include the terms for their three to five most common loan examples. The provision as revised for this adoption states: "Filling in any dollar amounts, interest rates, or other terms specific to the three to five most common loans for each of the products offered by the credit access business."

One commenter has concerns about the ability of the CAB to combine the HB 2592 disclosure with certain federal disclosures. The commenter states: "Proposed §83.6008(a)(4) and (5) must state that combining the disclosure with other required disclosure cannot lead to decreasing the font size or chart size in the required disclosure and cannot interfere with the disclosure presentation." The commission agrees with the commenter's concept and has incorporated revisions into new subsection (b), with some allowance for minor reductions in font or chart size due to the requirement that the disclosure fit on a single sheet of paper (front and back), or on two sheets of paper printed only on the front sides of each page. Additionally, proposed §83.6008(b) has been relettered as subsection (c).

One commenter offers three consumer warnings and requests that they be presented prominently. First, the HB 2592 disclosure is required to include a warning to car title borrowers that they may lose their vehicle, i.e. the Car Loss Consumer Warning. The commenter suggests the following language: "Warning: You Could Lose Your Car; If you miss a payment or pay late on this title loan, the lender or the lender's agent can repossess your car to pay back your loan." The commission agrees with the commenter's suggestion and has included revised language similar to that provided by the commenter. The commission has also made this warning much more prominent and moved it toward the top of page one of the auto title disclosure forms in §83.6007(c) and (d). The commenter also requests that the Al-

ternatives Comparison Data chart include an asterisk and footnote providing the Car Loss Warning. The comparison chart encompasses several numbers, symbols and other visual cues. The agency believes that the addition of a footnote and additional text would crowd the existing information. Hence, the commission has declined this comment in order to preserve a cleaner visual presentation.

The other two warnings discussed by the commenter are not required under HB 2592 and are outside the scope of these rules. One warning relating to no criminal prosecution for nonpayment is required to be included in the CAB contract, not these disclosures. The third warning relating to making only minimum payments is not found in the law. The commission declines to include the latter two warnings recommended by the commenter.

One commenter provides a sample page one disclosure based on the designs presented on the agency's website. In addition to the changes already discussed, the commission has incorporated several suggestions from the commenter's page one, including the top box just beneath the title of the form stating, "After reviewing the terms of this loan, you are not required to choose this loan, and may consider other borrowing options, including those shown on Page 2 of this document." The language in web Version A that was located in the top box has been relocated to the middle of page two of the form. Additionally, under "Ask Yourself . . . ," the commenter's suggested question has been added: "Can I afford to pay this loan back *in full* in two weeks?"

In web Version A, information under the headings "Other Considerations" and "Questions" has been streamlined and reduced under the new heading "Additional Information" for this adoption. The remaining information includes items of "highest importance" to one commenter: "how to complain to or contact the OCCC, and links to the OCCC website resources." In addition, a web commenter "liked that there were additional resources available that people could use to find out more information . . . ."

Sections 83.6001, 83.6003, and 83.6004 are adopted under Texas Finance Code, §393.222, which authorizes the Finance Commission to adopt rules to necessary to implement §393.222, Posting of Fee Schedule; Notices. Sections 83.6001, 83.6002, and 83.6005 - 83.6008 are adopted under Texas Finance Code, §393.223, which requires the Finance Commission to adopt by rule a consumer disclosure including the statutory information in a form prescribed by the commission.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.6003. Posting of Fee Schedule and Notices.

(a) In-person sales. A credit access business must prominently display the following in the licensee's office in a conspicuous location visible to the general public:

(1) a schedule of all fees to be charged for services performed by the credit access business in connection with deferred presentment transactions and motor vehicle title loans, as applicable;

(2) the following consumer credit notice: "This business is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, consumer.complaints@occc.state.tx.us, www.occc.state.tx.us."; and

(3) the notice required by Texas Finance Code, §393.222(a)(3).

(b) Internet sales. For business conducted through the Internet, a credit access business must prominently display the information provided in subsection (a) of this section in a conspicuous location on the business's website and on any website where the business advertises to the public.

(1) Direct link for fee schedule. The posting required by subsection (a)(1) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "Fee Schedule" or "Schedule of All Fees."

(2) Direct link for consumer credit notice. The posting required by subsection (a)(2) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "Consumer Credit Notice," "OCCC Notice," or "Complaints and Inquiries Notice."

§83.6006. Format.

(a) Disclosures for credit access business transactions must be printed in an easily readable font and type size. If other state or federal law requires a certain type size for a specific disclosure or notice, the type size specified by the other law should be used.

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Arial, Calibri, Caslon, Century Schoolbook, Garamond, Helvetica, Scala, and Times New Roman.

(c) The consumer disclosure for each product offered under Texas Finance Code, Chapter 393 must be provided to consumers as a separate document. Each product disclosure must fit on one standard-size sheet of paper (8 1/2 by 11 inches), printed on both sides, or on two standard sheets of paper printed only on the front sides of each page.

§83.6007. Consumer Disclosures.

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.
Figure: 7 TAC §83.6007(a)

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.
Figure: 7 TAC §83.6007(b)

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure.
Figure: 7 TAC §83.6007(c)

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided or before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.
Figure: 7 TAC §83.6007(d)

(e) Consumer disclosures required for three to five common examples. For the three to five examples of the most common loans transacted by a credit access business as utilized under §83.6004 of this title (relating to Fee Schedule Content), the business must develop a consumer disclosure for those loan amounts, including appropriate fee information. Three to five examples must be developed for each

payday or auto title product sold by the business (e.g., three single payment payday examples of $300, $500, and $700; three multiple payment auto title examples of $1,000, $1,500, and $2,500). The credit access business should provide the consumer with the example form for the product and amount that most closely relates to the consumer's loan request.

§83.6008. Permissible Changes.

(a) A credit access business must use the required disclosures under Texas Finance Code, §393.223 as prescribed by Figures: 7 TAC §83.6007(a) - (d) of this title (relating to Consumer Disclosures), but may consider making only limited technical changes, as provided by the following exclusive list:

(1) Filling in any dollar amounts, interest rates, or other terms specific to the three to five most common loans for each of the products offered by the credit access business;

(2) Substituting the pronouns used to denote the consumer by substituting words such as "you" and "your" for "I" and "my," along with appropriate grammatical changes;

(3) Adding an optional, dated signature block at the very bottom of the disclosure form, which must include the following statement directly above the signature line of the consumer: "ACKNOWLEDGMENT OF RECEIPT: By signing below, I acknowledge only that I have received a copy of this disclosure prior to signing any contract for a payday or auto title loan, this ___ day of _____, 20__."

(4) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure regarding military borrowers under 10 U.S.C. §987 and 32 C.F.R. Part 232;

(5) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure requirements for advertising under the Truth in Lending Act, 15 U.S.C. §1632(a), and its implementing regulations, 12 C.F.R. §226.24.

(b) The permissible changes allowed by this section must not result in decreasing a font size by more than one point or a chart size by more than 10% from the required disclosure. Permissible changes cannot otherwise interfere with the presentation or layout of the disclosed information.

(c) The comparison information regarding alternative forms of debt required by Texas Finance Code, §393.223(a)(1) and the information regarding the typical pattern of repayment required by Texas Finance Code, §393.223(a)(3) will be periodically updated by the OCCC. Updated consumer disclosures required by §83.6007 of this title will be posted on the OCCC website.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105659
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: January 5, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 936-7621

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CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

7 TAC §88.304

The Finance Commission of Texas (commission) adopts amendments to §88.304, concerning credit counseling standards for debt management services providers, without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7451).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §88.304 is to remove obsolete language that is no longer necessary.

Section 88.304(c) regarding employee incentives is being deleted. Former subsection (c) prohibited credit counselors from receiving commissions or bonuses based on the how many consumers they sign up or how many services they sell. This subsection was enacted during 2007 when for-profit organizations were newly included under the scope of Texas Finance Code, Chapter 394 by the legislature. At that time, abuses had been seen concerning certain sales tactics, as evidenced by a federal study cited in the commission's preamble supporting subsection (c).

Recent amendments to the Federal Trade Commission's Telemarketing Sales rule are designed to address the abuses by prohibiting advance fees. The type of prohibition in former §88.304(c) is not a common regulatory practice for this industry in any other state. Therefore, the agency has determined that the additional regulatory requirement of a sales-commission prohibition is no longer necessary and goes beyond the level of regulation intended by the legislature in light of Senate Bill 141 enacted by the 82nd Texas Legislature.

The amendments are adopted 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 adoption are contained in Texas Finance Code, Chapter 394, Subchapter C.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105657
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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PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 155. PAYOFF STATEMENTS
SUBCHAPTER A. REGISTRATION

7 TAC §§155.1 - 155.3

The Finance Commission of Texas ("Commission") on behalf of the Commission, and the three Finance Agencies, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the "Finance Agencies") adopts new 7 TAC Chapter 155, §§155.1 - 155.3, concerning Payoff Statements. Section 155.1 and §155.3 are adopted without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7454). Section 155.2 and the form are adopted with changes to the proposed text as published.

The new sections prescribe rules for the newly required Payoff Statement Form.

Changes made to §155.2 and the form are in response to public comment received in writing and are described in the summary of comments and responses section of this preamble. In addition to changes made in response to written comments, the Commission modified the design of the form with non-substantive modifications, to enhance readability and clarity.

The purpose of the adopted rules is to implement new statutory requirements under §343.106 of the Texas Finance Code, a new section added to the Texas Finance Code with the enactment of House Bill 558 by the 82nd Legislature. This new statute requires the Commission to adopt rules governing requests from title insurance companies for payoff information from mortgage servicers related to home loans, including rules prescribing a standard payoff statement form. New Chapter 155 prescribes rules that fulfill this statutory requirement.

New §155.1, concerning Definitions, provides a definition of "home loans" needed to correctly interpret Chapter 155.

New §155.2, concerning the Payoff Statement Form, sets out the requirements of the prescribed standard form to be used by a mortgage servicer when providing a payoff statement at a title company's request on a home loan. Subsection (b) meets the statutory requirements of Texas Finance Code §343.106(d). Subsection (c) provides optional language a mortgage servicer may use if applicable to a particular loan. Pursuant to House Bill 558, use of the form is not required before the 90th day after the Commission adopts these rules.

New §155.3, concerning the Time Delivery of Payoff Statement, sets forth the number of business days a mortgage servicer has to deliver the payoff statement after a payoff request is received.

The Finance Agencies decided it would be in the best interest of the Texas mortgage industry to seek input from interested stakeholders in the preparation of the Payoff Statement Form in accordance with the requirements set forth by §343.106. Accordingly, the Finance Agencies held a stakeholders meeting where stakeholders provided verbal testimony.

The Commission received no comments regarding §155.1 and §155.3. The Commission received written comments on the Payoff Statement Form required by §155.2 from the following: The Farmers State Bank; Texas Bankers Association; Texas Mortgage Bankers Association; Midland Mortgage; and Shelby Savings Bank.

One commenter suggested the form clarify that the party responsible for completing the closing date information required by the form is the title company requesting payoff information for the loan. The same commenter suggested that the "loan type" line item be removed from the form because it could cause unnecessary confusion for consumers or other non-industry professionals. After considering this proposal, the existing language was maintained as it is intended for use primarily by mortgage industry professionals. However, the "loan type" line item was made optional, as this information, while helpful, is not necessary to process the payoff statement.

One commenter suggested the form specify which date is the correct due date required by the form. The correct date is the next payment due date. To enhance clarity, the Commission has accepted the comment. The term "due date" has been replaced with "next payment due date."

One commenter addressed the interpretation that the optional "current escrow balance" section of the form is not consistent with federal law. To prevent confusion, the Finance Agencies agreed it would be best to remove this optional language. However, the Commission incorporated language that "any amount held in escrow will be settled in accordance with applicable federal law."

One commenter suggested requiring title companies to use the form as a request form which would be submitted to mortgage servicers to obtain payoff statement information. Similarly, another commenter expressed concern about receiving insufficient information needed to process the request, and suggested that both parties be required to use a standardized form. One comment suggested such use would be unnecessary, but suggested it be made clear that requests are to initiate with title companies. The comment also suggested the request include the following three identifiers: (1) the name of the mortgagor; (2) the address or legal description of the underlying collateral of the mortgage; and (3) the closing date. The Finance Agencies determined that required use of the form as both a request form and a payoff statement form would be unnecessary and no more beneficial than less burdensome alternatives. Consequently, the Commission declines to require use of the form for requests. However, the Commission determined that requiring the three identifiers is the minimum information needed for a mortgage servicer to provide payoff statement information, and incorporated this suggestion into the new rule.

Two commenters suggested the form be used as a model only and not as a prescribed form. The Commission declines to accept this comment. Texas Finance Code §343.106 requires the Commission to prescribe a standardized form. Moreover, the prescribed form, Figure: 7 TAC §155.2(b)(6), was developed after receiving extensive input from the stakeholders and was designed to be flexible in meeting the stakeholders' needs. Moreover, to minimize regulatory impact, the Commission has incorporated language in the rule that permits use of a format if substantially similar to the prescribed form and contains all required elements of the prescribed form.

One commenter suggested the form indicate that the form must be sent to the mortgage servicer's designated address and appropriate contact person for requesting payoff statement information, if either are so designated. Another commenter suggested this include e-mail addresses. The Commission accepted these comments and incorporated the suggested changes into the new rule.

One commenter suggested the form include a notice stating that the statute provides mortgage servicers with at least seven busi-

ness days after the date the payoff statement is received to provide the payoff statement to the requesting title company. To enhance clarity and ease transition to requirements under the new rule, the Commission accepted this comment and has modified the form to include a notice of the time requirement prescribed by the new rule.

Another commenter suggested the form include a place for the borrower to sign, authorizing release of payoff statement information. After considering this proposal, the Finance Agencies determined that such a requirement is beyond the scope of the statute. If there is such a requirement it is imposed by federal law and remains in place. Thus, the Commission declined this comment.

The new sections are adopted under Texas Finance Code §343.106 which requires the Commission to adopt rules governing requests by title insurance companies for payoff information from mortgage servicers related to home loans and the provision of that information, including rules prescribing a standard payoff statement form that must be used by mortgage servicers to provide payoff statement information, and §§11.301, 11.302, and 11.304, which authorize the Commission to adopt rules for state banks, state savings banks, and consumer credit laws.

Texas Finance Code, Chapter 343, is affected by the adopted new sections.

§155.2. Payoff Statement Form.

(a) Requests made pursuant to this chapter shall be in writing and submitted to a mortgage servicer by mail, electronic mail or facsimile. If the mortgage servicer has designated a specific physical address; electronic mail address; and/or a specific representative to receive requests made pursuant to this chapter, then requests shall be submitted in accordance with such designation. Requests for a payoff statement made pursuant to this chapter shall, at a minimum, include the following:

(1) Name of the mortgagor;

(2) Physical address of the underlying collateral of the loan, or a legal description of the property; and

(3) Proposed closing date of the loan.

(b) Upon receipt of a valid request made under subsection (a) of this section, a mortgage servicer shall provide, in writing, by mail or electronic mail, the payoff statement information for the home loan specified in the request which must be provided on the prescribed payoff statement form, Figure: 7 TAC §155.2(c)(6), or in a substantially similar format which contains all elements not indicated as optional on the prescribed payoff statement form. The statement must include the following information:

(1) The proposed closing date for the sale or other transaction, as provided in the request made pursuant to this chapter;

(2) The payoff amount that is valid through the proposed closing date; and

(3) Sufficient information to identify the loan for which the payoff information is provided.

(c) If applicable, the payoff statement may contain:

(1) Adjustable rate mortgage information;

(2) Per diem amount;

(3) Late charge information;

(4) Escrow disbursement information;

(5) A statement regarding which party is responsible for the release of lien; and

(6) Other information necessary to provide a clear and concise payoff statement.

Figure: 7 TAC §155.2(c)(6)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105692
Caroline Jones
General Counsel, Texas Department of Savings and Mortgage Lending
Joint Financial Regulatory Agencies
Effective date: January 8, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 475-1352

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

10 TAC §§5.402, 5.405 - 5.408, 5.422 - 5.424, 5.431

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter D, §§5.402, 5.405 - 5.408, 5.422 - 5.424, and 5.431, concerning the Comprehensive Energy Assistance Program (CEAP). Sections 5.402, 5.406, 5.408, 5.422, 5.423, and 5.431 are adopted with changes to the proposed text as published in the November 25, 2011, issue of the *Texas Register* (36 TexReg 7949). Sections 5.405, 5.407, and 5.424 are adopted without changes and will not be republished.

The amendment removes the Heating and Cooling Component from the CEAP to achieve greater overall benefit to CEAP clients and increase overall effectiveness of available CEAP funds.

The Department received comments to the proposed amendments in writing by email. The Department's response to all comments received is included in this attachment. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules.

A public hearing to receive input on the proposed rule amendments was held on December 6, 2011 with public comments received from (1) Stella Rodriguez, Texas Association of Community Action Agencies (TACAA), (2) Art Kampschafer, Community Services, Inc., (3) Brad Manning, Texas Neighborhood Services, (4) Shawnee Bayer, Community Action Committee of Victoria.

Public comments were accepted through December 6, 2011, with comments received in writing by email from (1) Jerry Clark, CenTech Supply, (2) Warren Tongate, Tongate Services, (3) Gregory J. Cassady, (4) Albert Lykins, (5) Kelly Franke, Combined Community Action, Inc, (6) Vicki K. Smith, Community Action Committee of Victoria, Texas, (7) Phyllis Cook, Panhandle Community Services, (8) Lynn Ball, Texas Neighborhood Services, (9) Richard Juarez, Community Council of Southwest Texas, (10) Dr. Mark Bethune, Concho Valley Community Action Agency, (11) Alma A. Barrera, Nueces County Community Action Agency, (12) Jacquelyn Douglas, Galveston County Community Action Council, (13) Karen Swenson, Greater East Texas Community Action Program, (14) Kristie L. Smith, Economic Action Committee of the Gulf Coast, (15) Amalia Garza, Cameron and Willacy Counties Community Projects, Inc., (16) Jim Williamson, Central Texas Opportunities, Inc., (17) Bryan D. Jones, Brazos Valley Community Action Agency, and (18) Emma Vasquez, Big Bend Community Action.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 5, SUBCHAPTER D.

§5.402. Purpose and Goals.

COMMENT SUMMARY: Commenter suggested a revised sentence structure and the addition of the purchase of refrigerators with the rationale that very old refrigerators used by many eligible low-income clients consume a large amount of energy resulting in high energy bills, and would lead to spoilage of food and prescription medication.

STAFF RESPONSE: The Department agreed with the revised sentence structure and that the replacement of refrigerators under the household crisis component should be an allowable activity. However, the replacement of refrigerators should only be undertaken when medically vulnerable household member(s) risk spoilage of prescription medication due to non-existent or inoperable refrigerators. In those instances, documentation of the medical necessity from a medical professional must by documented in the client file. Staff recommended changes based on this comment.

§5.406. Subrecipient Reporting Requirements.

COMMENT SUMMARY: Commenter suggested that CEAP subrecipients shall begin, not report, Direct Services expenditures within sixty (60) days of receipt of contract funds.

STAFF RESPONSE: Staff recommended that the 60 day requirement remain. To ensure that Direct Services are being provided to clients within a reasonable amount of time, staff recommended changing the proposed language to make it clear that Subrecipients shall provide Direct Services within 60 days of receipt of contract funds. Staff recommended changes based on this comment.

§5.408. Service Delivery Plan.

COMMENT SUMMARY: Commenter requested that CEAP Subrecipients are notified when format changes are made to the Service Delivery Plan and those changes will be posted on the Department's website.

STAFF RESPONSE: Staff agreed and recommended changes based on this comment.

§5.422(c). General Assistance and Benefit Levels.

COMMENT SUMMARY: Commenter requested language consistent with comments in §5.402, revising the sentence structure and adding the purchase of refrigerators as an allowable activity.

STAFF RESPONSE: Staff agreed and recommended changes based on this comment.

§5.422(d)(3). General Assistance and Benefit Levels.

COMMENT SUMMARY: Commenter requested language consistent with comments in §5.402, revising the sentence structure and adding the purchase of refrigerators as an allowable activity.

STAFF RESPONSE: Staff agreed recommended change based on this comment.

§5.422(h)(1). General Assistance and Benefit Levels.

COMMENT SUMMARY: Commenter requested to retain the language relating to "electrical wiring" and "lines, etc." in this rule for safety precautions as outlined in §5.423(d)(2), propane or butane tank repair and replacement is allowed. Electricity and gas must be maintained in order to provide gas heating system. A vendor will not set a tank unless everything meets code. Therefore, electrical wiring, and lines, etc. should be an allowable expense; otherwise, Subrecipients are prevented from addressing crisis situations.

STAFF RESPONSE: Staff agreed and recommended change based on this comment.

§5.423(a). Household Crisis Component.

COMMENT SUMMARY: Commenter requested language consistent with comments in §5.402, adding the purchase of refrigerators as an allowable activity.

STAFF RESPONSE: Staff agreed and recommended change based on this comment.

§5.423(d)(4). Household Crisis Component.

COMMENT SUMMARY: Commenter requested language consistent with comments in §5.402, revising sentence structure and adding the purchase of refrigerators as an allowable activity. Commenter also requested changing "the client" to "a household member."

STAFF RESPONSE: Staff agreed and recommended changes based on this comment.

§5.423(e). Household Crisis Component.

COMMENT SUMMARY: Commenter requested language consistent with comments in §5.402, adding the purchase of refrigerators as an allowable activity.

STAFF RESPONSE: Staff agreed and recommended change based on this comment.

§5.423(g). Heating and Cooling Component.

COMMENT SUMMARY: Commenter requested changing the time for crisis assistance from 12:00 p.m. to 6:00 p.m.

STAFF RESPONSE: Staff believes the current time period allows sufficient time for Subrecipient to respond to a crisis application received on a Friday afternoon. Staff recommended no change based on this comment.

§5.431(e). Payments to Subcontractors and Vendors.

COMMENT SUMMARY: Commenter requested that payments to vendors for which a valid vendor agreement is not in place

may be subject to disallowed costs, unless prior written approval is obtained from the Department.

STAFF RESPONSE: Staff agreed and recommended change based on this comment.

The amendments are adopted pursuant to the authority of the Texas Government Code Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

§5.402. Purpose and Goals.

The purpose of CEAP is to assist low-income households, particularly those with the lowest incomes, that pay a high proportion of household income for home energy, primarily in meeting their immediate home energy needs. The program encourages priority be given to those with the highest home energy needs, meaning low income households with high residential energy use, a high energy burden and/or the presence of a "vulnerable" individual in the household, such as a child age 5 and younger, disabled person, or an elderly individual. CEAP services include: energy education, needs assessment, budget counseling (as it pertains to energy needs), utility payment assistance, and crisis-related repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units and refrigerators. Purchase of refrigerators is limited to instances where medically vulnerable household member(s) risk spoilage of prescription medication due to non-existent or inoperable refrigerators.

§5.406. Subrecipient Reporting Requirements.

(a) The subrecipient shall electronically submit to the Department a Monthly Expenditure Report of all expenditure of funds, request for advance or reimbursement, and a Monthly Performance Report no later than fifteen (15) days after the end of each month.

(b) The subrecipient shall provide Direct Services to clients under the Household Crisis, Elderly Disabled or the Co-Payment program components within sixty (60) days of receipt of contract funds.

(c) The subrecipient shall electronically submit to the Department no later than sixty (60) days after the end of the subrecipient contract term a final expenditure or reimbursement and programmatic report utilizing the Expenditure Report and the Performance Report.

(d) The subrecipient shall submit to the Department no later than sixty (60) days after the end of the contract term an inventory of all vehicles, tools, and equipment with a unit acquisition cost of $5,000 or more and a useful life of more than one year, if purchased in whole or in part with CEAP funds.

(e) The subrecipient shall submit other reports, data, and information on the performance of the CEAP program activities as required by the Department.

§5.408. Service Delivery Plan.

Subrecipients are required to submit on an annual basis a Department formatted Service Delivery Plan, which includes information on how they plan to implement CEAP in their service area. Format for the Service Delivery Plan, may change between program years. The Department will notify CEAP Subrecipients when format changes are made and when updates will be posted on the Department's website.

§5.422. General Assistance and Benefit Levels.

(a) Subrecipients shall not discourage anyone from applying for CEAP assistance. Subrecipients shall provide all potential clients with opportunity to apply for LIHEAP programs.

(b) CEAP provides assistance to targeted beneficiaries, with priority given to the elderly, persons with disabilities, families with young children; households with the highest energy costs or needs in relation to income, and households with high energy consumption.

(c) CEAP includes activities, as defined in Assurances 1-16 in Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), as amended; such as education; and financial assistance to help very low- and extremely low-income consumers reduce their utility bills to an affordable level. CEAP services include energy education, needs assessment, budget counseling (as it pertains to energy needs), utility payment assistance; crisis related repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units and refrigerators.

(d) Sliding scale benefit for all CEAP components:

(1) Benefit determinations are based on the household's income, the household size, the energy cost and/or the need of the household, and the availability of funds;

(2) Energy assistance benefit determinations will use the following sliding scale:

(A) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed $1,200;

(B) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed $1,100; and

(C) Households with Incomes of 76% to at or below 125% of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed $1,000; and

(3) A household may receive crisis-related repair of existing heating and cooling units, and/or crisis-related purchase of portable heating and cooling units and refrigerators not to exceed $2,500. Purchase of refrigerators is limited to instances where medically vulnerable household member(s) risk spoilage of prescription medication due to non-existent or inoperable refrigerators.

(e) Subrecipient shall not establish lower local limits of assistance for any component.

(f) Total maximum possible annual household benefit (all components combined) equals $6,100.

(g) Subrecipient shall determine client eligibility for utility payments and/or retrofit based on the agency's household priority rating system and household's income as a percent of poverty.

(h) Subrecipients shall provide only the following types of assistance with funds from CEAP:

(1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as electrical wiring, propane or butane tanks, and lines, etc. for past due or current bills related to the procurement of energy for heating and cooling needs of the residence, not to include security lights and other items unrelated to energy assistance;

(2) Payment to vendors--only one energy bill payment per month as required by component;

(3) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;

(4) Energy assistance to low-income elderly and disabled individuals most vulnerable to high cost of energy for heating and cooling needs of the residence;

(5) Payment of water bills only when such costs include expenses from operating an evaporative water cooler unit or when the

water bill is an inseparable part of a utility bill. As a part of the intake process, outreach, and coordination, the subrecipient shall confirm that a client owns an operational evaporative cooler and has used it to cool the dwelling within sixty (60) days prior to application. Payment of other utility charges such as wastewater and waste removal are allowable only if these charges are an inseparable part of a utility bill. Documentation from vendor is required. Whenever possible, subrecipient shall negotiate with the utility providers to pay only the "home energy"--heating and cooling--portion of the bill;

(6) Energy bills already paid by householders may not be reimbursed by the program;

(7) Payment of reconnection fees in line with the registered tariff filed with the Public Utility Commission and/or Texas Railroad Commission. Payment cannot exceed that stated tariff cost. Subrecipient shall negotiate to reduce the costs to cover the actual labor and material and to ensure that the utility does not assess a penalty for delinquency in payments;

(8) Payment of security deposits only when state law requires such a payment, or if the Public Utility Commission or Texas Railroad Commission has listed such a payment as an approved cost, and where required by law, tariff, regulation, or a deferred payment agreement includes such a payment. Subrecipients shall not pay such security deposits that the energy provider will eventually return to the client;

(9) While rates and repair charges may vary from vendor to vendor, Subrecipient shall negotiate for the lowest possible payment. Prior to making any payments to an energy vendor a Subrecipient shall have a signed vendor agreement on file from the energy vendor receiving direct LIHEAP payments from the Subrecipient;

(10) Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of client is deducted from client's rent; and

(11) In lieu of deposit required by an energy vendor, Subrecipient may make advance payments. The Department does not allow LIHEAP expenditures to pay deposits, except as noted in paragraph (7) of this subsection. Advance payments may not exceed an estimated two months' billings. Funds for the Texas CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance (i.e., vehicle fuel), income assistance, or to pay for penalties or fines assessed to clients.

§5.423. Household Crisis Component.

(a) A bona fide household crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages or a terrorist attack have depleted or will deplete household financial resources and/or have created problems in meeting basic household expenses, particularly bills for energy so as to constitute a threat to the well-being of the household, particularly the elderly, the disabled, or children age 5 and younger ; or when medically vulnerable household member(s) risk an exacerbated condition due to non-existent or inoperable heating and cooling units; or when medically vulnerable household member(s) risk spoilage of prescription medications due to nonexistent or inoperable refrigerators.

(b) A utility disconnection notice may constitute a household crisis.

(c) Crisis assistance for one household cannot exceed the maximum allowable benefit level in one year. Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis. If the client's crisis requires more than the household limit to resolve, it exceeds the scope of this program. If the crisis exceeds the household limit, subrecipient may pay up to the household limit but the rest of the bill will have to be paid from other funds to resolve the crisis. Payments may not exceed client's actual utility bill. The assistance must result in resolution of the crisis.

(d) Where necessary to prevent undue hardships from a qualified crisis, subrecipients may directly issue vouchers to provide:

(1) Temporary shelter not to exceed the annual household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation;

(2) Emergency deliveries of fuel up to 250 gallons per crisis per household, at the prevailing price. This benefit may include coverage for safety precautions, including propane or butane tank repair or replacement--up to the maximum household benefit;

(3) Service and repair of existing heating and cooling units not to exceed $2,500. Documentation of service/repair and related warranty must be included in the client file;

(4) Purchase of portable heating/cooling units (portable electric heaters are allowable only as a last resort) not to exceed $2,500 during the contract period. Portable air conditioning and heating units may be purchased for households that include at least one member that is elderly, disabled, or a child aged 5 or younger when Subrecipient has met local weather crisis criteria; and/or in situations where medically vulnerable household member(s) risk an exacerbated condition due to non-existent or inoperable heating and cooling units whether the crisis criteria is met or not;

(5) Purchase of more than two portable heating/cooling units per household will require prior written approval from the Department;

(6) Purchase of refrigerators is allowable only when medically vulnerable household member(s) risk spoilage of prescription medications due to nonexistent or inoperable refrigerators;

(7) Subrecipient shall maintain in the client file documentation of any special situation affecting client eligibility. For a client to qualify to receive a portable air conditioner or heater to protect life of medically vulnerable household member(s) when the crisis criteria has not been met, the subrecipient's client file must contain documentation from a medical professional, stating that a health condition of household member(s) requires such climate control. For a client to qualify to receive a refrigerator, the subrecipient's client file must contain documentation from a medical professional, stating that a medication prescribed to a household member(s) requires refrigeration. A doctor's statement or prior written approval from the Department is required;

(8) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(9) Portable heating/cooling units must be Energy Star® or International Residential Code (IRC) compliant.

(e) Crisis funds, whether for emergency fuel deliveries, repair of existing heating and cooling units, purchase of portable heating/cooling units or refrigerators, or temporary shelter, shall be considered part of the total maximum household allowable assistance.

(f) When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures for the following:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, i.e., placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;

(3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(g) Time Limits for Assistance--Subrecipients ensure that for clients who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application and completes the eligibility process. For applications for assistance received from these clients on Fridays after 12:00 p.m. local time, the application process must be completed prior to 12:00 p.m. local time on the following Monday.

(h) Subrecipients must maintain written documentation in client files showing crises resolved within appropriate timeframes. The Department may disallow improperly documented expenditures.

§5.431. Payments to Subcontractors and Vendors.

(a) A Department approved bi-annual vendor agreement is required to be implemented by the subrecipient and shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving LIHEAP recipients. These agreements are subject to monitoring procedures performed by the Department staff.

(b) Subrecipient shall maintain proof of payment to subcontractors and vendors as required by OMB Circulars.

(c) The subrecipients shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification.

(d) The vendor payment method will be used by subrecipients for CEAP components. Subrecipient shall not make cash payments directly to eligible household for any of the CEAP components.

(e) Payments to vendors for which a valid vendor agreement is not in place may be subject to disallowed costs unless prior written approval is obtained from the Department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105675

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: January 8, 2012

Proposal publication date: November 25, 2011

For further information, please call: (512) 475-3916

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10 TAC §5.426

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 5, Subchapter D, §5.426, concerning the Comprehensive Energy Assistance Program (CEAP) Heating and Cooling Component, without changes to the proposal as published in the November 25, 2011, issue of the *Texas Register* (36 TexReg 7953) and will not be republished.

This repeal is adopted in order to consolidate and simplify the existing rules for the CEAP Program.

A public hearing to receive input on the proposed repeal was held on December 6, 2011 and written comments on the proposed repeal were accepted by mail, e-mail, and facsimile through December 6, 2011.

Public comments were received concerning the proposed repeal from (1) Jerry Clark, CenTec Supply, (2) Warren Tongate, Tongate Services, (3) Gregory J. Cassady, and (4) Albert Lykins.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED REPEAL OF 10 TAC CHAPTER 5, SUBCHAPTER D, §5.426.

§5.426. Heating and Cooling Component.

PUBLIC COMMENT: Commenters requested that the Heating and Cooling Component remain in the Comprehensive Energy Assistance Program.

STAFF RESPONSE: The Subrecipient network supports the removal of the Heating and Cooling Component from the Comprehensive Energy Assistance Program in an effort to achieve greater overall benefit to CEAP clients and increase overall effectiveness of available CEAP funds. Staff recommended no change based on this comment.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2011.

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Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.29

The Railroad Commission of Texas (Commission) adopts new §3.29, relating to Hydraulic Fracturing Chemical Disclosure Requirements, with changes to the proposed text as published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5765). The Commission adopts the new rule to implement Texas Natural Resources Code, Chapter 91, Subchapter S, §91.851, relating to Disclosure of Composition of Hydraulic Fracturing Fluids, as enacted by House Bill (HB) 3328 (82nd Legislature, Regular Session, 2011).

The Commission has been very active from the beginning on the issue of disclosure of hydraulic fracturing chemicals through the Interstate Oil and Gas Compact Commission (IOGCC) and the Ground Water Protection Council (GWPC), as well as other avenues. Commission staff was active in the development of FracFocus. In addition, Texas was the first state in the nation to enact disclosure legislation.

The Commission received 19 comments on the proposal, including six from associations (jointly-filed comments from Texas Oil and Gas Association (TxOGA) and Texas Independent Producers and Royalty Owners (TIPRO); the Environmental Defense Fund (EDF); the Sierra Club (both the Lone Star Chapter and the Environmental Law Program in Washington, D.C.); the American Exploration & Production Council (AXPC); the North Central Texas Communities Alliance (NCTCA); and Earthworks). In addition, the Commission held a public hearing to receive public comments on Wednesday, October 5, 2011, at the Commission's headquarters in Austin, Texas. Thirty people signed in and eight offered oral comments.

General comments

Representative Lon Burnam, as a co-sponsor of HB 3328, and on behalf of the residents in House District 90 in Fort Worth, commented that he generally supports the rule and commended the Commission for the expeditious manner in which this rule was drafted and proposed. Representative Burnam further stated that the rule is of great importance to his constituents in Fort Worth and to residents around North Texas, given the expansion of drilling activity in the Barnett Shale in recent years and the increase in the number of hydraulic fracturing treatments performed, and that he appreciated the diligence in ensuring that Texans are informed about the chemicals used in hydraulic fracturing as soon as possible. The Commission appreciates this comment.

Representative Burnam recommended that the Commission include a requirement that the Commission post the supplemental list of ingredients on a publicly available website. Representative Burnam noted that Texas Natural Resources Code, §91.851(a)(1)(E), the section of code amended by HB 3328, requires that operators provide to the Commission a list of chemicals used in the fracturing treatments that are not subject to federal hazardous chemical regulations pertaining to the maintenance of "material safety data sheets" ("non-MSDS chemicals"). Consistent with the amended statute, the proposed rule does not require these non-MSDS chemicals to be posted on the Chemical Disclosure Registry maintained by GWPC. That section does, however, require that the "supplemental list" of chemicals "be made available on a publicly accessible website." Although the discussion of the state fiscal implications in the preamble of the proposed rule implies that the Commission will post the supplemental list on the Commission's website along with other attachments to the well completion report submitted by the well operator, there is no explicit, corresponding provision in the text of the rule itself. In order to clarify that the law requires that the supplemental list must be readily available to the public, Representative Burnam recommends that the rule include a provision requiring that the supplemental list be made available either on the Commission's website (along with the well completion report) or on another website.

The Commission agrees with this comment. The FracFocus form currently allows an operator to include "non-OSHA" chemical constituents of hydraulic fracturing fluid. In fact, many operators already are including this information. However, as discussed below, the Commission is revising the proposed language to require that operators include all chemical information required to be entered on the FracFocus form, as well as chemical information that was to be included on the supplemental list ("non-OSHA" chemicals).

Representative Burnam recommended consolidating disclosure to the Chemical Disclosure Registry. Representative Burnam stated that the proposed rule requires that information on certain chemicals (Material Safety Data Sheet or MSDS chemicals) used in the hydraulic fracturing treatment be disclosed by posting on the Chemical Disclosure Registry and that the rule requires that information on other chemicals (non-MSDS chemicals) be provided to the Commission and be made available on a publicly accessible website. Representative Burnam stated that this bifurcated disclosure unnecessarily complicates disclosure for operators. Representative Burnam understands that GWPC is already in the process of modifying the registry to allow for posting of non-MSDS chemicals, and to reduce administrative costs associated with disclosure, recommends requiring that both groups of chemicals be posted on the Chemical Disclosure Registry, rather than on two different websites. This change will reduce operators' costs associated with the required disclosure while simultaneously making it easier for members of the public to access the information.

The Commission agrees with Representative Burnam's comments and fully intended to make a copy of the FracFocus registry form, as well as the supplemental list of chemicals, available on the Commission's website as an attachment to the completion report. However, as discussed in subsequent paragraphs of this preamble, the Commission has revised the proposed rule to require that all information required to be disclosed be uploaded to the Chemical Disclosure Registry. The Commission proposes to add to the "Oil & Gas Completions Query" for a particular well a link to FracFocus with instructions stating that the chemical disclosure information may be found by entering the API number in "Find a Well" on the FracFocus Internet website. A landowner or other interested person could then go to the Commission's "Public GIS Map Viewer for Oil, Gas, and Pipeline Data," find the well and note the API number, and then enter the API number or other identifying information into the "Oil & Gas Completions Query" to obtain the completion report for the well and enter the API number of other identifying information for the well into FracFocus to obtain hydraulic fracturing fluid chemical information.

EDF commented that the Commission is moving to implement HB 3328, the state's landmark hydraulic fracturing chemical disclosure bill, much more quickly than expected, and that the proposed new rule generally does a good job of addressing the statute's provisions. The Commission appreciates this comment.

EDF commented that any weakening of the proposed rule could hurt, rather than help, public confidence. In particular, EDF urged the Commission to be on guard against proposals to weaken the ability of landowners and adjacent landowners to challenge trade secret claims; interfere with the ability of health professionals and emergency responders to perform their jobs effectively; or report fewer chemicals than the law contemplates and the public expects. The Commission does not intent to "weaken" the rule. The Commission made no change in response to this comment.

EDF recommended that the adoption preamble include a discussion of the Commission's plans to publish on a publicly accessible website the information required to be filed by operators under proposed subsection (c)(2)(C)(ii). EDF stated that such publication is required by statute, but because it is a duty of the Commission rather than the operator, publication on a publicly accessible Internet website does not necessarily need to be mentioned in the body of the rule. The Commission agrees with this comment and has included discussion in this preamble of its plans to make the information publicly available.

The Sierra Club Lone Star Chapter ("Lone Star Sierra Club") expressed general agreement with the proposed rule and offered some specific recommendations. The Lone Star Sierra Club stated that it supports the Commission's plan to adopt the new rule earlier than the July 2013 deadline allowed by the Legislature. The Commission appreciates this comment.

The Lone Star Sierra Club recommended that the Commission work with GWPC to continue improving FracFocus and to add fields for reporting non-OSHA chemicals. The Lone Star Sierra Club recommended that the commission add language to subsection (c)(1) that the Commission will create a monthly well-by-well report on non-OSHA chemicals and make that report available on its website to ensure that, if operators do not enter this information into FracFocus, there will be an alternative venue for the public to research non-OSHA chemicals.

Commission staff continues to work with GWPC and IOGCC in their efforts to improve FracFocus. The form currently allows an operator to include "non-OSHA" chemical constituents of hydraulic fracturing fluid. In fact, many operators already are including this information. However, as discussed below, the Commission is revising the proposed language to require that operators include all chemical information required to be entered on the FracFocus form, as well as chemical information that was to be included on the supplemental list (non-OSHA chemicals). In light of this change, and because, after the effective date of this rule, it will be a violation not to include the required information on the FracFocus form for each well subject to the rule on which hydraulic fracturing treatments are performed, the Commission sees no need for a monthly well-by-well report.

The Sierra Club Environmental Law Program in Washington D.C. ("Sierra Club-D.C.") stated that it strongly supports complete disclosure of hydraulic fracturing chemicals and is pleased to see the Commission take the first step toward disclosure. The Commission appreciates this comment.

Esther McElfish, with the NCTCA, commented that the Commission should have given more notice of the October 5, 2011, public comment hearing. The Commission made no change to the rule in response to this comment. The Commissioners said from their initial discussion of this rulemaking proceeding that it is of the highest priority; that this rulemaking would be on a fast track; and that they welcomed input and comments from all interested persons, as demonstrated by the following actions: (1) this item was the only matter on the agenda of the Commission's June 15, 2011, open meeting; Chairman Jones discussed the significance and priority of this rulemaking; (2) the time line and procedure were discussed at the July 11, 2011, open meeting (item #162); and (3) there was an open meeting devoted almost exclusively to discussion of the proposed rule on August 29, 2011 (item #1). In addition, the proposed rule was posted on the Commission's web site on August 30, 2011, which was 10 days prior to the publication of the proposed rule in the *Texas Register.* The public hearing date of October 5, 2011, was published in that proposal preamble. In addition, news of the rule proposal was picked up by the Associated Press. News articles appeared in major newspapers in Austin, Lufkin, Tyler, Baytown, Dallas, Houston, Nacogdoches, Lubbock, San Antonio, Midland, and other areas across the state. The story also was aired through radio and television in the Austin, Tyler/Longview/Jacksonville, Lufkin, Nacogdoches, and Houston areas.

AXPC, a national trade association representing 31 of America's largest independent upstream natural gas and oil exploration and production companies, strongly advocated for disclosure of chemicals used in hydraulic fracturing and supported the creation of the FracFocus website as a vehicle for public disclosure since its inception by IOGCC and GWPC. AXPC companies made nearly all of the early voluntary disclosures to the website. AXPC agrees with the Commission's estimate that hydraulic fracturing chemical information for half of all wells on which hydraulic fracturing treatment(s) have been performed in Texas have been voluntarily posted since the inception of the FracFocus website. AXPC commended the Legislature for its demonstrated leadership in this area and for having passed legislation requiring disclosure, and the Commission for acting quickly and efficiently to promulgate regulations. AXPC stated that it believes that the Commission's model will quickly become the benchmark standard of excellence for other regulators in the United States, and will likely serve as a reference in many other countries. The Commission appreciates this comment.

BG Group, a natural gas company with operations in more than 25 countries over five continents, stated that it strongly supports the Commission's proposed new rule, and believes it is critical for producers of U.S. natural gas to address the public desire to be fully informed of the content of hydraulic fracturing fluids. BG Group, through its operating partner EXCO Resources, has been voluntarily disclosing fracturing treatments via the FracFocus website since its inception. BG Group stated that the proposed rule will provide transparency for chemicals and reporting of water quantities used in hydraulic fracturing operations, and is pleased that the Commission has expeditiously created the sensible and workable rule. The Commission appreciates this comment.

TIPRO expressed its support for hydraulic fracturing chemical disclosure and the increased transparency that it will provide to the citizens of Texas and commended the Commission for this rule. TIPRO worked with TxOGA and other oil and gas trade associations to develop some comments and revisions, as submitted by TxOGA. TIPRO stated that industry joined together in

supporting these revisions, and this unity is no small feat, considering the diversity of interests involved in the process. TxOGA also commented that it appreciates the Commission for moving swiftly in this rulemaking and recognizes the Commission's exemplary record regulating oil and natural gas production in Texas. TxOGA supports disclosure of the chemical ingredients used in hydraulic fracturing treatments, while recognizing appropriate protections for trade secrets. The Commission appreciates this comment.

Apache Corporation ("Apache"), an independent energy company that explores for, develops, and produces natural gas, crude oil, and natural gas liquids, stated that it appreciates the Legislature's leadership on this issue and applauds the Commission in swiftly promulgating the rule. Apache further stated that it supports the new requirements to disclose chemicals used in the process of hydraulic fracturing and believes the new requirements will demonstrate that states and oil and gas producers can work together to increase public confidence in the industry as it develops abundant, cleaner-burning natural gas resources. Apache also stated that it believes that the Commission's model will quickly become the benchmark standard of excellence for other regulators in the United States, and will likely serve as a reference in many other countries. Apache has been a vocal and strong advocate for public disclosure of chemicals used in hydraulic fracturing and supported the creation of the FracFocus website as a vehicle for public disclosure since its inception by IOGCC and GWPC. The Commission appreciates these comments.

EXCO Resources, Inc., ("EXCO") a producer of natural gas in East Texas, stated that it supports the proposed new rule and has been voluntarily disclosing fracturing treatments via FracFocus since the website's inception for all areas where EXCO is actively drilling.

Exxon Mobil Corporation and XTO Energy Inc. ("Exxon") offered some general comments, and supported the specific comments of the TxOGA (discussed in subsequent paragraphs of this preamble). Exxon commended Texas lawmakers for developing a workable state legislative solution for operators, service providers, and the public on the disclosure of ingredients used in hydraulic fracturing fluids, and appreciated the Commission for its expeditious rulemaking process. Exxon stated that public interest is growing due to a lack of familiarity and understanding of the industry. Exxon stated that it has been working with several industry associations and state agencies, including the Commission, to design a system that provides regulators, first responders, and the public the information they desire about hydraulic fracturing fluid ingredients. The GWPC/IOGCC's FracFocus website is the state-based reporting system that fulfills that need and Exxon supports Commission use of this valuable database. The Commission appreciates these comments.

Halliburton Energy Services, Inc. ("Halliburton") stated that it supports the Commission's efforts to develop balanced and effective regulations for hydraulic fracturing operations that ensure the safe and effective development of the State's oil and natural gas resources. Halliburton supports the comments submitted by TxOGA, including public disclosure of the ingredients used in hydraulic fracturing, while ensuring the integrity of its intellectual property rights and appropriate protection for trade secrets.

Pioneer Natural Resources USA, Inc. ("Pioneer") commented that it strongly supports mandatory public disclosure of the chemical ingredients used in hydraulic fracturing and that, in conjunction with many companies and other industry stakeholders, Pioneer worked with GWPC and IOGCC to develop FracFocus.org, the public registry of hydraulic fracturing fluids, on a well-by-well basis, and has voluntarily disclosed the chemical ingredients used since the inception of the website in April 2011. Pioneer strongly supported HB 3328 introduced this past session by State Representative Jim Keffer, Chairman of the House Energy Resources Committee. Pioneer stated that it believes that the Commission's proposed rule to implement this legislation must ensure the achievement of the legislation's intent, which is full public disclosure. The Commission appreciates these comments.

Pioneer commented that it is concerned that the Commission will promulgate a rule that gives too much discretion to suppliers, service companies, and operators to claim trade secret protection for the chemical ingredients used in their hydraulic fracturing products and processes. While the burden of filing a disclosure form on FracFocus.org and with the final well report to the Commission falls on the operator, the suppliers and service companies will necessarily provide most of the information regarding any particular hydraulic fracturing treatment, creating a possible disconnect between those responsible for providing the detailed information relating to a hydraulic fracturing treatment and the operator charged with disclosing that information to the public. Pioneer has integrated its own well services and pumping services subsidiaries, and anticipates these subsidiaries will drill and hydraulically fracture the majority of its wells in Texas over the next several years. Pioneer does not anticipate attempting to claim trade secret protection for any chemical ingredients provided in either capacity as a service company or as an operator. Pioneer notes, however, that it will not have the same control over information related to products provided to it by its suppliers. This situation reinforces Pioneer's support for a rule that favors disclosure of all chemical ingredients over claims of trade secret protection. If the rule allows for too easy a claim of trade secret protection while making the ability to challenge those claims too difficult, the potential effect would be to undermine the law's intent to mandate full public disclosure. In Pioneer's view, such a situation would be a disservice not only to the public and State of Texas, but also to the industry itself. Pioneer recognizes the necessity of providing a meaningful opportunity for suppliers, service companies, and operators to protect true intellectual property. However, with regard to the chemical ingredients used in hydraulic fracturing treatments, such claims should be the exception rather than the rule.

The Commission does not agree with this comment. The rule is consistent with the legislative intent of HB 3328. The Commission made no changes in response to this comment.

An individual, Rosemary Reed, commented that, although the rule will allow industry to resist disclosure of proprietary chemicals unless a claim is made or an emergency health situation exists, the rule is better than nothing. Ms. Reed also expressed concern that small business or micro-business entities might be exempted. Mr. Gary Hogan, vice president of NCTCA, also commented that he disagrees with any exemption for small businesses or micro-businesses, as inconsistent with the health, safety, and environmental and economic welfare of the state. The Commission is not exempting from the requirements of this rule any entities, regardless of their classification as small businesses or micro-businesses. The Commission included the analysis regarding potential impacts to such entities in the proposal preamble because it is required by Chapter 2006 of the Texas Government Code. The Commission also expressly stated in the proposal preamble that "there are no additional

alternative regulatory methods that will achieve the purpose of the statutes while minimizing the adverse impacts on small businesses and micro-businesses; exempting small businesses and micro-businesses from the requirements of the rules would not be consistent with the health, safety, and environmental and economic welfare of the state." The Commission made no change in response to this comment.

Subsection (a), Definitions

The Lone Star Sierra Club recommended that the Commission include a definition for "adjacent properties" to avoid legal issues, even though HB 3328 did not define the term. The Lone Star Sierra Club commented that it is not clear whether an adjacent landowner must be on land physically touching the property line of the primary landowner or merely near it. The Lone Star Sierra Club stated that one approach might be to clarify that only those landowners whose property lines actually physically touch the property line of a landowner on which a well is located be considered adjacent landowners. The Lone Star Sierra Club stated that another approach might be to include in the definition of "adjacent properties" some distance in feet from the property line.

The Sierra Club-D.C. recommended that the term "adjacent property" be defined as "property which either directly borders the property on which a well site has been hydraulically fractured or which is within 5,000 feet from such a well site," or some other reasonable distance to ensure that all affected landowners may seek disclosures, as the Legislature intended. The Sierra Club-D.C. stated that, in the context of hydraulic fracturing, nearby, or "adjacent," properties might well be affected by a hydraulic fracturing treatment, even though they do not share a direct border with the property where a treatment occurs.

Ms. McElfish, with the NCTCA, stated that she supports comments from the Sierra Club-D.C. regarding the definition of "adjacent" in determining who may challenge a claim of trade secret eligibility. NCTCA stated that one of the biggest concerns expressed by citizens is the right of affected parties to be able to challenge the trade secrets provision. NCTCA stated that the proposed rule does not allow for situations witnessed in the Barnett Shale area where a well is drilled on a city park property, but there are affected residents/property owners within 1,000 to 5,000 feet, who would not be considered "adjacent" property owners, as the rule now states.

TxOGA recommended that the Commission add a definition of "adjacent property" and define that term as "a property with a contiguous, adjoining surface boundary to another" to provide clarity of term and consistency with other Commission rules.

The Commission agrees that a definition for the term "adjacent property" would be helpful and has defined that term in subsection (a) to mean "a tract of property next to the tract of property on which the subject wellhead is located, including a tract that meets only at a corner point." In as much as one plain meaning of "adjacent" is "adjoining," the Commission has decided to use language consistent with an existing definition of "adjoining" for the purpose of clarifying the scope of the rule. The adopted definition of "adjacent property" is consistent with the definition of "adjoining" in §4.204 of this title (relating to Definitions).

EDF recommended that the Commission revise the definition of "health professional or emergency responder" in subsection (a) to include "anyone whose legally permitted scope of practice allows him or her to independently provide or be delegated the responsibility to provide, some or all of a particular service" to be at least as robust as the Occupational Health and Safety Act (OSHA) (see 29 Code of Federal Regulations (CFR) §1910.134). The Commission has room under the statute to devise reasonable provisions to govern sharing of information with health professionals and other persons helping to respond to possible chemical exposure.

The Commission does not agree with this comment. The federal regulations at 29 CFR §1910.134 concern personal protective equipment for respiratory protection. HB 3328 is very specific that the process be consistent with 29 CFR §1910.1200. The Commission finds that the proposed definition is consistent with 29 CFR Section §1910.1200. Furthermore, the definition is sufficiently broad to cover those persons who might offer health care treatment or respond to an emergency. The Commission made no change in response to this comment.

TxOGA also recommended that the Commission revise the definition of "health professional or emergency responder" by specifying providers that actually provide treatment. TxOGA further recommended that the Commission include physician assistant and nurse practitioner, but delete industrial hygienist, toxicologist, and epidemiologist from the definition. And, TxOGA recommended that the Commission replace the word "providing" with the phrase "who needs information in order to provide."

The Commission partly agrees with this comment. The Commission has added to the definition "physician's assistant" and "nurse practitioner" and has added the phrase "who needs information in order to provide," but sees no reason to delete from the definition the terms "industrial hygienist," "toxicologist," or "epidemiologist" as these terms are used as examples in 29 CFR §1910.1200(i).

Pioneer recommended that the Commission revise the definition of "hydraulic fracturing treatment" to read: "The act of stimulating a well by the application of hydraulic fracturing fluid under pressure *that is expressly designed to exceed the fracturing gradient* for the purpose of creating fractures in a target geologic formation to enhance production of oil and/or natural gas." Pioneer believes this wording more clearly differentiates true hydraulic fracturing activities, which require chemical disclosure, from other well-related work.

AXPC recommends that the definition of "hydraulic fracturing treatment" be modified to read: "the act of stimulating a well by the application of hydraulic fracturing fluid *at a pressure designed to initiate and propagate fractures or fracture networks* in a target geologic formation to enhance production of oil and/or natural gas." AXPC supports inclusion and reporting of "acid frac jobs," but believes the modified definition better excludes simple acid stimulation jobs, which by design dissolve and create pore space especially in natural fractures or any pre-existing fractures. Including acid stimulation information in FracFocus would distort any statistical analysis of hydraulic fracturing practices, particularly related to chemical ingredients and water usage figures.

TxOGA recommended that the Commission revise the definition of "hydraulic fracturing treatment" to read: "The *treatment of* a well by the application of hydraulic fracturing fluid under pressure *that is expressly designed to initiate or propagate a fracture* in a target geologic formation to enhance production of oil and/or natural gas." The Commission agrees that the definition of "hydraulic fracturing treatment" should be clarified, but used language other than the recommended language. "Hydraulic fracturing treatment--The *treatment of* a well by the application of hydraulic fracturing fluid under pressure for the *express* purpose

of *initiating or propagating* fractures in a target geologic formation to enhance production of oil and/or natural gas."

TxOGA recommended that the Commission clarify the definition of "landowner" by revising the definition as follows: "Landowner--The person listed on the *applicable county* appraisal roll as owning the real property on which the relevant wellhead is located." The Commission agrees with this comment and has made the recommended change.

TxOGA recommended that the Commission include a definition for Material Safety Data Sheet or MSDS because, while the term is only implicit in this rule, it is specific to FracFocus and fundamental to disclosure. The Commission does not agree with this comment. Although the term "Material Safety Data Sheet" is used on the FracFocus website, the term is not used in this rule. The Commission made no change in response to this comment.

TxOGA recommended that the Commission revise the definition of "person" by simply referring to the statutory definition in Texas Government Code, Chapter 311. The Commission does not agree with this comment. The definition in Chapter 311 of "person" includes "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." The definition in the proposed rule is the same definition found in §3.8(a)(21) of this title (relating to Water Protection) ("natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity"). The Commission has determined that this definition is appropriate for this rule. The Commission made no change in response to this comment.

TxOGA recommended that the Commission revise the definition of "requestor" as follows to provide specificity and consistency with the statute: *"A landowner on whose property a wellhead is located; a landowner listed on the appraisal roll as owning adjacent property adjacent to the property on which the relevant wellhead is located and has been directly affected by hydraulic fracturing treatment of a well; or an agency of the state with jurisdiction over an environmental, public health or safety matter to which a claimed trade secret is relevant."* The Commission does not agree with this comment. The language in the proposed rule appropriately ties the term "requestor" to the statutory language describing persons eligible to make a request for information claimed to be eligible for trade secret protection. The Commission made no change in response to this comment.

TxOGA recommended that the Commission revise the definition of "service company" as follows to clarify that rule relates only to hydraulic fracturing treatments and not all well stimulation practices: "A *company* that performs hydraulic fracturing treatments for *an operator* in this state." The Commission partly agrees with this comment. The Commission has deleted the phrase "well stimulation services, including" to clarify that the rule involves hydraulic fracturing treatments, as opposed to other types of well treatments. However, the Commission declines to replace the word "person" with "company" because the Commission has defined the term "person" to include a company. In addition, the Commission sees no reason to insert the phrase "for an operator."

Pioneer recommended that the Commission revise the definition of "total water volume" to match the definition used by FracFocus.org, which is "The total amount of water in gallons used as the carrier fluid for the hydraulic fracturing job. It may include recycled water and newly acquired water." The Commission agrees with this comment and has made the recommended change.

Earthworks commented that the factors that must be shown for an operator to meet the definition of a "trade secret" highlight one of the weaknesses of the proposed rule. Earthworks stated that its experience in other states has shown that operators claim exemptions from disclosure without a specific factual showing for each of the six listed factors. Although Earthworks has yet to see an exemption claim in any state that makes more than a generic showing of "the value of the information to the company and its competitors," this factor is the crux of the trade secret claim--that disclosure will somehow cause the company economic harm. Earthworks recommended that the Commission compile and publish a quarterly summary of the number of exemptions claimed, the companies claiming them, and a summary of the information provided under proposed §3.29(c)(2)(E), "the chemical family or other similar descriptor" for the exempt chemical to ensure that the use of this exemption provision is minimal, as called for by the Department of Energy Shale Gas Production Subcommittee 90-Day Report, August 18, 2011, p. 24, available at http://shalegas.energy.gov/index.html. The Commission disagrees with this comment. The rule is consistent with the intent of HB 3328. However, the Commission does plan to review the information uploaded to FracFocus to determine, among other things, how often entitlement to trade secret protection is claimed.

TxOGA recommended that the Commission revise the definition of "trade secret" by moving language relating to challenging a trade secret to body of rule and defining trade secret to mean "Any formula, pattern, device, or compilation of information that is used in a person's business, and that gives the person an opportunity to obtain an advantage over competitors who do not know *and* use it." The Commission does not agree with this comment. However, the Commission has revised the language in the definition so that it does not imply that a factual showing is required unless there is a challenge.

Subsection (b), Applicability

Representative Burnam recommended that the Commission make the rule effective as soon as possible because the rule makes use of existing infrastructure and processes at the Commission, the GWPC/IOGCC Chemical Disclosure Registry, and the Office of the Attorney General, and because well operators and service providers already should be maintaining records with the chemical information required to be disclosed under the proposed rule. Representative Burnam further commented that, in light of the vast number of hydraulic fracturing treatments being performed each month in Texas and the number of Texans living near and depending on fresh groundwater resources in proximity to those treatments, the Commission should be expeditious with the rule's effective date, and recommended that the rule take effect on January 1, 2012, or at the latest, February 1, 2012.

The Commission agrees with the comment and has revised subsection (b) to make the rule effective for a hydraulic fracturing treatment performed on a well in the State of Texas for which the Commission has issued an initial drilling permit on or after February 1, 2012, to allow sufficient time for all operators and their authorized agents to register with FracFocus to be able to upload information.

The Lone Star Sierra Club commented that the proposed rule appears to consider only a single hydraulic fracturing treatment and does not consider re-fracturing of the well. The Lone Star Sierra Club stated that wells not subject to the rule at the time of drilling could be re-fractured after the effective date of the rule. The Lone Star Sierra Club recommended that the Commission require the operator of such a well to disclose the hydraulic fracturing chemicals used in the re-fracturing treatment and any future re-fracturing treatments.

The Commission does not agree with the comment. The language in SECTION 2 of HB 3328 was very clear on this issue: "Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, applies only to a hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued on or after the date the initial rules adopted by the Railroad Commission of Texas under that subchapter take effect. A hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued before the date the initial rules take effect is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose." Therefore, the Commission cannot include the recommended requirement. However, in response to other comments, the Commission has clarified that a well that is subject to this rule and that is subsequently re-fractured remains subject to the requirements of the rule with any subsequent re-fracturing treatments.

Earthworks recommended that the Commission clarify the language in subsection (b) that re-stimulations on wells that have a permit also are subject to the disclosure requirements of the rule.

The Commission does not agree that the language needs to be clarified. The language tracks the wording of the statute and makes clear that the rule applies whenever a hydraulic fracturing treatment is performed on a well for which the Commission has issued a drilling permit after the effective date of the rule. The Commission made no change in response to this comment.

Subsection (c), Required Disclosures

Ms. McElfish, president of NCTCA, stated that she generally supports the proposed rule and the disclosure of ingredients on the FracFocus website, but recommended that both the Chemical Abstract Service (CAS) number for chemicals and the chemical name be included, which the rule appears to require. The Commission agrees that the rule requires both the chemical name and the CAS number for those chemical ingredients not eligible for trade secret protection. The Commission made no change to the rule in response to this comment.

Mr. Hogan commented that disclosure of proprietary chemicals should be made to the Commission (with a non-disclosure agreement) as needed to prove or disprove groundwater contamination. In the alternative, the commenter and Ms. Reed recommended that the Commission require that operators include and disclose tracer chemicals or dye for each well for use in determining whether or not hydraulic fracturing has caused pollution of groundwater. The Commission does not agree with this comment as it is beyond the scope of this rulemaking. In addition, such a requirement was proposed in the 82nd Texas Legislature, but did not pass. The Commission has the authority to require disclosure of information for which a claim of entitlement to trade secret protection has been made (with the appropriate non-disclosure agreement) in any contamination investigation. The Commission made no change in response to this comment.

An individual, Mr. Carl Dimon, a retired Registered Professional Engineer in petroleum engineering in Texas, stated his full support in the effort to make public the generic names and concentrations of all ingredients in hydraulic fracturing fluids, but recommended that the following specific information be provided for any ingredient for which an entity has claimed trade secret protection: (1) certification by a governmental agency that the compounds are not toxic; (2) a generic description of the chemical nature of the compound including the names of toxic functional groups which are not present (for example, chlorides, fluorides, benzene and condensed-ring aromatics); and (3) the range of concentrations and total weight of compounds used.

The Commission does not agree with this comment. HB 3328 prohibits the Commission from requiring the disclosure of some of the recommended information. The remaining information was not included in the proposed rule and cannot subsequently be added to the rule without republication and public comment. The Commission made no change in response to this comment.

Mr. Dimon also recommended that the Commission require that no well may be hydraulically fractured: (1) without first making public a wellbore sketch emphasizing how the well is cemented; (2) without making public a well deviation trajectory; (3) in any interval whose horizontal distance from a school, nursing home or shopping center is less than 1,000 feet; (4) in any interval whose horizontal distance is less than 3,000 feet from a dam site; and (5) in any interval whose horizontal distance from a set of homes is less than 1,000 feet and 30 percent of the homeowners protest this in writing within a 90-day period. In addition, Mr. Dimon recommended that the Commission require the operator to report certain data obtained by the operator's contract service companies, including (1) surface pressure at initial breakdown and throughout the hydraulic fracturing treatment, pumping rates versus time for water, sand, and slurry; (2) calculated downhole "net" fracturing pressure at the leading edge of the fracture; (3) certification that a responsible company representative was present on site for the entire hydraulic fracturing treatment; and (4) report all volumes transported for disposal by injection on a truckload-by-truckload basis. Mr. Dimon also recommended that the Commission require the following for salt water disposal: (1) two initial samples of transported fluids from each well held for chemical analysis; (2) two later samples of transported fluids from each well during a period of not less than two weeks and not more than six months; (3) quarterly, unannounced samples at each disposal well or at each disposal well complex; and (4) continuous monitoring of injection rates and surface injection pressure at each disposal well to insure that injection pressure does not exceed fracture pressure for the disposal well.

The Commission does not agree with these comments because they are beyond the scope of this rulemaking.

EXCO commented on the filing time requirements in subsection (c)(1) and pointed out a discrepancy with another Commission rule, §3.16 of this title (relating to Log and Completion or Plugging Report). EXCO commented that, as written, §3.29(c)(1) would require the service company to provide the information necessary to disclose hydraulic fracturing treatments within 30 days of the treatment, while §3.29(c)(2) requires the operator to submit the disclosure form to FracFocus within 30 days and to the Commission within 30 days. Section 3.16(b) requires the operator to file the completion report "within 30 days after completion of the well or within 90 days after the date on which the drilling operation is completed, whichever is earlier." EXCO commented that, if a service company files the required information

with an operator on the 30th day, the 30-day deadline imposed on an operator in proposed 3.29 would be impossible to meet. EXCO recommends that the Commission either reduce the service company's 30 day limit in §3.29(c)(1) to 15 days, or change the filing requirement in §3.16(b) to require the filing of the completion reports within 60 days of completion.

The Commission agrees with this comment and has revised §3.29(c)(1) to require that the service company provide the necessary information to the operator as soon as possible or within 15 days of the date of the hydraulic fracturing treatment(s).

Fasken Oil and Ranch, Ltd. ("Fasken") stated that subsection (c)(1) requires the supplier and service company to disclose each chemical ingredient intentionally added to the hydraulic fracturing fluid as soon as possible, but no later than 30 days following the completion of the treatment(s). If the supplier/service company waits until day 30, the operator must be ready and able to immediately load the information into the Chemical Disclosure Registry, print out a confirmation from the Registry, and then deliver the completion paperwork and confirmation to the Commission. Otherwise, the operator will be in violation of the rule requiring filing the completion paperwork within 30 days of completion of the well. Fasken recommended that the Commission revise the rule to require that the completion paperwork is due within 60 days of the completion of the well.

The Commission partially agrees with this comment. The recommended timing for submission of the completion report to the Commission by the operator (60 days) would require amendment of §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements), and would change the submission date for all wells, not just those on which a hydraulic fracturing treatment is performed. However, the Commission agrees that the language of the proposal could present a timing issue for operators, and therefore has revised §3.29(c)(1) to require that the service company provide the necessary information to the operator as soon as possible or within 15 days of the date of the hydraulic fracturing treatment(s).

The City of Dallas expressed concern that subsection (c) requires the operator to disclose chemical ingredients "on or before the well completion report" or after the hydraulic fracturing process has been completed. The City of Dallas recommended that the Commission consider making the requirement for disclosure contemporaneous with the permitting process. The Commission does not agree with this comment because the Legislature made it clear that disclosure was to occur after the hydraulic fracturing treatment(s). The Commission made no change to the rule in response to this comment.

Earthworks also commented that the Commission should include a new subsection (c) to provide for 30-day notice prior to the hydraulic fracturing operation to be given to the Commission, to those landowners identified in subsection (f), and to any municipality within whose water supply watershed the well is being drilled. In support of this suggestion, Earthworks points out that the State Review of Oil and Natural Gas Environmental Regulations (STRONGER) guideline on hydraulic fracturing recommends that notice be given to the regulatory agency to allow for observation of the hydraulic fracturing operation.

This comment is beyond the scope of this rulemaking. In addition, Subchapter Q of the Texas Natural Resources Code, related to Notice of Permit for Certain Oil and Gas Operations, already states that "[n]ot later than the 15th business day after the date the commission issues an oil or gas well operator a permit to drill a new oil or gas well or to reenter a plugged and abandoned oil or gas well, the operator shall give written notice of the issuance of the permit to the surface owner of the tract of land on which the well is located or is proposed to be located." The Commission made no change to the rule in response to this comment.

Pioneer recommended clarifying the language in subsection (c)(1)(A) to specify the disclosure of all ingredients by their CAS numbers, because the reference to 29 CFR §1910.1200(g)(2) is insufficient: "(A) each chemical ingredient, *identified by its associated CAS number,* subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2)." The Commission generally agrees with this comment, but has added language other than that recommended by Pioneer.

Regarding subsection (c), AXPC and Apache stated that its member companies have encouraged the voluntary disclosure of CAS numbers for all listed chemical ingredients on the FracFocus website when not claimed as trade secrets and that CAS level disclosure is the standard suggested by the statute for those chemicals required to be disclosed. However, to clarify, AXPC and Apache requested that the Commission make public disclosure of CAS numbers explicitly the obligatory minimum standard by adding the "CAS numbers of chemical ingredients" to the requirements reported under §3.29(c). AXPC and Apache assumed the Commission interpreted that 29 Code of Federal Regulations §1910.1200(g)(2) to require the disclosure of CAS numbers. AXPC and Apache read the Code to require disclosure of only chemical and common names without reference to CAS numbers even if CAS numbers are the practical standard of international MSDS sheets. The Commission agrees with these comments and has added the recommended language.

Halliburton commented that for some chemical ingredients, providing the chemical family name could disclose the identity of the chemical and reveal trade secret information. TxOGA's revisions allow the trade secret owner to provide the chemical family name or *other similar description* for chemical ingredients for which trade secret protection is claimed. For proprietary chemical ingredients that are subject to the requirements of 29 CFR §1910.1200(g)(2), the Material Safety Data Sheet (MSDS) will provide information concerning the properties and effects of the proprietary ingredient. Halliburton expressed concern that providing information concerning the properties and effects of proprietary chemical ingredients that are not subject to the requirements of 29 CFR §1910.1200(g)(2) could have the effect of disclosing the identity of the chemical, but notes that this group of chemicals already is not expected to pose a significant threat by virtue of the fact that it does not require an MSDS. Further, where there is a medical need or an emergency need for the claimed trade secret information, the identity of the chemical must be provided under the rule.

The Commission does not agree with this comment. The commenter did not provide the Commission with a proposed definition of the phrase "other similar description" and the Commission could not ascertain from the comment what such a description would entail. However, the Commission recognizes that in a very few instances, indicating the chemical family would result in disclosure of information protected as a trade secret. Therefore, the Commission has amended subsection (c)(1)(B) to require that the service company or supplier claiming protection as a trade secret for a chemical ingredient or additive provide the chemical family, unless providing the chemical family would result in disclosure of information protected as a trade secret.

TxOGA recommended that the Commission revise the language in subsection (c)(2) to clarify that certain information must be provided by the service company or supplier before it can be reported by operator, to revise the language relating to timing of reporting to reflect the possibility of multiple fracturing treatments, and to provide for the reporting of CAS numbers. TxOGA further recommended that the Commission delete a reference that is inconsistent with the statute in subsection (c)(2)(A)(xii).

The Commission agrees that much of TxOGA's suggested language will clarify the information that a supplier or service company must provide to an operator to ensure that the operator can comply with the operator disclosure requirements of this rule.

Fasken commented that the requirement in subsection (c)(2)(A) that the only party who may legally complete the Chemical Disclosure Registry is the operator of the well will greatly limit the flexibility of operators to partner with suppliers and service companies to find efficiencies in the processing of data to meet these new requirements. Fasken recommended that the Commission allow an operator the ability to use outside resources to meet the requirement of loading this data into the Registry.

The Commission partly agrees with this comment. The Commission did not intend to imply that an operator could not use an agent or third-party contractor to upload information on FracFocus. An operator has the ability to authorize an agent or third-party contractor to enter information into FracFocus on the operator's behalf. However, because the Commission does not control FracFocus, the Commission does not control the assignment of agents or third-party contractors for operators. Therefore, the Commission ultimately must hold the operator responsible for uploading the information on FracFocus. The Commission made no change in response to this comment.

TxOGA recommended that the Commission revise subsection (c)(2)(B) to delete subjective terminology. The Commission partly agrees with this comment and has revised the language to include the potential for multiple hydraulic fracturing treatments. The Commission declines to delete the term "temporarily" because this paragraph specifically deals with the possibility that FracFocus could be "temporarily" out of service. However, the Commission did add language to describe the requirements for disclosure should FracFocus be discontinued or become permanently inoperable.

TxOGA recommended that the Commission revise subsection (c)(2)(C), relating to timing of reporting, to reflect the possibility of multiple fracturing treatments. The Commission agrees that the proposed language lacks clarity, but has revised the language to delete subsection (c)(2)(C) and to amend subsection (c)(2)(A) to refer to "the well completion report for the well filed after the hydraulic fracturing treatment(s)."

TxOGA recommended that the Commission revise the language in subsection (c)(2)(E) to allow claimed trade secret information to be identified as "confidential business information," "proprietary" or "trade secret," consistent with the FracFocus approach. The Commission does not agree with this comment. The terms do not have the same meaning. Trade secret information is distinct from proprietary information. Addition of the terms as suggested by TxOGA would make the scope of the definition broader than intended by HB 3328. The Commission made no change in response to this comment.

TxOGA also recommended deleting the last sentence of subsection (c)(2)(E), which requires that the operator provide the contact information of the organization claiming entitlement to trade secret protection, because TxOGA believes this to impose an unnecessary burden on the operator. The Commission does not agree with this comment. Because the Commission has only 10 business days after receipt of a request to request a determination by the Office of the Attorney General, the Commission needs this information to be readily accessible. The Commission made no change in response to this comment. However, for other reasons discussed elsewhere in this preamble, the Commission deleted proposed subsection (c)(2)(C) and (c)(2)(D) and redesignated proposed subsection (c)(2)(E) and (c)(2)(F) as subsection (c)(2)(C) and (c)(2)(D), respectively.

Earthworks stated that it supports the requirement in §3.29(c)(2) that the operator file the list of items specified and urged the Commission to ensure that the operators timely file these items, as this section of the rule is the heart of the disclosure requirement. Earthworks further stated that a landowner who believes that his water well has been contaminated by hydraulic fracturing operations on an adjacent oil or gas well must be able to quickly and easily access this chemical disclosure information. If the operator has not filed the necessary report, then the landowner has no direct recourse, other than to appeal to the Commission to enforce the rules. It would only take a few instances for this lack of compliance to undermine any trust that has been regained through the promulgation of this rule. The Commission does not agree with this comment; the Commission has every intention of enforcing this rule. The Commission made no change in response to this comment.

Pioneer recommended that the Commission revise subsection (c)(2)(C)(ii) for consistency: "(ii) a supplemental list of all *chemical ingredients* and their respective CAS numbers, not listed on the Chemical Disclosure Registry, that were intentionally included in and used for the purpose of creating the hydraulic fracturing treatment for the well." The Commission agrees with this comment. However, the Commission has deleted the language in subsection (c)(2)(C)(ii) for other reasons.

Earthworks noted that §3.29(c)(2)(D) gives operators the option of providing all of the required items on the Chemical Disclosure Registry form. Earthworks urges the Commission to make this mandatory, assuming that the FracFocus website is modified to allow the posting of the required items. One of the ways to regain public trust on this issue is to make the information easily and fully accessible. That requires that the information be consolidated and searchable, which the current FracFocus structure does not allow. Earthworks understands that GWPC has committed to modifying the website to allow this type of posting and searchability, and urges the Commission to follow up with GWPC to ensure that these changes move forward.

The Commission agrees with this comment and has revised the rule to require that all chemical information required by the rule be entered into FracFocus. In addition, the Commission will continue to work with GWPC and IOGCC to improve the website.

With regard to subsection (c), the Sierra Club-D.C. recommended that the Commission guarantee internet disclosure because Texas Natural Resources Code, §91.851(a)(1), directs that "each chemical ingredient" used in a hydraulic fracturing job be posted on the website of FracFocus.org, or, "if the website is discontinued or permanently inoperable," posted on another publicly accessible website. As the Commission recognizes, some chemicals may not be listed (or listable) on FracFocus.org. Texas Natural Resources Code, §91.851(a)(1)(E), requires disclosure of "all other chemical ingredients not listed" on the Chemical Disclosure Registry. For all intents and purposes, the

website is "permanently inoperable" for these chemicals, triggering the Commission's obligation to provide for an alternative form of disclosure. Thus, Sierra Club-D.C. understands that the Commission intends to post supplemental lists of these chemicals, along with all other chemical disclosures, on its website. This is a positive step, but the rule itself does not clearly state that these lists will be posted. Therefore, the Sierra Club-D.C. recommended that the Commission affirmatively state that this disclosure will occur.

The Commission agrees with this comment and has added language to subsection (c)(2)(B), as adopted, to state that, if the Chemical Registry known as FracFocus is discontinued or becomes permanently inoperable, the information required by this rule must be filed with the completion report for the well, which will be posted on the Commission's publicly available Internet website as an attachment to the completion report until the Commission amends this rule to specify another publicly accessible Internet website.

The City of Dallas commented that the notice provisions in subsection (c)(4) allow for disclosure of chemical ingredients deemed to be eligible for trade secret protection to health professionals and emergency responders only in the case of an emergency and limits the definition of a health professional or emergency responder to those rendering medical or other health services "to a person exposed to a chemical ingredient." The City of Dallas commented that this provision does not include an incident in which hydraulic fracturing chemicals are spilled on property and recommended that the Commission include land in this definition, so that health professionals and emergency responders can obtain complete and correct information to respond to incidents that occur on property.

The Commission does not agree with this comment. The Texas Legislature made it clear in HB 3328 the circumstances under which the Commission may require disclosure of information protected by trade secret provisions. HB 3328 requires disclosure to a health professional or emergency responder "who needs the information in accordance with Subsection (i)" of 29 CFR §1910.1200. The Commission made no change in response to this comment.

TxOGA recommended that the Commission revise subsection (c)(4) to distinguish between emergency and non-emergency situations and to clarify the differences in disclosures under each situation. The Commission agrees with this comment and has revised the language in subsection (c)(4) accordingly.

Subsection (d), Disclosures Not Required

TxOGA recommended that the Commission revise the language in subsection (d)(4) to be consistent with the statute. The Commission does not agree that the recommended language is inconsistent with the statute. The Commission used the statutory language. However, the Commission revised the language in paragraph (4) to clarify that information must be disclosed if the Office of the Attorney General, or a court of proper jurisdiction on appeal of a determination by the Office of the Attorney General, determines that the information would not be entitled to protection as trade secret information under Texas Government Code, Chapter 552, if the information had been provided to the Commission.

Subsection (e), Trade Secret Protection

TxOGA recommended that the Commission revise subsection (e) to add "CAS number" throughout the subsection because a trade secret may be connected to the CAS number as well as the specific identity or concentration of a chemical ingredient. The Commission agrees with this comment and has made the recommended changes.

TxOGA recommended that the Commission revise subsection (e)(2) to provide clarity. As proposed, the Commission conditions the ability to withhold claimed trade secret information on a supplier, service company, or operator, as applicable, providing chemical family information and an indication of the trade secret claim to the Commission. TxOGA commented that this language could be construed to require direct submission of information by suppliers and service companies to the Commission. Because this information would be submitted to the Commission by the operator based on information it receives from service companies and suppliers, TxOGA suggested that instead of "must provide to the Commission," the language read "must provide in its required submittals hereunder."

The Commission does not agree with this comment. The Commission intends that the supplier or service company provide the listed information to the operator so that the operator may comply with the requirements of this rule. The Commission did not make the change suggested by TxOGA, but has made a change to show that the information should be provided to the operator rather than to the Commission.

TxOGA recommended that the Commission revise the language in subsection (e)(2)(B) by allowing claimed trade secret information to be identified as "confidential business information," "proprietary," or "trade secret," which is consistent with the FracFocus approach. The Commission does not agree with this comment. The terms do not have the same meaning. Trade secret information is distinct from proprietary information. Addition of the recommended terms would make the scope of the definition broader than was intended by HB 3328. The Commission made no change in response to this comment.

TxOGA recommended that the Commission revise subsection (e)(2) to require service companies or suppliers claiming trade secret protection to provide a designated contact for notice of a trade secret challenge to avoid notification issues at the time of a challenge. The Commission does not agree with this comment. Proposed subsection (c)(2)(D), adopted as subsection (c)(2)(C), requires that the operator of the well on which the hydraulic fracturing treatment(s) were performed provide the contact information, including the name, authorized representative, mailing address, and phone number of the business organization claiming entitlement to trade secret protection. Such a requirement ensures that the contact information is current and ties the information to a specific well. Such requirement also does not shift the burden to the Commission. The Commission made no change in response to this comment.

Regarding subsection (e), Halliburton commented that it agrees with TxOGA's proposal to move the criteria to be used by the Office of the Attorney General in making determinations on whether information claimed as a trade secret is entitled to trade secret protection from the definition of "trade secret" to the trade secret challenge process. As noted previously, the Commission does not agree with this comment. The Commission made no change in response to this comment.

In subsection (e), the Lone Star Sierra Club suggested that the Commission require entities requesting trade secret protection to submit the request directly to the Office of the Attorney General and have them determine whether it meets the guidelines.

The Commission does not agree with this comment. The Legislature's clear intent was to bring in the Office of the Attorney General when there is a challenge to a claim of entitlement to trade secret protection that meets the eligibility requirements of the legislation and the Commission can timely make the required preliminary determinations, including a determination of the date the operator filed with the Commission the completion report for the well as required by HB 3328. The Commission made no changes in response to this comment.

Subsection (f), Trade Secret Challenge

The Sierra Club-D.C. recommended that the Commission clarify in subsection (f) that all affected landowners may challenge trade secret withholding. In Texas Natural Resources Code, §91.851(a)(5), the Texas Legislature provided that landowners may challenge a claim of trade secret protection for hydraulic fracturing fluid constituents. Under proposed subsection (f)(4), a request for trade secret protected information must be filed "no later than 24 months from the date the operator filed the final well completion report." Landownership may change during that period, but all affected landowners have a vital interest in chemical disclosures. For instance, landowners who have since moved may be concerned with exposure to chemicals contained in hydraulic fracturing fluid during the time they resided on their property, and wish to review this information. The Commission can ensure as much by defining in subsection (a) that "landowners" are the "person or persons listed on the appraisal rolls as owning the real property on which the relevant wellhead is located *beginning at the time the hydraulic fracturing treatment is conducted."* The Commission generally agrees with this comment but has added language to address this concern in subsection (c)(4).

TxOGA recommended that the Commission simplify subsection (f)(1) by using the term "requestor" as TxOGA proposed to redefine it. The Commission does not agree for the reasons discussed previously in this preamble.

The City of Dallas also expressed concern with the limited list of people allowed to challenge the claim of entitlement to trade secret protection; the timing of these disclosures, including when an "incident" requires disclosure to a health professional or emergency responder; and the omission of "place" from the definition of incidents in subsection (f). As drafted, only entities that fall into the category of landowner and "adjacent land owner" are entitled to appeal claim of trade secrets. While a municipality will typically fall under the category of "adjacent land owner" in light of adjoining public rights of way, the City of Dallas recommended that the Commission also recognize the broad authority of municipalities to provide for the health, safety, and welfare of their citizens under traditional police powers by allowing municipal authorities to appeal a claim of trade secrets.

The Commission does not agree with this comment. The Legislature made it clear in HB 3328 when the Commission may require disclosure of information eligible for trade secret protection. The Commission maintains, however, that the Commission has the authority to request such information in the course of an investigation. The Commission made no change in response to this comment.

Fasken recommended that the Commission revise subsection (f)(1)(B), which allows any landowner who is adjacent to the land where a fracture treatment is located to have the right to challenge the trade secret protection. Fasken stated that in much of the Permian Basin, large land areas are owned by a single owner and are developed by one operator. For example, Fasken's largest ranch runs through the heart of the Wolfberry play in Midland, Ector, and Andrews Counties and is many miles long and wide. The rule as proposed implies that an adjacent landowner who may be many miles away from a hydraulic fracturing treatment would have the right to challenge the trade secret protection under this provision, even though there is no chance of any negative ramifications on his property. Fasken recommended that the Commission revise the language to limit how far away an adjacent operator can be and still have the right to make a challenge of this protection. Fasken cited the Commission's routine use of one mile in making decisions concerning who has the right to protest, and suggested that one mile should be used in this rule as well.

As discussed above, the Commission agrees that the definition for the term "adjacent property" would be helpful and has defined that term to mean "a tract of property next to the tract of property on which the subject wellhead is located, including a tract that meets only at a corner point." As noted previously, one plain meaning of "adjacent" is "adjoining" and the Commission used a definition consistent with the existing definition of "adjoining" in §4.204 of this title (relating to Definitions).

TxOGA recommended that the Commission revise subsection (f)(1)(C) to require that the state department or agency provide the reason for requesting the information. The Commission does not agree with this comment. In the normal situation, the Public Information Act (Open Records Act) prohibits a governmental entity from asking a requestor for the reason the requested information is being sought. The Commission made no change in response to this comment.

TxOGA recommended that the Commission revise subsection (f)(3) to revise the form to clarify that it would only apply to landowner requestors and not government agencies. The Commission agrees with this comment and has made the recommended changes.

TxOGA recommended that the Commission revise subsection (f)(4) to provide clarity by tying the requirement to the "relevant well." The Commission agrees with this comment, but has used language other than that recommended. In addition, as noted previously, the Commission deleted the word "final."

TxOGA recommended that the Commission revise subsection (f)(5), as adopted, to provide notice to the operator and to any service company or supplier identified as the person claiming the trade secret. The Commission agrees with this comment and has made the recommended revision.

TxOGA recommended that the Commission revise subsection (f)(6) to provide a process for challenging the eligibility of a person challenging a claim of trade secret protection. Halliburton also expressed agreement with TxOGA's comments regarding the ability to challenge the eligibility of a requestor to make a trade secret challenge. The proposed rule does not specify whether and how a trade secret owner could challenge the eligibility of the requestor. The revisions proposed by TxOGA would afford the trade secret owner a short, ten-business day period to make such a challenge and stay action by the Office of the Attorney General pending the eligibility challenge. Because this is a Commission rule rather than a rule of the Office of the Attorney General, the Commission may appropriately serve as the agency to consider any challenge to the eligibility of the requestor.

The Commission declines at this time to include such a provision in the adopted rule, but would entertain comments on the issue at such time as the Commission has more experience with fracturing fluid disclosure and has determined that the eligibility of requestors is an issue that needs to be addressed. First, the proposed rule did not include such a provision and inclusion of such a provision would be a sufficiently substantial change to require that the Commission republish the proposed rule for further comment. In addition, at this point the Commission is not sure which agency would have the authority to hear a dispute over a person's eligibility to challenge a request for information claimed as trade secret under Texas Government Code, Chapter 552. The Commission made no changes to the rule in response to this comment. However, the Commission did include language to indicate that the Commission would determine whether the request has been made within the allowed 24-month period, and language that indicates that if the Commission determines that the request has been received within the allowed 24-month period and the certification is properly completed and signed, the Commission will consider this sufficient for the purpose of forwarding the request to the Office of the Attorney General.

TxOGA recommended that the Commission revise subsection (f)(7), as adopted, to establish a procedure for providing information to Office of the Attorney General during challenge process without making the information subject to open records and delete the requirement to provide a physical copy of the trade secret information to the Office of the Attorney General. As proposed, subsection (f)(5)(B), adopted as subsection (f)(6)(B), requires the trade secret owner to submit the claimed secret information marked "confidential" to the Office of the Attorney General as part of the challenge review process. While it may be necessary for the Office of the Attorney General to receive or have access to this information as part of the review, TxOGA is concerned that providing a copy of the information as proposed could allow it to be requested by any member of the public, not just a requestor, under the Texas Public Information Act. Instead, provisions to make the information available to the Office of the Attorney General during the challenge review process are included in subsection (f)(7) of TxOGA's proposed revisions. Halliburton commented that proposed subsection (f)(5)(B) would require the trade secret owner to submit the claimed secret information marked "confidential" to the Office of the Attorney General as part of the challenge review process. While it may be necessary for the Office of the Attorney General to receive or have access to this information as part of the review, it should not thereby become information that any member of the public could request under the Texas Public Information Act.

The Commission does not agree with these comments. HB 3328 requires disclosure of information held by a third party supplier, service company, or operator, rather than a state agency (the Commission). Normally, when a governmental entity receives information that is considered entitled to trade secret protection, and subsequently receives an open records request for that information, the Office of the Attorney General requires that the governmental entity provide the information to the Office of the Attorney General. The Office of the Attorney General holds that information confidential until is has made a determination regarding whether or not the information is public information. The Commission sees no reason to deviate from such a requirement and place an additional burden on the Office of the Attorney General. The Commission made no change in response to these comments.

TxOGA recommended that the Commission add new wording to provide a process for challenging a claim of trade secret protection. The Commission generally agrees with this comment, but did not use the recommended language.

TxOGA recommended that the Commission add new wording to recognize that there may be circumstances where a determination is unnecessary or the challenge is withdrawn. Halliburton stated that it agrees with TxOGA regarding withdrawal of a challenge, as it is not appropriate to continue to task the time and resources of the Office of the Attorney General when the challenge becomes moot. Accordingly, provisions have been suggested that would allow for withdrawal of a challenge by a landowner or in the event the trade secret owner provides the information being requested by a government agency requestor under a claim of confidential business information.

The Commission generally agrees with this comment. The Commission agrees that there may be situations in which a request may be withdrawn or that made a determination by the Office of the Attorney General moot. The Commission did revise the language in response to this comment, but did not use the recommended language.

TxOGA recommended that the Commission revise proposed subsection (f)(6) and (8), adopted as subsection (f)(7) and (10), to conform language to be consistent with Texas Government Code, Chapter 552. The Commission agrees with this comment and has made the recommended changes.

Subsection (h), Penalties

The Lone Star Sierra Club also recommended that subsection (h), which specifies the enforcement, compliance, and penalty provisions, include specific penalty amounts for failure to comply with the rules.

The Commission does not agree with this comment. The Commission did not include a specific amount for penalties in the proposed rule. Therefore, it cannot include such a number in the adopted rule. However, the Commission recently directed staff to begin work on a penalty rule and the commenter may wish to comment on that proposed rule. The Commission made no changes in response to this comment.

TxOGA requested that the Commission clarify against whom the Commission would pursue enforcement action in a situation where an operator is unable to obtain information from a supplier or service company necessary to comply with the disclosure requirements of the rule.

If such a situation were to arise, the Commission would require the operator to document its attempts to obtain the required information and would require the supplier or service company to document why it did not provide the required information. After review of this documentation, the Commission would pursue enforcement action against the entity or entities that did not provide adequate documentation. If an operator continued to use the services of a supplier or service company that consistently failed to provide the operator with information in compliance with the disclosure requirements of this rule, the Commission most likely would pursue enforcement action against both the operator and the supplier or service company.

The Commission adopts new §3.29(a), relating to definitions, to define terms used in the proposed new rule. The Commission added a definition and modified other definitions in response to comments. The Commission added a definition for "adjacent property" to mean "a tract of property next to the tract of prop-

erty on which the subject wellhead is located, including a tract that meets only at a corner point." The Commission also revised the definition of "health professional or emergency responder" to include physician's assistant and nurse practitioner and to replace the word "providing" with the phrase "who needs information in order to provide." The Commission revised the definition of "service company" to delete the phrase "well stimulation services, including" to clarify that the rule concerns hydraulic fracturing treatments. The Commission also revised the definition of "total water volume" to conform to the FracFocus definition of the term.

The Commission adopts new §3.29(b), relating to applicability, with changes. The Commission revised this subsection to state that this new section applies to a hydraulic fracturing treatment performed on a well in this state for which the Commission has issued an initial drilling permit on or after February 1, 2012. The Commission selected the February 1, 2012, date to allow operators and their agents sufficient time to register with GWPC to be able to upload information on the FracFocus Internet website. In addition, this date will allow suppliers, service companies, and operators sufficient time to prepare for compliance with the requirements of this new rule.

The Commission adopts new §3.29(c), relating to required disclosures, to detail the hydraulic fracturing treatment chemical disclosure requirements for suppliers, services companies, and operators. Consistent with the provisions of HB 3328, subsection (c) requires an operator to submit information about the chemical ingredients and volume of water used in the hydraulic fracturing treatment of a well to the hydraulic fracturing chemical registry Internet website of the Ground Water Protection Council (GWPC) and the Interstate Oil and Gas Compact Commission (IOGCC) known as "FracFocus." Should this website be discontinued or become permanently inoperable, the Commission will amend the new rule to specify another publicly accessible Internet website on which this information must be posted.

In response to comments, the Commission revised subsection (c)(1) to change the time for a supplier or service company to provide required information to the operator to not later than 15 days, rather than 30 days, following the completion of hydraulic fracturing treatment(s) on a well. In addition, the Commission clarified the information that a supplier or service company must provide to the operator of a well to allow the operator to comply with the requirements of the rule. The Commission also added language that requires the supplier or service company to supply the operator with a written statement that the specific identity and CAS number or amount of any additive or chemical ingredient used in the hydraulic fracturing treatment of the operator's well is entitled to protection as trade secret information pursuant to the criteria provided by Texas Government Code, Chapter 552.

In response to comments, the Commission revised subsection (c)(2), relating to operator disclosures, to add clarifying phrases and words. In addition, the Commission revised the language to require that all information required by this rule, including the information on the supplemental list, as well as the information required to be uploaded on the FracFocus website in the proposed version, be uploaded to the FracFocus website. Such a requirement will consolidate all of the information on the FracFocus Internet website, and will simplify the procedure for operators by eliminating the need for an operator to upload information on FracFocus and make and submit a hard copy of that information with the supplemental list and the completion report for the well. This change also will make the information more easily accessible and less confusing to the public.

Also in response to comments, the Commission modified subsection (c)(4) to clarify the requirements for disclosure of information to health professionals and emergency responders during emergency and non-emergency situations.

The Commission adopts §3.29(d), relating to disclosures not required, which states that a supplier, service company, or operator is not required to disclose ingredients that are not disclosed to it by the manufacturer, supplier, or service company; disclose ingredients that were not intentionally added to the hydraulic fracturing treatment; disclose ingredients that occur incidentally or are otherwise unintentionally present which may be present in trace amounts, may be the incidental result of a chemical reaction or chemical process, or may be constituents of naturally occurring materials that become part of a hydraulic fracturing fluid; or identify specific chemical ingredients that are eligible for trade secret protection based on the additive in which they are found or provide the concentration of such ingredients. In response to comments, the Commission inserted the phrase "and/or CAS numbers" after the phrase "specific identity" because the CAS number may be information for which a claim of trade secret protection has been made. The Commission also added language to clarify that this information must be disclosed if the Office of the Attorney General, or a court of proper jurisdiction on appeal of a determination of the Office of the Attorney General, determines that the information would not be entitled to trade secret protection under Texas Government Code, Chapter 552, if the information had been provided to the Commission.

The Commission adopts §3.29(e), relating to trade secret protection, which states that a supplier, service company, or operator is not required to disclosure information that is entitled to trade secret protection, unless the claim has been successfully challenged under Texas Government Code, Chapter 552. The Commission included the phrase "or CAS number" after the phrase "specific identity" because the CAS number may be information for which a claim of trade secret protection has been made.

The Commission adopts §3.29(f), relating to trade secret challenge, which codifies the eligibility requirements in Texas Natural Resources Code, §91.851, of a person who may challenge a claim of entitlement to trade secret protection, and outlines the procedures and requirements for such a challenge. The Commission revised the language in subsection (f)(1) to clarify that certain persons may submit a request to challenge a claim of entitlement to trade secret protection and to more clearly identify that the request would challenge such a claim for information related to chemical ingredients used in the hydraulic fracturing treatment(s) of a well.

In response to a comment, the Commission also added to the format in Figure: 16 TAC §3.29(f)(3) a sentence that identifies that the second part of the form is to be completed by a landowner or adjacent landowner making a request to challenge a claim of entitlement to trade secret information.

The Commission also revised subsection (f)(4) to clarify that a landowner who owned the property on which the wellhead is located, or owned adjacent property, on or after the date the operator filed with the Commission the completion report for the subject well may challenge a claim of entitlement to trade secret protection within that 24-month period only. In addition, the Commission inserted language that clarifies that the Commission will

determine whether or not the request has been received within the allowed 24-month period.

The Commission also inserted a new subsection (f)(5) to clarify that, if the Commission determines that the request has been received within the allowed 24-month period and the certification is properly completed and signed, the Commission will consider this sufficient for the purpose of forwarding the request to the Office of the Attorney General.

The Commission also revised subsection (f)(6), proposed as subsection (f)(5), to state that the Commission also will notify the operator of the subject well that the Commission has received a request to challenge a claim of entitlement to trade secret protection for information related to chemical ingredients used in the hydraulic fracturing treatment(s) of the operator's well.

The Commission revised subsection (f)(6) (now subsection (f)(7)) and subsection (f)(8) (now subsection (f)(10)) to make the language consistent with Chapter 552 of the Government Code.

In response to comments, the Commission inserted new subsection (f)(8), which provides for withdrawal of a request to challenge a claim of entitlement to trade secret protection.

The Commission adopts without change §3.29(g), relating to trade secret confidentiality, which requires that a health professional or emergency responder to whom trade secret information is disclosed under new subsection (f) must hold the information confidential, except that the health professional or emergency responder may, for diagnostic or treatment purposes, disclose information provided under that subsection to another health professional, emergency responder, or accredited lab.

The Commission adopts without change §3.29(h), relating to penalties, which states that violations of this new section may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the Commission, and that the certificate of compliance for a well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) (Rule 73) for violation of this section.

The Commission adopts the new rule pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 91, Subchapter S, as enacted by HB 3328, relating to Disclosure of Composition of Hydraulic Fracturing Fluids; Texas Natural Resources Code, §91.101, which gives the Railroad Commission authority to adopt rules and orders governing the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Commission; and Texas Government Code, §2001.006, which authorizes a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Texas Natural Resources Code, §§81.051, 81.052, and 91.851 are affected by the new rule.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 91.851; Texas Government Code, §2001.006.

Cross reference to statute: Texas Natural Resources Code, Chapters 81 and 91.

Issued in Austin, Texas, on December 13, 2011.

§3.29. Hydraulic Fracturing Chemical Disclosure Requirements.

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

(1) Accredited laboratory--A laboratory as defined in Texas Water Code, §5.801.

(2) Additive--Any chemical substance or combination of substances, including a proppant, contained in a hydraulic fracturing fluid that is intentionally added to a base fluid for a specific purpose whether or not the purpose of any such substance or combination of substances is to create fractures in a formation.

(3) Adjacent property--A tract of property next to the tract of property on which the subject wellhead is located, including a tract that meets only at a corner point.

(4) API number--A unique, permanent, numeric identifier assigned to each well drilled for oil or gas in the United States.

(5) Base fluid--The continuous phase fluid type, such as water, used in a particular hydraulic fracturing treatment.

(6) Chemical Abstracts Service--The division of the American Chemical Society that is the globally recognized authority for information on chemical substances.

(7) Chemical Abstracts Service number or CAS number--The unique identification number assigned to a chemical by the Chemical Abstracts Service.

(8) Chemical Disclosure Registry--The chemical registry website known as FracFocus developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.

(9) Chemical family--A group of chemical ingredients that share similar chemical properties and have a common general name.

(10) Chemical ingredient--A discrete chemical constituent with its own specific name or identity, such as a CAS number, that is contained in an additive.

(11) Commission--The Railroad Commission of Texas.

(12) Delegate--The person authorized by the director to take action on behalf of the Railroad Commission of Texas under this section.

(13) Director--The director of the Oil and Gas Division of the Railroad Commission of Texas or the director's delegate.

(14) Health professional or emergency responder--A physician, physician's assistant, industrial hygienist, toxicologist, epidemiologist, nurse, nurse practitioner, or emergency responder who needs information in order to provide medical or other health services to a person exposed to a chemical ingredient.

(15) Hydraulic fracturing fluid--The fluid, including the applicable base fluid and all additives, used to perform a particular hydraulic fracturing treatment.

(16) Hydraulic fracturing treatment--The treatment of a well by the application of hydraulic fracturing fluid under pressure for the express purpose of initiating or propagating fractures in a target geologic formation to enhance production of oil and/or natural gas.

(17) Landowner--The person listed on the applicable county appraisal roll as owning the real property on which the relevant wellhead is located.

(18) Operator--An operator as defined in Texas Natural Resources Code, Chapter 89.

(19) Person--Natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(20) Proppant--Sand or any natural or man-made material that is used in a hydraulic fracturing treatment to prop open the artificially created or enhanced fractures once the treatment is completed.

(21) Requestor--A person who is eligible to request information claimed to be entitled to trade secret protection in accordance with Texas Natural Resources Code, §91.851(a)(5).

(22) Service company--A person that performs hydraulic fracturing treatments on a well in this state.

(23) Supplier--A company that sells or provides an additive for use in a hydraulic fracturing treatment.

(24) Total water volume--The total amount of water in gallons used as the carrier fluid for the hydraulic fracturing job. It may include recycled water and newly acquired water.

(25) Trade name--The name given to an additive or a hydraulic fracturing fluid system under which that additive or hydraulic fracturing fluid system is sold or marketed.

(26) Trade secret--Any formula, pattern, device, or compilation of information that is used in a person's business, and that gives the person an opportunity to obtain an advantage over competitors who do not know or use it. The six factors considered in determining whether information qualifies as a trade secret, in accordance with the definition of "trade secret" in the Restatement of Torts, Comment B to Section 757 (1939), as adopted by the Texas Supreme Court in *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958), include:

(A) the extent to which the information is known outside of the company;

(B) the extent to which it is known by employees and others involved in the company's business;

(C) the extent of measures taken by the company to guard the secrecy of the information;

(D) the value of the information to the company and its competitors;

(E) the amount of effort or money expended by the company in developing the information; and

(F) the ease or difficulty with which the information could be properly acquired or duplicated by others.

(27) Well--A well as defined in Texas Natural Resources Code, Chapter 89.

(28) Well completion report--The report an operator is required to file with the Commission following the completion or recompletion of a well, if applicable, in accordance with §3.16(b) of this title (relating to Log and Completion or Plugging Report.)

(b) Applicability. This section applies to a hydraulic fracturing treatment performed on a well in the State of Texas for which the Commission has issued an initial drilling permit on or after February 1, 2012.

(c) Required disclosures.

(1) Supplier and service company disclosures.

(A) As soon as possible, but not later than 15 days following the completion of hydraulic fracturing treatment(s) on a well, the supplier or the service company must provide to the operator of the well the following information concerning each chemical ingredient intentionally added to the hydraulic fracturing fluid:

(i) each additive used in the hydraulic fracturing fluid and the trade name, supplier, and a brief description of the intended use or function of each additive in the hydraulic fracturing treatment;

(ii) each chemical ingredient subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2);

(iii) all other chemical ingredients not submitted under subparagraph (A) of this paragraph that were intentionally included in, and used for the purpose of creating, hydraulic fracturing treatment(s) for the well;

(iv) the actual or maximum concentration of each chemical ingredient listed under clause (i) or clause (ii) of this subparagraph in percent by mass; and

(v) the CAS number for each chemical ingredient, if applicable.

(B) The supplier or service company must provide the operator of the well a written statement that the specific identity and/or CAS number or amount of any additive or chemical ingredient used in the hydraulic fracturing treatment(s) of the operator's well is claimed to be entitled to protection as trade secret information pursuant to Texas Government Code, Chapter 552. If the chemical ingredient name and/or CAS number is claimed as trade secret information, the supplier or service company making the claim must provide:

(i) the supplier's or service company's contact information, including the name, authorized representative, mailing address, and telephone number; and

(ii) the chemical family, unless providing the chemical family would disclose information protected as a trade secret.

(2) Operator disclosures.

(A) On or before the date the well completion report for a well on which hydraulic fracturing treatment(s) was/were conducted is submitted to the Commission in accordance with §3.16(b) of this title, the operator of the well must complete the Chemical Disclosure Registry form and upload the form on the Chemical Disclosure Registry, including:

(i) the operator name;

(ii) the date of completion of the hydraulic fracturing treatment(s);

(iii) the county in which the well is located;

(iv) the API number for the well;

(v) the well name and number;

(vi) the longitude and latitude of the wellhead;

(vii) the total vertical depth of the well;

(viii) the total volume of water used in the hydraulic fracturing treatment(s) of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment(s), if something other than water;

(ix) each additive used in the hydraulic fracturing treatments and the trade name, supplier, and a brief description of the intended use or function of each additive in the hydraulic fracturing treatment(s);

(x) each chemical ingredient used in the hydraulic fracturing treatment(s) of the well that is subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2), as provided by the chemical supplier or service company or by the operator, if the operator provides its own chemical ingredients;

(xi) the actual or maximum concentration of each chemical ingredient listed under clause (x) of this subparagraph in percent by mass;

(xii) the CAS number for each chemical ingredient listed, if applicable; and

(xiii) a supplemental list of all chemicals and their respective CAS numbers, not subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2), that were intentionally included in and used for the purpose of creating the hydraulic fracturing treatments for the well.

(B) If the Chemical Disclosure Registry known as FracFocus is temporarily inoperable, the operator of a well on which hydraulic fracturing treatment(s) were performed must supply the Commission with the required information with the well completion report and must upload the information on the FracFocus Internet website when the website is again operable. If the Chemical Registry known as FracFocus is discontinued or becomes permanently inoperable, the information required by this rule must be filed as an attachment to the completion report for the well, which is posted, along with all attachments, on the Commission's Internet website, until the Commission amends this rule to specify another publicly accessible Internet website.

(C) If the supplier, service company, or operator claim that the specific identity and/or CAS number or amount of any additive or chemical ingredient used in the hydraulic fracturing treatment(s) is entitled to protection as trade secret information pursuant to Texas Government Code, Chapter 552, the operator of the well must indicate on the Chemical Disclosure Registry form or the supplemental list that the additive or chemical ingredient is claimed to be entitled to trade secret protection. If a chemical ingredient name and/or CAS number is claimed to be entitled to trade secret protection, the chemical family or other similar description associated with such chemical ingredient must be provided. The operator of the well on which the hydraulic fracturing treatment(s) were performed must provide the contact information, including the name, authorized representative, mailing address, and phone number of the business organization claiming entitlement to trade secret protection.

(D) Unless the information is entitled to protection as a trade secret under Texas Government Code, Chapter 552, information submitted to the Commission or uploaded on the Chemical Disclosure Registry is public information.

(3) Inaccuracies in information. A supplier is not responsible for any inaccuracy in information that is provided to the supplier by a third party manufacturer of the additives. A service company is not responsible for any inaccuracy in information that is provided to the service company by the supplier. An operator is not responsible for any inaccuracy in information provided to the operator by the supplier or service company.

(4) Disclosure to health professionals and emergency responders. A supplier, service company or operator may not withhold information related to chemical ingredients used in a hydraulic fracturing treatment, including information identified as a trade secret, from any health professional or emergency responder who needs the information for diagnostic, treatment or other emergency response purposes subject to procedures set forth in 29 Code of Federal Regulations §1910.1200(i). A supplier, service company or operator must provide directly to a health professional or emergency responder, all information in the person's possession that is required by the health professional or emergency responder, whether or not the information may qualify for trade secret protection under subsection (e) of this section. The person disclosing information to a health professional or emergency responder must include with the disclosure, as soon as circumstances permit, a statement of the health professional's confidentiality obligation. In an emergency situation, the supplier, service company or operator must provide the information immediately upon request to the person who determines that the information is necessary for emergency response or treatment. The disclosures required by this subsection must be made in accordance with the procedures in 29 Code of Federal Regulations §1910.1200(i) with respect to a written statement of need and confidentiality agreements, as applicable.

(d) Disclosures not required. A supplier, service company, or operator is not required to:

(1) disclose ingredients that are not disclosed to it by the manufacturer, supplier, or service company;

(2) disclose ingredients that were not intentionally added to the hydraulic fracturing treatment;

(3) disclose ingredients that occur incidentally or are otherwise unintentionally present which may be present in trace amounts, may be the incidental result of a chemical reaction or chemical process, or may be constituents of naturally occurring materials that become part of a hydraulic fracturing fluid; or

(4) identify specific chemical ingredients and/or their CAS numbers that are claimed as entitled to trade secret protection based on the additive in which they are found or provide the concentration of such ingredients, unless the Office of the Attorney General, or a court of proper jurisdiction on appeal of a determination by the Office of the Attorney General, determines that the information would not be entitled to trade secret protection under Texas Government Code, Chapter 552, if the information had been provided to the Commission.

(e) Trade secret protection.

(1) A supplier, service company, or operator is not required to disclose trade secret information, unless the Office of the Attorney General or a court of proper jurisdiction determines that the information is not entitled to trade secret protection under Texas Government Code, Chapter 552.

(2) If the specific identity and/or CAS number of a chemical ingredient, the concentration of a chemical ingredient, or both the specific identity and/or CAS number and concentration of a chemical ingredient are claimed or have been finally determined to be entitled to protection as a trade secret under Texas Government Code, Chapter 552, the supplier, service company, or operator, as applicable, may withhold the specific identity and/or CAS number, the concentration, or both the specific identity and/or CAS number and concentration, of the chemical ingredient from the information provided to the operator. If the supplier, service company, or operator, as applicable, elects to withhold that information, the supplier, service company, or operator, as applicable, must provide to the operator or the Commission, as applicable, information that:

(A) indicates that the specific identity and/or CAS number of the chemical ingredient, the concentration of the chemical ingredient, or both the specific identity and/or CAS number and concentra-

tion of the chemical ingredient are entitled to protection as trade secret information; and

(B) discloses the chemical family associated with the chemical ingredient; or

(C) discloses the properties and effects of the chemical ingredient(s), the identity of which is withheld.

(f) Trade secret challenge.

(1) The following persons may submit a request challenging a claim of entitlement to trade secret protection for any chemical ingredients and/or CAS numbers used in the hydraulic fracturing treatment(s) of a well:

(A) the landowner on whose property the relevant wellhead is located;

(B) the landowner who owns real property adjacent to property described in subparagraph (A) of this paragraph; or

(C) a department or agency of this state with jurisdiction over a matter to which the claimed trade secret information is relevant.

(2) A requestor must certify in writing to the director, over the requestor's signature, to the following:

(A) the requestor's name, address, and daytime phone number;

(B) if the requestor is a landowner, a statement that the requestor is listed on the county appraisal roll as owning the property on which the relevant wellhead is located or is listed on the county appraisal roll as owning property adjacent to the property on which the relevant wellhead is located;

(C) the county in which the wellhead is located; and

(D) the API number or other Railroad Commission of Texas identifying information, such as field name, oil lease name and number, gas identification number, and well number.

(3) A requestor may use the following format to provide the written certification required by paragraph (2) of this subsection: Figure: 16 TAC §3.29(f)(3)

(4) A requestor must file a request no later than 24 months from the date the operator filed the well completion report for the well on which the hydraulic fracturing treatment(s) were performed. A landowner who owned the property on which the wellhead is located, or owned adjacent property, on or after the date the operator filed with the Commission the completion report for the subject well may challenge a claim of entitlement to trade secret protection within that 24-month period only. The Commission will determine whether or not the request has been received within the allowed 24-month period.

(5) If the Commission determines that the request has been received within the allowed 24-month period and the certification is properly completed and signed, the Commission will consider this sufficient for the purpose of forwarding the request to the Office of the Attorney General.

(6) Within 10 business days of receiving a request that complies with paragraph (2) of this subsection, the director must:

(A) submit to Office of the Attorney General, Open Records Division, a request for decision regarding the challenge;

(B) notify the operator of the subject well and the owner of the claimed trade secret information of the submission of the request to the Office of the Attorney General and of the requirement that the owner of the claimed trade secret information submit directly to the Office of Attorney General, Open Records Division, the claimed trade secret information, clearly marked "confidential," submitted under seal; and

(C) inform the owner of the claimed trade secret information of the opportunity to substantiate to the Office of the Attorney General, Open Records Division, its claim of entitlement of trade secret protection, in accordance with Texas Government Code, Chapter 552.

(7) If the Office of the Attorney General determines that the claim of entitlement to trade secret protection is valid under Texas Government Code, Chapter 552, if the information had been provided to the Commission, the owner of the claimed trade secret information shall not be required to disclose the trade secret information, subject to appeal.

(8) The request shall be deemed withdrawn if, prior to the determination of the Office of the Attorney General on the validity of the trade secret claim, the owner of the claimed trade secret information provides confirmation to the Commission and the Office of the Attorney General that the owner of the claimed trade secret information has voluntarily provided the information that is the subject of the request to the requestor subject to a claim of trade secret protection, or the requestor submits to the Commission and the Office of the Attorney General a written notice withdrawing the request.

(9) A final determination by the Office of the Attorney General regarding the challenge to the claim of entitlement of trade secret protection of any withheld information may be appealed within 10 business days to a district court of Travis County pursuant to Texas Government Code, Chapter 552.

(10) If the Office of the Attorney General, or a court of proper jurisdiction on appeal of a determination by the Office of the Attorney General, determines that the withheld information would not be entitled to trade secret protection under Texas Government Code, Chapter 552, if the information had been provided to the Commission, the owner of the claimed trade secret information must disclose such information to the requestor as directed by the Office of the Attorney General or a court of proper jurisdiction on appeal.

(g) Trade secret confidentiality. A health professional or emergency responder to whom information is disclosed under subsection (c)(4) of this section must hold the information confidential, except that the health professional or emergency responder may, for diagnostic or treatment purposes, disclose information provided under that subsection to another health professional, emergency responder, or accredited laboratory. A health professional, emergency responder, or accredited laboratory to which information is disclosed by another health professional or emergency responder under this subsection must hold the information confidential and the disclosing health professional or emergency responder must include with the disclosure, or in a medical emergency, as soon as circumstances permit, a statement of the recipient's confidentiality obligation pursuant to this subsection.

(h) Penalties. A violation of this section may subject a person to any penalty or remedy specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the Commission. The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) (Rule 73) for violation of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105527
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Effective date: January 2, 2012
Proposal publication date: September 9, 2011
For further information, please call: (512) 475-1295

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CHAPTER 4. ENVIRONMENTAL PROTECTION

SUBCHAPTER F. OIL AND GAS NORM

16 TAC §4.635

The Railroad Commission of Texas (Commission or RRC) adopts new §4.635, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Department of State Health Services (DSHS) Regarding Radiation Control Functions, without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7224). The purpose of the new rule is to delineate areas of respective jurisdiction and to coordinate the respective responsibilities and duties of the RRC and the DSHS in the regulation of sources of radiation in accordance with Texas Health and Safety Code (HSC) §401.414, to provide consistency, effectiveness and efficiency in radiation control functions.

The RRC received no comments on the proposed new rule.

The RRC's new rule parallels DSHS's new 25 TAC §289.102 (relating to Memorandum of Understanding between the Department of State Health Services and the Railroad Commission of Texas Regarding Radiation Control Functions) published in the August 5, 2011, issue of the *Texas Register* (36 TexReg 4897). Earlier in 2011, the RRC provided a substantially identical copy of the proposed rule on its web site for informal comment, but received no comments.

New subsection (a) delineates areas of respective jurisdiction and coordinates the respective responsibilities and duties of the DSHS and the RRC in the regulation of sources of radiation in accordance with HSC, §401.414, to provide a consistent approach and to avoid duplication. In addition, subsection (a) clarifies that this MOU shall not be construed to reduce the statutory authority of either agency.

New subsection (b) provides that words and terms used in this section have the same meaning as defined in HSC, §401.003, unless the context clearly indicates otherwise, and specifically lays out the definition of oil and gas NORM waste as defined in HSC, §401.003(27).

New subsection (c) identifies the respective agencies' respective jurisdictions related to the regulation of sources of radiation. In accordance with HSC, §401.415 (relating to Oil and Gas Naturally Occurring Radioactive Material (NORM) Waste), the RRC has sole authority to regulate and issue licenses, permits, and orders for the disposal of oil and gas NORM waste and to require the owner or operator of oil and gas equipment used in exploration, production, or disposal to determine whether the equipment contains or is contaminated with oil and gas NORM waste and to identify any equipment determined to contain or be contaminated with oil and gas NORM. The DSHS has jurisdiction to regulate and license the possession, receipt, use, handling, transfer, transport, and storage of all radioactive material in accordance with HSC, §401.003(3)(A). The DSHS has sole jurisdiction to regulate and register or license the use or service of electronic products as defined in HSC, §401.003(9). HSC, §401.106, gives the DSHS the authority, through rulemaking by the executive commissioner of the Texas Health and Human Services Commission, to exempt a source of radiation or a kind of use or user from licensing or registration requirements.

New subsection (d) identifies the respective agencies' authority over specific activities, including disposal, decontamination, transportation, radioactive logging tools, radioactive tracers, NORM contaminated equipment, and recycling/scrap yards.

New subsection (e) establishes the activities in which the RRC and the DSHS will coordinate with each other, including working together to ensure that complete regulation is maintained for radioactive materials and other sources of radiation associated with oil and gas exploration, development, and production operations; coordinating rulemaking activities between the two agencies and the Texas Radiation Advisory Board (TRAB) to ensure consistency of regulation in accordance with HSC, §401.020 (relating to the Duty of Agencies With Radiation Related Programs); coordinating with each other in the preparation of the annual evaluation and report to the Legislative Budget Board as required under the Texas Government Code, §2110.006 (relating to Agency Evaluation of Committee Costs and Effectiveness) and §2110.007 (relating to Report to the Legislative Budget Board); and seeking and considering advice from the Texas Radiation Advisory Board (TRAB) on issues that involve management or disposal of NORM waste generated in connection with oil or gas exploration, development, or production operations.

The DSHS and the RRC each agree to coordinate rulemaking activities that pertain to the requirements of the agreement between the State of Texas and the United States Nuclear Regulatory Commission, as amended, and to ensure that rules and guidelines are compatible with federal regulatory programs. Each agency agrees to coordinate with the other by providing information on any proposed legislation relating to the regulation of radioactive substances. The DSHS and the RRC each agree to meet as needed to discuss possible changes in this MOU and to encourage increased communication between the agencies. The DSHS and the RRC each agree to coordinate with the other agency with respect to activities involving radioactive sources that are lodged, abandoned, or lost down hole. Prior to approving abandonment procedures, tool recovery, well re-entry, and corrective action when a radioactive source has been breached or radiation otherwise escapes the source, the RRC will assure coordination with and concurrence from DSHS.

New subsection (f) establishes coordination of enforcement and incident response activities.

New subsection (g) establishes that the DSHS and the RRC agree to provide mutual assistance when there is need for such assistance, such as for performing training, environmental or public health or safety monitoring, or technical reviews.

New subsection (h) provides that the RRC and the DSHS will revise their respective rules and procedures as needed to implement this MOU, and states that if any part of the MOU is held to be invalid, the remaining provisions will not be affected.

New subsection (i) provides that the MOU will take effect after approval by both agencies and 20 days after the date on which it is filed in the Office of the Secretary of State in accordance with the provisions of Texas Government Code, §2001.036 (relating to Effective Date of Rules; Effect of Filing with Secretary of State), and will remain in effect until rescinded by either agency.

The RRC adopts new §4.635 under Texas Health and Safety Code, §401.414, which requires the Texas Commission on Environmental Quality, the RRC, and the Health and Human Services Commission by rule to adopt memoranda of understanding defining their respective duties under Texas Health and Safety Code, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation; Texas Water Code, §26.131, which gives the RRC jurisdiction over pollution of surface or subsurface waters from oil and gas exploration, development, and production activities; Texas Natural Resources Code, §81.052, which authorizes the RRC to adopt all necessary rules for governing persons and their operations under the jurisdiction of the RRC under Texas Natural Resources Code, §81.051; Texas Natural Resources Code, §85.042(b), which authorizes the RRC to adopt and enforce rules for the prevention of actual waste of oil or operations in the field dangerous to life or property; Texas Natural Resources Code, §85.201, which authorizes the RRC to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas; Texas Natural Resources Code, §85.202, which authorizes the RRC to adopt rules to prevent waste of oil and gas in producing operations; Texas Natural Resources Code, §91.101, which authorizes the RRC to adopt rules relating to the various oilfield operations, including the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste; and Texas Natural Resources Code §91.602, which authorizes the RRC to adopt and enforce rules relating to the generation, transportation, treatment, storage, and disposal of oil and gas hazardous waste.

Texas Health and Safety Code, §401.414; Texas Water Code, §26.131, and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602 are affected by the adopted new rule.

Statutory authority: Texas Health and Safety Code, §401.414; Texas Water Code, §26.131, and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Cross-reference to statute: Texas Health and Safety Code, §401.414; Texas Water Code, §26.131, and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Issued in Austin, Texas, on December 13, 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 December 13, 2011.

TRD-201105526
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Effective date: January 2, 2012
Proposal publication date: October 28, 2011
For further information, please call: (512) 475-1295

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §§402.703, 402.704, 402.715

The Texas Lottery Commission (Commission) adopts the repeal of 16 TAC §402.703, concerning Books and Records Inspection; §402.704, concerning Tax Review Inspection; and §402.715, concerning Compliance Audit, without changes to the proposal as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7457).

The purpose of the repeal is to eliminate these provisions from the Charitable Bingo Administrative Rules as the reasons for them no longer exist.

A public comment hearing was held on Wednesday, November 16, 2011, at 10:00 a.m. There were no individuals present at the hearing, and the Commission did not receive any written comments on the proposed repeal.

The repeal is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under 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 repeal implements Occupations Code, Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105595
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: January 5, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 344-5012

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CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.401

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.401, concerning Use of Commission Motor Vehicles, without changes to the proposed text, as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7457).

The purpose of the amendments is to delete the existing subsection (b) because the underlying statute was repealed in the 82nd Legislature, Regular Session, and to add a new subsection (b)

to reflect a statutory requirement not previously reflected in the agency rules.

The Commission received no written comments from individuals, groups, or associations during the public comment period.

The amendments are adopted 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 adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105597
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: January 5, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 344-5275

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1034

The Texas Education Agency (TEA) adopts an amendment to §61.1034, concerning school facilities. The amendment is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6845) and will not be republished. The section establishes provisions related to the allotment for new instructional facilities. The adopted amendment modifies the rule to reflect statutory changes, implement a recent TEA policy decision to allow open-enrollment charter schools to apply for the allotment, amend the application process, and establish in rule a requirement for applicants to complete a survey after receiving funds.

The Texas Education Code (TEC), §42.158, allows the commissioner by rule to establish procedures and adopt guidelines for the administration of the New Instructional Facility Allotment (NIFA). Through 19 TAC §61.1034, last amended to be effective September 23, 2004, the commissioner exercised rulemaking authority to establish definitions, explain the application process, and describe costs and payments related to the allotment.

House Bill 2237, 80th Texas Legislature, 2007, amended the TEC, §42.158, to allow the appropriation of an additional $1 million for the NIFA each school year. This additional amount must first be applied to prevent any reduction in NIFA funding for eligible high school facilities if the total amount of allotments exceeds the regular NIFA appropriation of $25 million. Any remaining funds may be applied proportionally to prevent reductions in NIFA funding for other instructional facilities.

The adopted amendment to 19 TAC §61.1034 modifies the rule to reflect this statutory change by adding new subsection (d)(3) to include an explanation of how the additional NIFA appropriation is to be allocated.

The adopted amendment also modifies the rule to allow open-enrollment charter schools to apply for the allotment, in accordance with a recent TEA policy decision. Specifically, subsection (a) is revised to state that open-enrollment charter schools are eligible for the allotment and to include facility provisions specific to open-enrollment charter schools. It is also revised to state explicitly that leased facilities are not eligible for the allotment. New subsection (d)(2)(B) is added to explain what property value will be used for an open-enrollment charter school if proration of the allotment is necessary. New subsection (e) is added to specify that property purchased with NIFA funds by an open-enrollment charter school is considered public property.

In addition, subsection (b)(1)(B) is amended to expand the list of supporting documents required to be submitted with an initial application and specify that the supporting documents must be submitted electronically.

New subsection (c) is added to require applicants that have received funding to complete a survey in the year after funding is received stating the number of days of instruction held at the facility for which funding was received.

The section is also restructured to allow for the new provisions, and minor technical edits and changes in word usage are made throughout.

The current rule requires a school district that wishes to receive an allotment to complete and submit an application requesting funding. The adopted amendment requires an open-enrollment charter school that wishes to receive an allotment to follow the same process. The application requires the name and campus number of the facility for which the allotment is being requested, applicable student count information, and estimates of the number of days of instruction at the new facility for the applicable year. Initial applications also require the electronic submission of a photograph and description of the new facility, a legal document describing the new construction, site and floor plans, and, if applicable, a demolition plan.

Under current NIFA procedures, school districts are required to submit a survey in the year after funding is received stating the number of days of instruction held at the facility for which funding was received. The amendment adopts the survey requirement in rule for school districts and open-enrollment charter schools. The survey requires the actual number of days of instruction held at the new facility.

Any locally maintained paperwork requirements resulting from the adopted amendment correspond with and support the stated procedural and reporting implications.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began October 14, 2011, and ended November 14, 2011. Following is a summary

of the public comment received and the corresponding agency response regarding the proposed amendment to 19 TAC Chapter 61, School Districts, Subchapter CC, Commissioner's Rules Concerning School Facilities, §61.1034, New Instructional Facility Allotment.

Comment. The Texas Charter Schools Association (TCSA) commented that it supported the proposed amendment to 19 TAC §61.1034 modifying the rule to allow open-enrollment charter schools to apply for the allotment. The TCSA commented that charter school students would benefit from this change in the rule, as the schools that receive the allotment will be able to direct more financial resources toward classroom instruction and fewer resources toward facilities costs.

Agency Response. The agency agrees with the comment and maintains language as published as proposed.

The amendment is adopted under the TEC, §42.158, which authorizes the commissioner of education to adopt rules as necessary to implement the new instructional facilities allotment.

The amendment implements the TEC, §42.158.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105524
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: January 2, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 475-1497

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CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071

The Texas Education Agency (TEA) adopts an amendment to §62.1071, concerning the equalized wealth level. The amendment is adopted without changes to the proposed text as published in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7110) and will not be republished.

The section establishes provisions relating to wealth equalization requirements. The amendment adopts as a part of the Texas Administrative Code (TAC) the *Manual for Districts Subject to Wealth Equalization 2011-2012 School Year.*

The manual contains the processes and procedures that the TEA uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet.

Legal counsel with the TEA has advised that the procedures contained in each annual manual for districts subject to wealth equalization be adopted as part of the TAC. The intent is to annually update 19 TAC §62.1071 to refer to the most recently published manual. Manuals adopted for previous school years will remain in effect with respect to those school years.

The adopted amendment to 19 TAC §62.1071, Manual for Districts Subject to Wealth Equalization, adopts in rule the official TEA publication *Manual for Districts Subject to Wealth Equalization 2011-2012 School Year* as Figure: 19 TAC §62.1071(a).

Each annual manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

Significant changes to the *Manual for Districts Subject to Wealth Equalization 2011-2012 School Year* from the *Manual for Districts Subject to Wealth Equalization 2010-2011 School Year* include the following.

Section 1

Information has been added on how Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, affects the calculation of weighted average daily attendance for Chapter 41 purposes.

Section 2

Information on the procedures districts must follow upon notification of Chapter 41 status has been clarified.

Section 4

Information on the efficiency credit has been updated to reflect that the credit is no longer available.

Section 5

Information on property value adjustments for declines in district tax bases has been updated to reflect that adjustments are not available for the 2011-2012 school year. The form associated with the adjustment has been removed from Appendix B of the manual.

The adopted rule action places the specific procedures contained in the *Manual for Districts Subject to Wealth Equalization 2011-2012 School Year* in the TAC. The TEA administers the wealth equalization provisions of the TEC, Chapter 41, according to the procedures specified in each annual manual for districts subject to wealth equalization. Data reporting requirements are addressed primarily through the online FSP System. The adopted rule action has no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began October 21, 2011, and ended November 21, 2011. No public comments were received.

The amendment is adopted under the TEC, §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of the TEC, Chapter 41.

The amendment implements the TEC, §41.006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2011.

TRD-201105566
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: January 4, 2012
Proposal publication date: October 21, 2011
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.4

The Texas Real Estate Commission adopts amendments to 22 TAC §535.4, concerning License Required, without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7260) and will not be republished.

The amendments are adopted to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, Senate Bill 747 amends the Texas Occupations Code, Chapter 1101 to define a real estate broker to include a person who controls the acceptance or collection of rent from a resident of a single-family residential unit and to require licensure as a broker for a business entity as defined in §1.002 of the Business Organizations Code which receives compensation on behalf of the licensee.

The amendment to §535.4(f) replaces an existing reference to a corporation or limited liability company to "business entity" to more closely track the text of the statute. The amendment to §535.4(g) defines the meaning of "controls the acceptance or deposit of rent" and "single family residential property unit" for purposes of §1101.002(1)(A)(x) of the Act.

The reasoned justification for the amendment is to have consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535. The reasoned justification for the rule is further described below in response to the comments.

Six comments were received on the rule as proposed including comments from the Texas Apartment Association.

Comment: Two commenters believe that there is no difference between a person who controls the acceptance and deposit of rent for a single family home and a person who does so for a duplex, triplex or four-plex. The commenters believe that the intent and spirit of the statutory change is to require licensure of a person who controls the collection or acceptance of rent on any type of property.

Response: While the Commission understands the commenters' concerns, the language of the statute controls and purpose must be given to the phrase "single-family residential real property unit." Condominiums are owned as single family units with a non-exclusive interest in common areas such as hallways and elevators. On the other hand duplexes are typically owned as one unit with two dwellings. If ownership of a duplex is by condominium regime where two different owners own each unit of the duplex, then such properties could be considered single-family and therefore subject to the real estate license requirement if a person controls the acceptance or deposit of rent for either of the units.

Comment: Two comments inquired as to whether a license would be required if the owner managed the properties.

Response: No license is required if an owner manages the properties and collects the rent for him or herself.

Comment: One commenter suggests deleting the term "condominium" from the proposed definition because it would inadvertently require licensure of an employee of a property management company who merely accepts or deposits rent from tenants in a residential condominium building.

Response: The commission respectfully disagrees with the commenter. The purpose of the statutory provision was to redefine the definition of real estate brokerage to require licensure of a person who controls the acceptance or deposit of rent. An employee of a property management company who merely collects the rent or deposits the rent in a bank account but who does not have the authority to sign checks or withdraw money from the account would not need to be licensed as long as the person did not engage in any other type of real estate brokerage activity as defined in the Act.

Comment: One commenter suggested including an additional provision in the rule to exempt from the requirements of licensure an employee who only controls the acceptance or deposit of rent, but does not engage in any other brokerage activity for a licensed broker because the licensed broker would be responsible for the employee's acts.

Response: The Commission respectfully disagrees with the commenter. An employee that controls the acceptance or deposit of rent for a licensed broker would need to be licensed under the new law even if the employee did not engage in any other real estate brokerage activity. However, if the employee collects rent and manages the company's books, but does not control the disbursement of funds, the new rule would not require that the employee obtain a license.

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

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101, 1102, and 1303; and Texas Property Code, Chapter 221. No other statute, code or article is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105533

Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: January 2, 2012
Proposal publication date: October 28, 2011
For further information, please call: (512) 936-3092

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.211

The Texas Real Estate Commission adopts an amendment to §535.211, concerning Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102, without changes to the proposed text as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7261), which will not be republished.

The amendment updates the reference in subsection (c) to the current certificate of insurance form, REI COI-0.

The reasoned justification for the amendment as adopted is clarity and accuracy of the requirement that inspectors submit proof of insurance on the approved form.

No comments were received regarding the amendment as proposed.

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

The statutes affected by this adoption are Texas Occupations Code, Chapter 1102. No other statute, code, or article is affected by the amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105534
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: January 2, 2012
Proposal publication date: October 28, 2011
For further information, please call: (512) 936-3092

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20 - 537.23, 537.26 - 537.28, 537.30 - 537.33, 537.35, 537.37, 537.39 - 537.41, 537.44 - 537.48, 537.51, 537.52

The Texas Real Estate Commission (TREC or commission) adopts amendments to 22 TAC §537.20, concerning Standard Contract Form TREC No. 9-9; §537.21, concerning Standard Contract Form TREC No. 10-5; §537.22, concerning Standard Contract Form TREC No. 11-6; §537.23, concerning Standard Contract Form TREC No. 12-2; §537.26, concerning Standard Contract Form TREC No. 15-4; §537.27, concerning Standard Contract Form TREC No. 16-4; §537.28, concerning Standard Contract Form TREC No. 20-10; §537.30, concerning Standard Contract Form TREC No. 23-11; §537.31, concerning Standard Contract Form TREC No. 24-11; §537.32, concerning Standard Contract Form TREC No. 25-8; §537.33, concerning Standard Contract Form TREC No. 26-5; §537.35, concerning Standard Contract Form TREC No. 28-1; §537.37, concerning Standard Contract Form TREC No. 30-9; §537.39, concerning Standard Contract Form TREC No. 32-2; §537.40, concerning Standard Contract Form TREC No. 33-1; §537.41, concerning Standard Contract Form TREC No. 34-3; §537.44, concerning Standard Contract Form TREC No. 37-3; §537.45, concerning Standard Contract Form TREC No. 38-3; §537.46, concerning Standard Contract Form TREC No. 39-6; §537.47, concerning Standard Contract Form TREC No. 40-4; §537.48, concerning Standard Contract Form TREC No. 41-1; §537.51, concerning Standard Contract Form TREC No. 44-0; and §537.52, concerning Standard Contract Form TREC No. 45-0. Sections 537.21 - 537.23, 537.33, 537.35, 537.39 - 537.41, 537.44 - 537.46, 537.48, 537.51, and 537.52 are adopted without changes to the proposed text as published October 28, 2011, issue of the *Texas Register* (36 TexReg 7262) and there were no changes to the forms adopted by reference. Sections 537.20, 537.26 - 537.28, 537.30 - 537.32, 537.37, and 537.47 are adopted without changes to the proposed rule text as published, but with changes to the forms adopted by reference.

The difference between the forms as proposed and as adopted are as follows: Paragraph 7.F. regarding repairs and treatments is changed to clarify that the buyer may extend the closing date up to 15 days so that the seller may complete repairs pursuant to the paragraph. The phrase "smoke detectors" is changed to "smoke alarms" in paragraph 21 of TREC Form Nos. 15-5 and 16-5. "Financing Approval" is changed to "Credit Approval" in TREC Form No. 40-5, Third Party Financing Addendum for Credit Approval, to be consistent with other forms. Typographical errors in various forms are corrected.

The amendments propose to adopt by reference six revised contract forms and 17 assorted addenda for use by Texas real estate licensees.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

Amendments to all of the forms adopted by reference change the main telephone number and website address for TREC located in the box on the penultimate and/or last page of each of the forms. Unless specifically referenced below, such changes are the only changes made to the forms adopted by reference.

The amendment to §537.20 adopts by reference Standard Contract Form TREC No. 9-10, Unimproved Property Contract. The proposed revisions are the same as those proposed for TREC

Form No. 20-11, except that the transfer fee notice is new subparagraph 6.E.(9).

The amendment to §537.28 adopts by reference Standard Contract Form TREC No. 20-11, One to Four Family Residential Contract (Resale). Paragraph 6.B. is amended to add a sentence regarding the buyer's ability to terminate the contract if the commitment and exception documents are not delivered within the time required, which was deleted from paragraph 15; paragraph 6.D. is amended to add the phrase "by Buyer" to the sentence regarding waiver of Buyer's right to object to defects, exceptions or encumbrances to title; paragraph 6.E.(2) is amended to add additional disclosures required by amendments to §207.003, Property Code; new subparagraph 6.E.(8) adds a new statutory disclosure regarding private transfer fee obligations; paragraph 7.A. is amended to require a seller to have utilities turned on and keep them on while the contract is in effect. Paragraph 7.F. is amended to change a phrase regarding the buyer's remedies if the seller fails to complete agreed repairs and treatments prior to the closing date; the new text provides that the buyer may exercise remedies under paragraph 15 or extend the closing date up to 15 days. Paragraph 15 is amended to delete the sentence regarding seller's failure to make non-casualty repairs or deliver the commitment or survey. The sentence was moved to paragraph 6.B.

The amendment to §537.30 adopts by reference Standard Contract Form TREC No. 23-12, New Home Contract (Incomplete Construction). The revisions are the same as those for TREC Form No. 20-11, except that there are no amendments to paragraphs 7.A. or 7.F.

The amendment to §537.31 adopts by reference Standard Contract Form TREC No. 24-12, New Home Contract (Completed Construction). The revisions are the same as those for TREC Form No. 20-11.

The amendment to §537.32 adopts by reference Standard Contract Form TREC No. 25-9, Farm and Ranch Contract. The revisions are the same as those for TREC Form No. 20-11, except that paragraph 6.E.(2) is not amended.

The amendment to §537.37 adopts by reference Standard Contract Form TREC No. 30-10, Residential Condominium Contract (Resale). The revisions are the same as those for TREC Form No. 20-11, except that paragraph 6.E.(2) is not amended and the transfer fee notice is new subparagraph 6.D.(6).

The amendment to §537.44 adopts by reference Standard Contract Form TREC No. 37-4, Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in a Property Owners' Association. Paragraphs D, H, and I are amended to more closely track recent statutory changes to Chapter 207, Property Code.

The amendment to §537.46 adopts by reference Standard Contract Form TREC No. 39-7, Amendment to Contract. Paragraph (8) is changed to reference the correct title of the Third Party Financing Condition Addendum for Credit Approval.

The reasoned justification for the amendments is the availability of current standardized contract forms. In addition, the responses to the comments below fully articulate additional reasoned justification for the amendments.

Eleven comments were received on the rules as proposed. The MetroTex Association of Realtors and the Texas Association of Realtors commented on the rules and forms as proposed.

Comment: Three commenters disagree with the proposed changes to require a seller to have utilities turned on and keep them on while the contract is in effect. Reasons given for the opposition include the cost of keeping utilities turned on which may be a hardship on the seller, and the fact that it may be dangerous to keep the utilities turned on in an unoccupied property because of water-related issues that may occur.

Response: While the commission understands the concerns articulated, the commission respectfully disagrees and believes that it is important for utilities to remain on so that inspections can be timely conducted. Home inspectors often show up at a home to conduct an inspection where utilities are not turned on. The inspector will need to set another time to come back out to the property which can be costly and burdensome to the party paying for the inspection or to the inspector who may be expected to not charge for the lost time. The commission believes that requiring the seller to keep the utilities on is a reasonable compromise as home inspections are an important component of the sale of a property.

Comment: One commenter requested that the contracts include a blank line to indicate when an offer was submitted.

Response: The commission will take this comment into consideration when the forms are fully reviewed in the near future.

Comment: One commenter requested that paragraph 7.F. regarding repairs be changed to clarify that the buyer may extend the closing date up to 15 days so that the seller may complete repairs pursuant to the paragraph.

Response: The commission agrees with the commenter and has changed the forms accordingly.

Comment: One commenter opined on delays caused by lenders and suggested ways in which to require lenders to comply with agreed upon dates in the contract forms. The commenter also believes that the contract forms do not adequately deal with what happens when the closing date passes.

Response: The commission will take the comment into consideration when the forms are fully reviewed in the near future.

Comment: One person commented on TREC Form No. 36-7 and the difficulty in anyone other than the current homeowner obtaining the information from the Homeowner's Association (HOA).

Response: The commission did not propose TREC Form No. 36-7 for notice and comment.

Comment: One commenter believes that the proposed changes to paragraph 7.F. regarding repairs and treatments will subject sellers and licensees to more lawsuits.

Response: The commission respectfully disagrees and believes that the changes to paragraph 7.F. which permits the buyer to extend the closing date by 15 days so that the seller may complete repairs is consistent with the first part of the paragraph wherein the seller agrees to complete the repairs prior to the closing date.

Comment: One commenter pointed out a typographical error in paragraph 6.B of TREC Form No. 23-12. The commenter also suggested that paragraph 11 be expanded in TREC Form No. 24-12, and that the phrase "smoke detectors" be changed to "smoke alarms" in paragraph 21 of TREC Form Nos. 15-5 and 16-5.

Response: The commission will review the forms to make sure the proposed changes are consistently applied to all the contract

forms if relevant and that the blank space in paragraph 11 is consistently the same size across all forms. The commission also agrees with the commenters suggestions regarding TREC Form Nos. 15-5 and 16-5.

Comment: One commenter suggested that paragraph C of TREC Form No. 11-7 should read that an amendment or termination of the First Contract will not terminate the Back-Up Contract. The commenter also suggested that the second sentence of Paragraph 6.B. should be amended let seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at an address to be filled in by Buyer.

Response: The commission respectfully disagrees with the commenter and has not changed the referenced forms as suggested. Regarding TREC Form NO. 11-7, paragraph C in its present form is correct. Regarding the suggested changes to paragraph 6.B., the commission believes that the sentence in its present form is appropriate.

Comment: The commenter suggested that on TREC Forms Nos. 15-5 and 16-5, paragraph 16 should emphasize the need to secure appropriate insurance coverage by both parties. Regarding TREC Form Nos. 20-11 and 30-10, the commenter suggested that paragraph 7.H. should give the specific TREC website for licensed residential service contract providers in the State of Texas. Regarding TREC Form No. 38-4 the commenter suggested that the form should be revised to serve as a "withdrawal of offer" form. Regarding TREC Form No. 40-5, the commenter suggested revising the form to include additional loans.

Response: The commission will take the comment regarding TREC Form Nos. 15-5 and 15-6 into consideration when the forms are fully reviewed in the near future. The commission respectfully disagrees with the suggestions regarding the remaining forms.

The revisions to the rules and forms as adopted do not change the nature or scope so much that they could be deemed different rules or forms. The rules and forms as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules and forms as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules and forms.

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

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101, 1102, 1303; and Texas Property Code, Chapter 221. No other statute, code or article is affected by the amendments.

§537.20. Standard Contract Form TREC No. 9-10.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-10 approved by the Texas Real Estate Commission in 2012 for use in the sale of unimproved property where intended use is for one to four family residences. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.26. Standard Contract Form TREC No. 15-5.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 15-5 approved by the Texas Real Estate Commission in 2012 for use as a residential lease when a seller temporarily occupies property after closing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, www.trec.texas.gov.

§537.27. Standard Contract Form TREC No. 16-5.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 16-5 approved by the Texas Real Estate Commission in 2012 for use as a residential lease when a buyer temporarily occupies property prior to closing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, www.trec.texas.gov.

§537.28. Standard Contract Form TREC No. 20-11.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-11 approved by the Texas Real Estate Commission in 2012 for use in the resale of residential real estate. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.30. Standard Contract Form TREC No. 23-12.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-12 approved by the Texas Real Estate Commission in 2012 for use in the sale of a new home where construction is incomplete. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.31. Standard Contract Form TREC No. 24-12.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-12 approved by the Texas Real Estate Commission in 2012 for use in the sale of a new home where construction is completed. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.32. Standard Contract Form TREC No. 25-9.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-9 approved by the Texas Real Estate Commission in 2012 for use in the sale of a farm or ranch. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.37. Standard Contract Form TREC No. 30-10.

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-10 approved by the Texas Real Estate Commission in 2012 for use in the resale of a residential condominium unit. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.47. Standard Contract Form TREC No. 40-5.

The Texas Real Estate Commission adopts by reference standard contract form, TREC No. 40-5 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105535
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: March 1, 2012
Proposal publication date: October 28, 2011
For further information, please call: (512) 936-3092

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL
SUBCHAPTER C. TEXAS REGULATIONS FOR CONTROL OF RADIATION

25 TAC §289.102

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §289.102 concerning a memorandum of understanding between the department and the Railroad Commission of Texas (RRC) regarding radiation control functions without changes to the proposed text as published in the August 5, 2011, issue of the *Texas Register* (36 TexReg 4897) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The purpose of the new rule is to delineate areas of respective jurisdiction and to coordinate the respective responsibilities and duties of the department and the RRC in the regulation of sources of radiation in accordance with Health and Safety Code, §401.414, in order to provide a consistent approach and to avoid duplication of radiation control functions.

SECTION-BY-SECTION SUMMARY

The new rule establishes respective agency responsibilities regarding general agency jurisdiction, jurisdiction over specific activities and wastes, coordination of regulatory activities, coordination of enforcement and incident response activities, mutual assistance, and miscellaneous items.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new rule is authorized by Health and Safety Code, §401.414, which allows the department and the RRC to adopt a memorandum of understanding defining their respective duties; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2011.

TRD-201105537
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: January 2, 2012
Proposal publication date: August 5, 2011
For further information, please call: (512) 776-6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE
SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 10. ELIGIBILITY AND FORMS

28 TAC §5.4903, §5.4905

The Commissioner of Insurance (Commissioner) adopts amendments to §5.4903 and §5.4905, concerning declination of coverage and minimum retained premium. The Commissioner also adopts a conforming amendment to the title of 28 Texas Administrative Code (TAC) Chapter 5, Subchapter E, Division 10. The sections are adopted with changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6868).

REASONED JUSTIFICATION. The amendments are necessary to implement legislative changes to the Insurance Code Chapter 2210 and amend the plan of operation of the Texas Windstorm Insurance Association (Association).

House Bill 3 (HB 3), 82nd Legislature, First Called Session, effective September 28, 2011, amends insurance coverage eligibility requirements in the Insurance Code §2210.202 concerning declination of coverage, and it is necessary that the new requirement for a declination on renewal every third year be integrated into the plan of operation in §5.4903. Additionally, HB 3 amends the minimum retained premium requirement set forth in the Insurance Code §2210.204, and it is necessary that the new 90-day minimum retained premium requirement be integrated into the plan of operation in §5.4905. Section 62(a) of HB 3 provides that the amendments to the Insurance Code §2210.202 and §2210.204 are effective for new and renewal coverage issued by the Association on or after November 27, 2011, which

is the 60th day after the September 28, 2011, effective date of HB 3. In accordance with Chapter 2210 of the Insurance Code, compliance with these requirements is essential to ensure the availability of Association insurance coverage for all eligible persons and properties.

§5.4903. Declination of Coverage.

The requirement under §5.4903(a)(1) that an applicant or applicant's agent must have received at least one such declination in order to obtain new Association coverage continues the existing rule requirement. In response to a comment, the Department has revised subsection (a)(1), removing the limiting phrase "on a structure" because the phrase had the unintended effect of excluding "contents only" policies. The requirement under §5.4903(a)(2) that an applicant or applicant's agent must have received at least one such declination every three calendar years in order to obtain renewal Association insurance coverage implements the HB 3 amendment to the Insurance Code §2210.202, which requires evidence of one declination every three calendar years with an application for renewal of an Association policy.

The phrase "new or renewal" is deleted in existing §5.4903(a). The declination requirement for new coverage is now addressed under new §5.4903(a)(1), and the declination requirement for renewal coverage is now addressed under new §5.4903(a)(2).

§5.4905. Minimum Retained Premium.

Section 5.4905 establishes the minimum retained premium for Association policyholders required by the Insurance Code §2210.204. The Insurance Code §2210.204(c) provides that the Association shall have a minimum retained premium set forth in the plan of operation. HB 3 amends the Insurance Code §2210.204(e) to provide that the minimum retained premium in the plan of operation must be for a period of not less than 90 days, except for certain events specified in the plan of operation. Before the HB 3 amendment, the Insurance Code §2210.204(e) required the minimum retained premium in the plan of operation to be for a period of not less than 180 days, except for certain events specified in the plan of operation, as established by House Bill 4409 (HB 4409), 81st Legislature, Regular Session.

Section 5.4905(a)(1)(A) amends the time period from 180 days to 90 days for policies that become effective on and after November 27, 2011, and subsection (a)(1)(B) retains the 180 day time period for policies that become effective before November 27, 2011, in order to implement HB 3. The Department revised subsection (a) as a result of comment to specify the requirements for policies that become effective before November 27, 2011, or on and after that date, to clarify the requirements for both categories of policies. This revision also resulted in non-substantive, conforming restructuring.

Section 5.4905(a) also continues the $100 minimum retained premium that was first adopted under §5.4501, effective June 15, 1999, and was incorporated into §5.4905 effective February 24, 2010.

Existing §5.4905(c) is deleted. The Department previously determined that the existing 180-day minimum premium requirement could potentially have a disproportionate adverse effect on persons relying on premium financing to obtain Association insurance coverage (premium finance customers). Requiring the Association to withhold a full minimum premium would require premium finance customers to make a deposit in excess of 50 percent of the policyholder's annual premium, which the Department determined was considerably more than current financing practices require and could effectively eliminate this option for those persons most in need of financing the premium.

However, because HB 3 changes the 180-day minimum premium requirement to a 90-day minimum premium requirement, the Department has determined that such a requirement does not have a disproportionate adverse effect on premium finance customers. Requiring the Association to withhold a full minimum premium would no longer require premium finance customers to make a deposit in excess of 50 percent of the policyholder's annual premium.

Because the exception in existing §5.4905(c) is deleted, §5.4905(d), the second sentence of existing subsection (f), and (g), which administered existing §5.4905(c), are also no longer necessary and are deleted.

As a result of comment, the Department has retained the provision under §5.4905(e), redesignated as subsection (c), which was proposed for deletion. The Department has revised the sentence by replacing "is indebted to the Association" with the phrase "owes premium" as a non-substantive, clarifying change.

Existing subsection (f) is redesignated as subsection (d), as a conforming, non-substantive change.

Because the Department is implementing additional legislative changes, a conforming amendment to the title of 28 TAC Chapter 5, Subchapter E, Division 10, is also adopted.

HOW THE SECTIONS WILL FUNCTION. Section 5.4903 specifies the declination of coverage requirements an applicant or applicant's agent must satisfy prior to obtaining Association new or renewal coverage. Section 5.4905 specifies the minimum retained premium on an Association policy and how it is applied to an Association policy.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: A commenter recommends deleting "on a structure" under proposed §5.4903(a)(1) because the proposed language incorrectly limits subsection (a)(1) to a structure, while the original rule is applicable for a property. The commenter asserts that there is no legislative intent for this limitation and that the limitation would impact those policyholders with "contents only" policies. The commenter says that the suggested deletion would maintain the three year requirements for all coverages pursuant to the legislative intent of HB 3.

Agency Response: The Department agrees and has made the suggested change.

Comment: A commenter recommends restructuring and amending proposed §5.4905(a) to state: "Except as provided in this section, the minimum retained premium on an Association policy issued on an annual basis shall: (1) On policies effective on and after November 27, 2011, be a premium amount equal to the greater of 90 days of the annual policy term or $100; or (2) On policies effective before November 27, 2011, be the premium amount equal to the greater of 180 days of the annual policy term or $100. The minimum retained premium shall be fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata." The commenter says that as the Association transitions into new policies issued on and after November 27, 2011, the requirements for existing Association policies that predate the HB 3 requirements need to be addressed, because they will be active concurrently with the new policies being issued with the 90-day minimum retained premium. The commenter

further asserts that existing §5.4905 must continue in effect until existing policies with the pre-HB 3 requirements have exceeded the 180-day requirement.

Agency Response: The Department agrees that addressing policies that become effective before November 27, 2011, and those that become effective on and after November 27, 2011, in the text will clarify the requirements for both categories of policies. The Department has revised §5.4905(a) to state, "Except as provided in this section, the minimum retained premium on an Association policy issued on an annual basis shall be: (1) equal to the greater of: (A) 90 days of the annual policy term or $100, for policies that become effective on and after November 27, 2011; or (B) 180 days of the annual policy term or $100, for policies that become effective before November 27, 2011; and (2) fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata."

In response to the comment that existing §5.4905 must continue in effect for a certain time period, the Department declines to further revise the text, asserting that the clarification for policies that become effective before November 27, 2011, is sufficient.

Comment: A commenter recommends retaining existing §5.4905(e) as redesignated §5.4905(c), because the total amount due to the Association from former Association policyholders is almost $1.2 million. The commenter asserts that removing this requirement would extinguish any debt currently owed to the Association by policyholders without due process. The commenter further states that these policyholders should be required to pay back their debt before the Association will issue a new policy, because the Association obtained this debt after implementation of the requirements for a 180-day minimum retained premium pursuant to HB 4409, 81st Legislature, and the adoption of §5.4905, effective February 24, 2010.

Agency Response: The Department does not intend to extinguish existing debts and therefore retains existing §5.4905(e), redesignated as §5.4905(c). The Department replaces the phrase "is indebted to the Association" with the phrase "owes premium" as a non-substantive, clarifying change.

Comment: A commenter suggests adding a new subsection (e) to state, "This section does not apply to builder's risk policies issued by the Association." The commenter states that this language is necessary because no rule currently addresses builder's risk policies.

Agency Response: The Department declines to make the suggested change. The commenter's suggested language adds content that was not included in the proposal; therefore, required notice of this substantive provision was not provided prior to adoption. Further, HB 3, which the Department is implementing by the adoption of these rules, does not specifically address builder's risk policies issued by the Association.

NAMES OF THOSE COMMENTING ON THE PROPOSAL. Neither for nor against, with recommended changes: Texas Windstorm Insurance Association.

STATUTORY AUTHORITY. Amendments to §5.4903 and §5.4905 are adopted under the Insurance Code §§2210.008, 2210.151, 2210.152, 2210.202, 2210.204, and 36.001. Section 2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules in the manner prescribed in Subchapter A, Chapter 36, Insurance Code. Section 2210.151 authorizes the Commissioner to adopt the Association's plan of operation to provide Texas windstorm and hail insurance coverage in the catastrophe area by rule. Section 2210.152 provides that the Association's plan of operation provide for the efficient, economical, fair, and nondiscriminatory administration of the Association and include both underwriting standards and other provisions considered necessary by the Department to implement the purposes of the Insurance Code Chapter 2210. Section 2210.202(a) requires that a declination be defined in the Association's plan of operation and that one declination every three calendar years is required with an application for renewal of an Association policy. Section 2210.202(b) requires the agent to possess proof of the declination described by §2210.202(a). Section 2210.204(d) and (e) require that the minimum retained premium be set forth in the plan of operation. Section 2210.204(e) provides that for cancellation of insurance coverage under §2210.204, the minimum retained premium in the plan of operation must be for a period of not less than 90 days, except for certain events specified in the plan of operation. It also requires that the plan of operation specify events that reflect a significant change in the exposure, or the policyholder, concerning the insured property that would be exempt from the minimum retained premium requirement. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

§5.4903. Declination of Coverage.

(a) To be eligible to obtain windstorm and hail insurance coverage from the Association for a property, an applicant or applicant's agent must have received at least one declination of coverage for the property from an insurer authorized to engage in the business of, and writing, property insurance providing windstorm and hail insurance coverage in the first tier coastal counties:

(1) in order to obtain new Association coverage; and

(2) every three calendar years, in order to obtain renewal Association coverage.

(b) The following words and terms when used in this division shall have the following meanings unless the context clearly indicates otherwise:

(1) Authorized insurer and insurer authorized--An insurer operating under a certificate of authority issued by the Texas Department of Insurance.

(2) Declination--

(A) A refusal to offer or a refusal to renew coverage for the perils of windstorm and hail from an authorized insurer; or

(B) An offer of a policy that includes coverage for the perils of windstorm and hail that is not substantially equivalent to the coverage offered by the Association. A policy is not substantially equivalent to an Association policy if the policy that is being offered does not provide the basic coverage(s) that the applicant is seeking. For example, a policy being offered to the applicant that includes coverage for the perils of windstorm and hail is not substantially equivalent to the coverage offered by the Association:

(i) when the applicant is seeking a policy that provides coverage on a replacement cost basis and the policy being offered to the applicant only provides coverage on an actual cash value basis; or

(ii) when the applicant is seeking a policy with a certain windstorm and hail deductible amount and the windstorm and

hail deductible amount on the policy being offered is in excess of that amount.

(3) Writing--Offering new or renewal coverage.

(c) An agent shall maintain and submit to the Association at its request documentation that indicates proof of the declination required under subsection (a) of this section and that was relied upon by the agent in completing the Association's application for insurance coverage as set forth in §5.4902(b) of this division (relating to Additional Requirements). The proof must document the name of the authorized insurer that declined to offer coverage and the date of the declination. Documentation must be maintained either in writing or in an electronic format that may be printed by the agent. Documentation must be maintained for a period of not less than five years following the date of the submission of the application for Association coverage. The Association may also allow an agent to submit the requested documentation electronically in a manner that is acceptable to the Association.

(d) If the Association determines that a structure does not have a declination as required by this section, the Insurance Code §2210.202, and §5.4902(b) of this division, the Association may cancel insurance coverage on the structure. The Association shall provide the policyholder and the policyholder's agent with written notice of the cancellation not later than the 30th day before the effective date of the cancellation. In accordance with §5.4001(d)(3)(A)(ii) of this subchapter (relating to Plan of Operation), the notice of cancellation must state the reason for cancellation and provide the policyholder with notice of their right to appeal the Association's action. If the policyholder, or the policyholder's agent, provides the Association prior to the date of the cancellation of the policy with proof of a declination as required by this section, the Insurance Code §2210.202, and §5.4902(b) of this division, the Association shall rescind the cancellation notice and continue coverage under the policy.

§5.4905. Minimum Retained Premium.

(a) Except as provided in this section, the minimum retained premium on an Association policy issued on an annual basis shall be:

(1) equal to the greater of:

(A) 90 days of the annual policy term or $100, for policies that become effective on and after November 27, 2011; or

(B) 180 days of the annual policy term or $100, for policies that become effective before November 27, 2011; and

(2) fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.

(b) An Association policy canceled due to the reasons specified in paragraphs (1) - (4) of this subsection is subject to the $100 minimum retained premium. The minimum retained premium shall be fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.

(1) A change in majority ownership of the insured property, including sale of the insured property to an unrelated party, or foreclosure of the insured property;

(2) the replacement of the Association policy with other similar coverage in the voluntary market;

(3) the removal of the item(s) insured under an Association policy due to a total loss of the item(s), including demolition of the item(s); or

(4) the death of the policyholder.

(c) The Association shall not issue a new or renewal policy to an applicant who owes premium on a prior Association policy.

(d) The minimum retained premium shall not create or extend coverage beyond the policy's effective cancellation date.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105682
Sara Waitt
Acting General Counsel
Texas Department of Insurance
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Proposal publication date: October 14, 2011
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 3. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 3, 2011, adopted an amendment to §53.50, concerning Training and Certification Fees, with changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6446).

The change affects subsection (c)(1) and (5). The change to paragraph (1) would clarify that an agent of the department must be approved in accordance with department guidelines. Under Parks and Wildlife Code, §31.108(d), the department may "appoint agents to administer a boating education course or course equivalency examination." The change would make it clear that the appointment of boating education agents will be according to department guidelines. The change also replaces the word "boating education provider" with the word "agent" in paragraph (5). The word "agent" is used throughout the rule to describe a person or entity that delivers boater education instruction. The change is necessary to maintain consistent terminology.

The amendment establishes a definition of "agent," establishes the $10 statutory examination or course fee for boater education training in rule, and allows an agent of the department who provides boater education instruction to charge and retain a per-person service fee in an amount established in a fee schedule approved by the department's executive director, which shall not exceed $25. The amendment as adopted also exempts an agent providing a boater education course via the Internet from the requirement to collect and forward to the department the $10 examination or course fee.

The Texas Water Safety Act (Parks and Wildlife Code, Chapter 31), as amended by House Bill 1395, enacted by the 82nd Texas Legislature, requires persons born after September 1, 1993 to complete an approved boater education course before legally being able to operate a vessel of more than 15 horsepower, a windblown vessel of more than 14 feet in length, or a personal watercraft alone in public water.

Parks and Wildlife Code, §31.108 allows the department to appoint agents to administer a boater education course or course equivalency examination. Section 31.108 requires agents to collect and forward to the department a $10 course or examination fee and allows agents to collect and retain an additional $3 service fee. Section 31.108 also allows the commission by rule to provide exemptions to the boater education requirements that are consistent with public safety in the operation of vessels.

House Bill 3722, enacted by the 82nd Texas Legislature, Regular Session, 2011, amended Parks and Wildlife Code, §31.108 to allow the Parks and Wildlife Commission to set the service fee that may be collected and retained by an agent. The department has determined that the current $3 limit on the service fee that agents are allowed to collect and keep is not sufficient for agents to continue to provide boater education instruction and must be increased in order to ensure that this valuable, effective, and convenient service continues to be widely available. The amendment sets the service fee at an amount established by a fee schedule approved by the executive director, but not more than $25. The service fee amount was determined by conducting a survey of other states with similar boating education requirements. The survey indicated that boater education certification fees in Texas are the lowest in the nation, and that the median fee is $24.50. The department therefore adopts a service fee not to exceed $25, which is consistent with most other states and is believed to provide sufficient incentive for persons to continue to act as agents of the department for purposes of providing boater education. The amendment authorizes the executive director to establish a service fee schedule to account for the varying costs among course delivery methods.

In order to encourage the development and enhance the availability of Internet boater education courses, which in turn will promote public safety in the operation of vessels, the amendment exempts the providers of Internet courses from the requirement to collect and submit to the department the $10 course or examination fee. Exempting Internet course providers from the requirement to collect and forward a service fee to the department will help to ensure that boater education is affordable and widely available. Additionally, since boater education in Texas is mandatory for certain age groups and the department is required under Parks and Wildlife Code, §31.108(a)(4) to ensure that boater education courses and examinations are available in each county in the state, exempting Internet course providers from the $10 course or examination fee will help to ensure the availability of the course from the private sector and assist the department in carrying out is statutory obligations.

The amendment also clarifies that the adoption is not intended to prevent boater education providers who are agents of the department from offering and charging additional fees for course work that exceeds the standards established by the department. The department recognizes that some providers may seek to offer enhanced courses for an additional fee. Enhanced boater education courses may act to further the goals of boater safety. Therefore, the department wishes to ensure that the rule as adopted doesn't interfere with efforts to offer such additional course work.

The department received two comments supporting adoption of the proposed rule.

The department received no comments opposing adoption of the proposed rule.

No groups or associations commented in favor of or opposition to adoption of the proposed rule.

The amendment is adopted under the authority of House Bill 3722, 82nd Texas Legislature, Regular Session (2011), which amended Parks and Wildlife Code, §31.108 to authorize the commission to set a service fee that may be collected and kept by agents of the department who provide boater education instruction, and under Parks and Wildlife Code, §31.108(b), which authorizes the commission by rule to create exemptions from boater education requirements imposed by statute to the extent the exemptions are consistent with promoting public safety in the operation of vessels.

§53.50. Training and Certification Fees.

(a) Marine safety enforcement training and certification fees.

(1) The fee for certification as a marine safety enforcement officer is $25.

(2) The fee for certification as a marine safety enforcement officer instructor is $25.

(b) Hunter education fees.

(1) The registration fee for a hunter education course is $15, of which $10 may be directly retained by a volunteer instructor.

(2) The fee for a deferred hunter education option is $10; however, at the time a person who has used a deferred hunter education option chooses to enroll in a hunter education course, that person shall pay a $5 registration fee to be directly retained by the volunteer instructor.

(c) Boater education fees.

(1) As used in this subsection, an "agent" is a person or entity (approved in accordance with department guidelines) acting on behalf of the department in the administration of a boater education course or course equivalency examination in accordance with department guidelines.

(2) Except as provided in paragraph (4) of this subsection, an agent shall collect a $10 per person examination or course fee and forward that fee to the department within 30 days after the examination or course is administered.

(3) In addition to the examination or course fee described in paragraph (2) of this subsection, an agent may charge and keep a service fee in an amount established in a fee schedule approved by the director, which shall not exceed $25.

(4) An agent providing an Internet-based boater education course and examination is exempt from the requirement to collect and forward to the department the $10 examination or course fee.

(5) The fees established in this subsection apply only to course content necessary to satisfy the minimum requirements for boater education certification in Texas. Nothing in this subsection shall be construed to prohibit an agent from providing and charging a fee for enhanced content.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2011.

TRD-201105564
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: January 4, 2012
Proposal publication date: September 30, 2011
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) adopts amendments to Chapter 371, Drinking Water State Revolving Fund: Subchapter B, Financial Assistance, §371.14, regarding Lending Rates; Subchapter C, Intended Use Plan, §371.21, regarding Rating Process; and Subchapter E, Environmental Reviews and Determinations, §371.40, regarding Definitions, §371.41, regarding Environmental Review Process, §371.42, regarding Types of Environmental Determinations: Categorical Exclusions, §371.50, regarding Use of Environmental Determinations Prepared by Other Entities, and new §371.51, regarding Emergency Relief Project Procedures without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7483).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE AMENDMENTS AND NEW RULE

The Drinking Water State Revolving Fund (DWSRF) is used by the TWDB to offer loans and loan forgiveness to political subdivisions for improvements to water systems. Loans from DWSRF are provided through annual federal capitalization grants, in coordination with the U.S. Environmental Protection Agency (EPA) Region 6 and the Texas Commission on Environmental Quality (TCEQ). Implementation of the financing program is through the Intended Use Plan (IUP).

Staff has determined that amendments to certain sections of Chapter 371, Subchapter C and Subchapter E, are needed to authorize expedited environmental review procedures required for entities seeking DWSRF funding in emergency situations. These rules were adopted on an emergency basis at a meeting of the TWDB on September 20, 2011, pursuant to §2001.034, Government Code. This adopted rulemaking will continue these duties. In addition, a minor amendment in Subchapter B is needed to clarify the procedure for setting fixed interest rates within the DWSRF loan program.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS AND NEW RULE

Section 371.14(b)

The adopted amendment to §371.14(b) adds the sentence, "The interest rates will be determined by this section and as described in an IUP."

Section 371.21

The adopted amendment to §371.21 describes the rating process for those entities seeking DWSRF funding for an approved emergency relief project.

Section 371.40

The adopted amendment to §371.40 adds paragraph (7) and defines an "emergency relief project" in order to determine those entities experiencing an emergency condition or incident that causes an imminent peril to public health, safety, environment, or welfare.

Section 371.41(a)

The adopted amendment to §371.41(a) clarifies that the environmental review process, in compliance with the National Environmental Policy Act (NEPA), will be applied to projects funded in whole or in part by the DWSRF to the maximum extent legally and practicably feasible. The amendment allows the environmental review process to be modified if an emergency condition as described in §371.40(7) exist.

Section 371.42(g)

The adopted amendment to §371.42(g) describes the public notice criteria for a Categorical Exclusion (CE) environmental determination made by the executive administrator. The amendment allows the required public notice to be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice that is published in a newspaper of general circulation in the county or counties of the affected community.

Section 371.50(a)

This amendment corrects the acronym for the National Environmental Policy Act (NEPA).

Section 371.51

Section 371.51 is added to Subchapter E to provide that if an applicant requests funding for an emergency relief project, the executive administrator shall review all relevant information needed by the Board to find that an emergency condition as described under amended §371.40(7) is present. If the Board determines that an emergency condition is present, the Board may authorize funding for the designated emergency relief project, subject to the availability of funds. If the Board finds that full compliance with NEPA will unreasonably delay the resolution of the emergency condition, the NEPA notification requirements will be modified to the extent necessary to proceed with the project provided the Board also finds that the modified notification will not adversely impact any natural resources falling within NEPA protections. The notification will be documented by the executive administrator.

PUBLIC COMMENTS

No public comments were received regarding the proposed amendments and new rule.

SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §371.14

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and Water Code, Chapter 15, Subchapter J, §15.605 relating to rules necessary to carry out Subchapter J.

This rulemaking affects Water Code, Chapter 15, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 19, 2011.

TRD-201105679
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: January 9, 2012
Proposal publication date: November 4, 2011
For further information, please call: (512) 463-8061

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SUBCHAPTER C. INTENDED USE PLAN

31 TAC §371.21

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and Water Code, Chapter 15, Subchapter J, §15.605 relating to rules necessary to carry out Subchapter J.

This rulemaking affects Water Code, Chapter 15, Subchapter J.

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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Kenneth L. Petersen
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Effective date: January 9, 2012
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For further information, please call: (512) 463-8061

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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

31 TAC §§371.40 - 371.42, 371.50, 371.51

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and Water Code, Chapter 15, Subchapter J, §15.605 relating to rules necessary to carry out Subchapter J.

This rulemaking affects Water Code, Chapter 15, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) adopts amendments to Chapter 375, Clean Water State Revolving Fund: Subchapter A, General Program Requirements, §375.2, regarding Entities and Activities Eligible for Assistance; Subchapter B, Financial Assistance, §375.15, regarding Lending Rates; Subchapter E, Environmental Reviews and Determinations, Division 1, State Projects, §375.52, regarding Types of Environmental Determinations: Categorical Exclusions; Division 2, Federal Projects, §375.62, regarding Types of Environmental Determinations: Categorical Exclusions and §375.70, regarding Use of Environmental Determinations Prepared by Other Entities; and Subchapter I, Nonpoint Source Pollution Linked Deposits Program, §375.204, regarding Project Certifications without changes to the proposed text as published in the November 4, 2011, issue of the *Texas Register* (36 TexReg 7486).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE AMENDMENTS

The Clean Water State Revolving Fund (CWSRF) is authorized pursuant to Title VI of the Clean Water Act, 33 U.S.C. §1381 et seq. and Water Code, Chapter 15, Subchapter J. The CWSRF is used by the TWDB to offer loans and loan forgiveness to political subdivisions for improvements to wastewater systems. Loans from CWSRF are provided through annual federal capitalization grants, state matches, repayments and revenue bonds, in coordination with the U.S. Environmental Protection Agency (EPA) Region 6. Implementation of the financing program is through the Intended Use Plan (IUP).

The adopted rulemaking includes minor, nonsubstantive modifications in Subchapters A, B, E, and I.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS

Section 375.2

The adopted amendment to §375.2 clarifies project eligibility and consistency with State planning efforts for the Texas Nonpoint Source Management Program and the National Estuary Program for the State.

Section 375.15(b)

The adopted amendment to §375.15(b) replaces "or" with "and" to clarify that interest rates will be determined by both this sec-

tion and as described in the respective IUP for entities receiving loans through the CWSRF program.

Section 375.52(g)

The adopted amendment to §375.52(g) (State projects) describes the public notice criteria for a Categorical Exclusion (CE) environmental determination made by the executive administrator. The amendment allows the required public notice to be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice that is published in a newspaper of general circulation in the county or counties of the affected community.

Section 375.62(g)

The adopted amendment to §375.62(g) (Federal projects) describes the public notice criteria for a CE environmental determination made by the executive administrator. The amendment allows the required public notice to be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice that is published in a newspaper of general circulation in the county or counties of the affected community. The amendment also provides minor modifications to the descriptions of those projects which are eligible and which are ineligible for a CE.

Section 375.70(a)

The adopted amendment to §375.70(a) corrects the acronym for the National Environmental Policy Act (NEPA).

Section 375.204(b)

The adopted amendment to §375.204(b) corrects the title of the Nonpoint Source Management Program (NPS Management Program).

PUBLIC COMMENTS

No comments were received regarding the proposed rulemaking.

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §375.2

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; and Water Code, Chapter 15, Subchapter J, §15.605, relating to the rules necessary to carry out Subchapter J.

This rulemaking affects Water Code Chapter 15, Subchapter J.

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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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-8061

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SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §375.15

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; and Water Code, Chapter 15, Subchapter J, §15.605, relating to the rules necessary to carry out Subchapter J.

This rulemaking affects Water Code Chapter 15, Subchapter J.

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For further information, please call: (512) 463-8061

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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS
DIVISION 1. STATE PROJECTS

31 TAC §375.52

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; and Water Code, Chapter 15, Subchapter J, §15.605, relating to the rules necessary to carry out Subchapter J.

This rulemaking affects Water Code Chapter 15, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. FEDERAL PROJECTS

31 TAC §375.62, §375.70

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; and Water Code, Chapter 15, Subchapter J, §15.605, relating to the rules necessary to carry out Subchapter J.

This rulemaking affects Water Code Chapter 15, Subchapter J.

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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SUBCHAPTER I. NONPOINT SOURCE POLLUTION LINKED DEPOSITS PROGRAM

31 TAC §375.204

STATUTORY AUTHORITY

The amendments are adopted under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; and Water Code, Chapter 15, Subchapter J, §15.605, relating to the rules necessary to carry out Subchapter J.

This rulemaking affects Water Code Chapter 15, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 23. ADMINISTRATIVE PROCEDURES

34 TAC §23.5

The Teacher Retirement System of Texas (TRS or system) adopts amendments to §23.5, concerning the nominating elections for appointment to the TRS Board of Trustees (TRS board) and the terms of board members. The amendments to §23.5 are adopted without changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6448) and will not be republished.

Amended §23.5 implements §825.002(c) - (g) of the Government Code, which concerns elections to nominate candidates the governor may consider in appointing trustees to the retiree, public education, and high education employee positions on the board. The 82nd Legislature (Regular Session, 2011) enacted two pieces of legislation amending §825.002 - House Bill (HB) 2120 and Senate Bill (SB) 1667, both of which became effective September 1, 2011. HB 2120 amended Government Code §825.002 to expand the higher education appointee position to an at-large appointee position. The at-large appointee position is eligible to be filled by any individual who is a retiree of the system or who is a member and employed by a public school or institution of higher education. Similarly, eligible voters in the at-large nominating election are those who are retirees of the system or members who are employed by a public school or institution of higher education. SB 1667 amends Government Code §825.002 to clarify that the retiree nominating election may, like other trustee elections, be held by telephone or other electronic means in addition to, or in place of, paper ballots. The adopted rule conforms §23.5 to the amended statutes. The adopted rule provides that the first nominating election for the at-large trustee appointment will occur after the current higher education trustee's term of office expires in 2017. If, however, the current higher education trustee vacates the office before the expiration of the six-year term, the amended rule provides that TRS will conduct a nominating election in accordance with the criteria for the expanded at-large trustee position at that time. The amended rule also makes other conforming and technical changes to implement the expansion of the higher education trustee position to an at-large trustee position at the appropriate time.

TRS also adopts rule amendments clarifying certain provisions of §23.5. The amended rule establishes clear deadlines for filing nominating petitions and casting votes in a nominating election. Petitions and votes must be "received" rather than "filed" or "submitted" by a certain date. To accommodate prospective candidates and voters in shifting to the more definite deadlines based

on receipt by TRS, the amended rules expands the petition filing and voting periods each by five calendar days. In addition, the deadline is extended to the next business day if it falls on a weekend or holiday.

Other rule changes update the current terms of all trustee positions. Finally, TRS adopts minor wording or formatting changes throughout §23.5 to conform the language of the whole rule to the adopted amendments described above.

No comments were received regarding the adoption of amended §23.5.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

Cross-Reference to Statute: The adopted amendments affect the following statutes: §825.002 of the Government Code, as amended by Act of May 24, 2011, 82nd Leg., R.S., ch. 786, §1, H.B. 2120, eff. Sept. 1, 2011, and Act of May 20, 2011, 82nd Leg., R.S., ch. 455, §14, S.B. 1667, eff. Sept. 1, 2011; and §825.004 of the Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105605
Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Effective date: January 5, 2012
Proposal publication date: September 30, 2011
For further information, please call: (512) 542-6438

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CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER B. COMPENSATION

34 TAC §25.26

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §25.26, concerning annual compensation creditable for benefit calculation without changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6450) and will not be republished.

Recent statutory changes in the plan's terms that take effect with the beginning of the 2012-2013 school year standardize the parameters of a school year to a 12-month period that begins September 1 and ends August 31. Using a standard period to determine annual compensation represents a fundamental change that requires interpretation regarding how TRS will determine benefits using salaries received both before and after the change.

The adopted amendments address any potential lapses between the end of a school year that ended prior to September 1, 2012 and the start of the new standardized school year that begins September 1, 2012. The amendments provide that all compensation paid after September 1, 2012 will be credited based on a 12-month period that begins September 1 and ends August 31. Compensation received prior to September 1, 2012 will be credited based either on a 12-month period that begins September 1 and ends August 31 or a 12-month period that begins and ends according to the terms of the member's qualified contract or work agreement - whichever method yields the greater amount of compensation creditable for benefit calculation.

The adopted amendments to §25.26 bring the rule in line with the statutory changes that establish a standard school year for every participant for TRS purposes and provide notice to the members of how TRS will calculate benefits both after the effective date of the change and during the transition period.

No comments were received regarding the adoption of amended §25.26.

Statutory Authority: The amendments are adopted under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The adopted amendments affect Chapter 821, Subchapter C, of the Government Code, concerning definitions, Chapter 822, Subchapter C, of the Government Code, concerning membership, and Chapter 824, Subchapter C, of the Government Code, concerning service retirement benefits.

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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Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

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SUBCHAPTER J. CREDITABLE TIME AND SCHOOL YEAR

34 TAC §25.133

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §25.133, concerning school year with changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6451) and will be republished.

Recent statutory changes established a standard school year for TRS purposes that begins September 1 and extends for 12 months through August 31 of the following calendar year. The statutory change is effective with the beginning of the 2012-2013 school year and requires TRS to amend §25.133.

The adopted amendments to §25.133 bring the rule in line with the statutory language establishing the standard school year for every TRS participant. Beginning with the 2012-2013 school

year, for the purpose of granting service credit and determining annual compensation, the school year for every TRS participant will be a 12-month period that begins September 1 and ends August 31. The adopted amendments to the rule confirm the new definition of school year going forward and maintain the established parameters for a school year for years prior to the effective date of the law.

TRS makes the underlined technical changes in paragraph (3) of §25.133 in the following sentence to improve its syntax: "Use of a written or oral work agreement *that* [which] is not *a* qualified contract is optional for school years 1970-1971 through 1994-1995, but shall be mandatory for all persons employed under a written or oral work agreement after the 1994-1995 school year.

No comments were received regarding the adoption of amended §25.133.

Statutory Authority: The amendments are adopted under the following statutes: §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the system and the transaction of business of the board.

Cross-Reference to Statute: The adopted amendments affect Chapter 821, Subchapter C, of the Government Code, concerning definitions, and 824, Subchapter C, of the Government Code, concerning service retirement benefits.

§25.133. School Year.

(a) For the purpose of granting creditable time toward retirement and determining a member's annual compensation, for school years prior to the 2012-2013 school year a "school year" shall be one of the following:

(1) a period extending from the beginning of the school term (but not earlier than August 23) through August 31 of the following calendar year for service rendered prior to the 1970-1971 school year;

(2) a period extending from the beginning of the school term (but not earlier than August 2) through August 31 of the following calendar year for service rendered for the 1970-1971 school year and thereafter; or

(3) a period not to include more than 12 months, extending from the beginning date of a "qualified contract" or an oral or written work agreement year through August 31 of the following calendar year or to the beginning date of a subsequent qualified contract or oral or written work agreement year, whichever is earlier. Use of this "qualified contract year" is optional for school years 1970-1971 through 1974-1975 but shall be mandatory for all persons under a qualified contract after the 1974-1975 school year. Use of a written or oral work agreement that is not a qualified contract is optional for school years 1970-1971 through 1994-1995, but shall be mandatory for all persons employed under a written or oral work agreement after the 1994-1995 school year. A "qualified contract" or "work agreement" is any employment agreement in which service each year under the agreement is to begin on or after July 1 and is to extend past August 31 of the same calendar year. A "qualified contract" further imposes upon the employing school district a legal obligation to employ and compensate the employee for the entire duration of the agreed employment period.

(b) For the purpose of granting creditable time toward retirement and determining a member's annual compensation, beginning with the 2012-2013 school year and thereafter a "school year" shall be a 12 month period beginning September 1 and ending August 31 of the next calendar year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

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Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
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Proposal publication date: September 30, 2011
For further information, please call: (512) 542-6438

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SUBCHAPTER N. INSTALLMENT PAYMENTS

34 TAC §25.182

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §25.182, concerning yearly increments of credit without changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6452) and will not be republished.

Recent statutory changes in the plan's terms regarding the requirement to purchase certain types of service credit and changes regarding the cost of certain types of service credit require changes to this rule.

The adopted amendments reflect a change in the restrictions on the purchase of service credit and provide an opportunity for members purchasing certain types of service credit to purchase additional amounts of the same type of service credit before completing the original purchase under an installment purchase agreement. The adopted amendments include developmental leave service credit and unreported service credit in the list of types of service credit that can be purchased in yearly increments. Members will no longer be required to purchase both years of developmental leave credit if they only want to purchase one year. Similarly, a member will no longer be required to purchase all unreported service credit verified by TRS and may purchase only the year(s) the member decides to purchase. For example, this change will allow members to purchase one year of substitute service credit at a time.

The adopted amendments address the limited time for purchasing out-of-state service credit, developmental leave service credit, or unreported service credit at the old cost by removing the restriction on purchasing additional years of these types of service credit prior to the completion of the purchase of the same type of service credit under an ongoing installment purchase agreement. The adopted amendments allow members to initiate the purchase of the additional years of one of these three types of service credit by August 31, 2013 before completing the installment purchase of the same type of service credit.

The adopted amendments to §25.182 bring the rule in line with the statutory changes that remove the requirement that all unreported service credit must be established before a benefit can be paid by TRS and reflect the anticipated demand for changes in opportunities to purchase service credit that may result from the increased actuarial cost of certain types of service credit. They also provide greater flexibility for members purchasing service credit using an installment purchase method.

No comments were received regarding the adoption of amended §25.182.

Statutory Authority: The amendments are adopted under the following sections of the Government Code: §825.102, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board and §825.410, which authorizes the board to adopt rules to implement that statute concerning payroll deductions or installment payments for special service credit.

Cross-Reference to Statute: The adopted amendments relate to the following sections of the Government Code: §823.301 and §823.302, concerning military service credit; §823.304, concerning reemployed veteran's credit under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. §4301 et seq.; §823.401, concerning out-of-state service credit; §823.402, concerning developmental leave service credit; §823.404, concerning the purchase of equivalent service credit for work experience by a career or technology teacher; and §825.403, concerning the purchase of unreported service or compensation credit.

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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Brian K. Guthrie
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SUBCHAPTER P. CALCULATION OF FEES AND COSTS

34 TAC §25.302

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 34 TAC §25.302 are not included in the print version of the Texas Register. The figures are available in the on-line version of the December 30, 2011, issue of the Texas Register.)

The Teacher Retirement System of Texas (TRS or system) adopts amendments to §25.302, concerning the calculation of actuarial cost. The rule is adopted with changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6453) and will be republished.

Section 25.302 sets forth the methodology for calculating the actuarial cost of an additional year of service credit. Almost all types of service credit that a member may purchase now require payment of actuarial cost. TRS adopts the amended rule primarily in response to recent legislation and actuarial review of the related cost factors. Attached to the rule as graphics are actuarial tables that contain factors to calculate actuarial cost of purchasing TRS service credit. Each factor is based on a member's age and years of credited TRS service before purchase. Additionally, the date on which a member's current TRS membership began (before September 1, 2007, or on/after that date) determines which set of factor tables will be used. The rule text provides instruction as to how the factors are used.

To reflect recent legislative changes, the adopted rule amendments extend the actuarial tables from 15 years to 35 years of credit that may be purchased. Formerly, the most years an eligible member could purchase at actuarial cost was 15 years of out-of-state service credit. Recent legislation (Senate Bill 1668, 82nd Legislature, 2011), however, now requires unreported service to be purchased at actuarial cost and allows an eligible person to purchase more than 15 years of unreported service credit. As a result, TRS must be prepared to calculate the actuarial cost of more than 15 years of service credit. Therefore, the proposed amendments extend the tables to provide the cost factors for purchasing up to 35 years of credit.

The adopted rule also reflects the actuary's adjustment to existing factors. Because of the need to adjust the tables as described above, the actuary recommended using the opportunity to also make some revisions to some of the existing factors on the tables to make them more consistent with the other factors. These revisions occur mostly at the higher age and service combinations. Out of more than 2,000 existing factors, fewer than 100 are revised.

After publication of the proposed revised factors, TRS decided to modify the timing of implementation of the revised factors. The adopted rule delays the use of the revised factors for reasons of consistency and administrative efficiency in transitioning to the new costs. When a member receives a bill for service credit, the quoted cost remains in effect until the end of the plan year in which the bill is issued. For bills already issued to members this plan year, the quoted cost normally would remain in effect through August 31, 2012. However, if revised cost factors were to take effect mid-year, members who have not yet paid their service credit cost bills would be subject to a cost change mid-year, if their cost was calculated with one of the factors now being revised. The adopted changes to the proposed rule text avoid mid-year cost re-calculations for bills still outstanding. To follow the customary practice of having the quoted cost remain in effect through the end of the plan year, the adopted rule retains the existing actuarial cost factors to calculate the cost of credit paid in full before September 1, 2012, as well as the cost of credit subject to an installment payment initiated before September 1, 2012. The adopted rule reflects that approach in new subsection (k), which was added subsequent to the publication of the proposed amendments. Thus, the revised factors take effect for service credit purchased, or with an installment agreement entered into, on or after September 1, 2012. Other amendments to subsections (b) and (d) of the rule, added subsequent to the publication of the proposed amendments, reflect this implementation plan.

However, the new extended tables to purchase between 16 and 35 years of service credit as discussed above and, as explained below, the new tables to purchase unreported compensation credit will be implemented upon the effective date of the adopted rule. Because those tables contain *new* cost factors, they have not yet been used to produce bills for members. It is important to have those tables take effect as soon as possible so that cost calculations can be prepared for members whose purchase is subject to those new factor tables.

The adopted rule also addresses the actuarial cost of unreported compensation credit. Senate Bill 1668 requires that, to estab-

lish credit for unreported compensation (i.e., salary that should have been, but was not, reported to TRS when earned), a person must pay the actuarial cost of the additional benefit that will be payable by TRS due to the additional salary credit. Before TRS adopted these amendments to §25.302, the actuarial cost tables addressed only the purchase of additional *years* of service credit; they did not address the purchase of additional *compensation credit.* Therefore, the adopted rule adds a description of the calculation used to determine the actuarial cost of the *compensation* credit and by adding new factor tables to be used in the calculations.

No comments were received regarding the adoption of amended §25.302.

Statutory Authority: The amendments are adopted under the following authorities: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility of membership, the administration of the funds of the retirement system, and for the transaction of the business of the Board; §823.406, Government Code, authorizing the Board to adopt rules for the administration of this statute concerning the purchase of membership waiting period service credit; and §825.105, which requires the Board to adopt rates and tables the Board considers necessary for the retirement system.

Cross-reference to Statute: The adopted amendments affect the following statutes: §822.001, Government Code, which provides that membership in TRS includes all employees of the public school system; §822.201, Government Code, which provides for member compensation subject to report and deposit; §823.004, Government Code, which provides for computation of and payment for service credit; §823.006, Government Code, providing for limits on contributions; §823.401, Government Code, requiring the payment of the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of out-of-state service credit based on rates and tables recommended by the retirement system's actuary and adopted by the TRS Board; §823.402, Government Code, requiring the payment of the actuarial present value for developmental leave service credit; §823.404, Government Code, requiring the payment of the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the conversion of the work experience into service credit based on rates and tables recommended by the actuary and adopted by the TRS Board; §823.406, Government Code, requiring the payment of the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of membership waiting period service credit, based on rates and tables recommended by the retirement system's actuary and adopted by the TRS Board; §825.403, Government Code, providing for collection of member contributions and requiring the payment of actuarial cost to establish unreported service or compensation credit; §825.410, Government Code, providing for installment payments and an additional fee when the installment method is used; and §825.105, Government Code, authorizing the Board to adopt actuarial tables.

§25.302. Calculation of Actuarial Cost.

(a) When a member is purchasing TRS service credit for which the law requires that the actuarial cost or actuarial present value be deposited and for which the method in this section is referenced by another section of this title, TRS will calculate the cost using the tables and method described in subsections (b), (c), (d), and (e) of this section.

(b) To calculate the actuarial cost of additional service credit, TRS will use the cost factors obtained from the Actuarial Cost Tables furnished by the TRS actuary of record. The factors for individuals whose membership was established before September 1, 2007, are shown in the tables adopted as part of this subsection, which shall be used when the service credit cost is paid on or after September 1, 2012, or an installment agreement is entered into on or after September 1, 2012. The factors for individuals whose membership was established on or after September 1, 2007, are shown in the tables described in subsection (d) of this section. Within each set of tables, the number of years of service credit to be purchased will determine which specific table will be used. Each of the tables cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per $1,000 of salary. The cost factor for a participant with more years of service credit than shown on the table is the same as the factor shown for the highest number of years of service credit on the table for the participant. TRS will calculate the cost to purchase service credit under this section by dividing the salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The tables set forth the cost, per $1,000 of salary, to purchase from one year to fifteen years of service credit. The number of years of service credit available for purchase is determined by the laws and rules applicable to the type of service credit to be purchased. For the purpose of calculating the required amount for a member who is grandfathered to use a three-year salary average under §51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), the term "salary" is defined as follows:

(1) For the upper region of the table (where the factors appear above the line), salary is the greater of current annual salary or the average of the member's highest years of compensation, with either two or three years of compensation used for the average, depending on whether the member has only two years or has three or more years of service credit at the time of the calculation; or

(2) For the lower region of the table (where the factors appear below the line), salary is the average of the member's highest three years of compensation. A member's highest three years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of the table (where the factors appear below the line) reflects those age and service combinations where the purchase of service credit results in immediate eligibility of the member for unreduced retirement benefits.

Figure: 34 TAC §25.302(b)(2)

(c) For the purpose of calculation of actuarial cost for service credit for a member who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a five-year salary average shall be used instead of a three-year salary average. Additionally, the cost shall be 96 percent of the cost as calculated under subsection (b) of this section when a factor in the upper region of the table is used.

(d) For individuals whose membership was established on or after September 1, 2007, the methodology described in subsection (b) of this section shall be used to determine cost of additional service credit, but the retirement system shall use the factors in the tables adopted as part of this subsection, which shall be used when the service credit cost is paid on or after September 1, 2012, or an installment agreement is entered into on or after September 1, 2012. If the member is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a five-year salary average shall be used instead of a three-year salary average.

Figure: 34 TAC §25.302(d)

(e) If an individual established membership on or after September 1, 2007, but is grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section. The cost of establishing additional service credit for a grandfathered member who established membership on or after September 1, 2007, shall be 1.04 times the cost as calculated under subsection (d) of this section when a factor in the upper region of the table is used.

(f) An individual who first was a member of TRS before September 1, 2007, but who terminated membership through withdrawal of accumulated contributions and then again joined TRS on or after September 1, 2007, is subject to the calculation of cost for additional service credit under subsections (d) and (e) of this section.

(g) When a member is purchasing TRS compensation credit for which the law requires that the actuarial cost or actuarial present value be deposited and for which the method in this section is referenced by another section of this title, TRS will calculate the cost using the tables and method described in subsections (h), (i), and (j) of this section.

(h) To calculate the actuarial cost of additional compensation credit, TRS will use the cost factors obtained from the actuarial cost tables furnished by the TRS actuary of record. The factors for individuals whose membership was established before September 1, 2007, are shown in the tables adopted as part of subsection (i) of this section. The factors for individuals whose membership was established on or after September 1, 2007, are shown in the tables described in subsection (j) of this section. Each of the tables cross-references the member's age in rows with years of credited service in columns. The intersection of the participant's age and service is the cost factor that shall be applied to the additional final average compensation that may result from the purchase. TRS will calculate the cost to purchase compensation credit under this section by dividing the additional compensation by three or five years, as determined by the standard annuity calculation applicable to the member, and dividing that quotient by 1,000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The eligibility of additional compensation credit available for purchase is determined by the laws and rules applicable to the type of compensation sought to be credited.

(i) For individuals whose membership was established before September 1, 2007, the methodology described in subsection (h) of this section shall be used to determine cost of additional compensation credit, but the retirement system shall use the factors in the tables adopted as part of this subsection.
Figure: 34 TAC §25.302(i)

(j) For individuals whose membership was established on or after September 1, 2007, the methodology described in subsection (h) of this section shall be used to determine cost of additional compensation credit, but the retirement system shall use the factors in the tables adopted as part of this subsection.
Figure: 34 TAC §25.302(j)

(k) For the cost calculations described in subsections (b) and (d) of this section, when the cost is calculated for a purchase that is paid in full before September 1, 2012, or for a purchase for which an installment agreement is entered into before September 1, 2012, the factors in the tables adopted as part of this subsection shall be used.
Figure 1: 34 TAC §25.302(k)
Figure 2: 34 TAC §25.302(k)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 1. STATE MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

SUBCHAPTER I. IN-HOME AND FAMILY SUPPORT MENTAL RETARDATION PROGRAM

40 TAC §§1.401 - 1.405, 1.407, 1.409, 1.411

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Subchapter I, governing the In-Home and Family Support Mental Retardation Program, in Chapter 1, State Mental Retardation Authority Responsibilities, without changes to the proposed text published in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7148).

The repeal is adopted to remove rules concerning the In-Home and Family Support Mental Retardation (IHFS-MR) Program. The 82nd Legislature, Regular Session, 2011, passed a budget for fiscal years 2012 and 2013 that eliminated funding for the IHFS-MR program. The responsibility of a local mental retardation authority (MRA) to administer the program ended September 1, 2011.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Health and Safety Code, §535.002, which requires rules to administer the In-Home and Family Support Program--Mental Retardation (IHFS-MR Program); 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; and 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.

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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Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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CHAPTER 2. MENTAL RETARDATION AUTHORITY RESPONSIBILITIES
SUBCHAPTER G. ROLE AND RESPONSIBILITIES OF AN MRA

40 TAC §2.315

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §2.315, concerning MRA administrative functions, in Chapter 2, Mental Retardation Authority Responsibilities, without changes to the proposed text published in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7149).

The amendment is adopted to remove the requirement that a mental retardation authority (MRA) administer the In-Home and Family Support Program--Mental Retardation (IHFS-MR Program) in its local service area. The 82nd Legislature, Regular Session, 2011, passed a budget for fiscal years 2012 and 2013 that eliminated funding for the IHFS-MR Program. The responsibility of an MRA to administer the program ended September 1, 2011.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Health and Safety Code, §535.002, which requires rules to administer the In-Home and Family Support Program--Mental Retardation (IHFS-MR Program); 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; and 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.

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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General Counsel
Department of Aging and Disability Services
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CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES
SUBCHAPTER A. INTRODUCTION

40 TAC §92.2

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment §92.2, concerning definitions, in Chapter 92, Licensing Standards for Assisted Living Facilities, with changes to the proposed text as published in the October 7, 2011, issue of the *Texas Register* (36 TexReg 6701).

The amendment is adopted to implement portions of House Bill (HB) 2972 of the 81st Legislature, Regular Session, 2009. HB 2972 amended Texas Health and Safety Code, §247.005, by revising the definition of a "controlling person." The definition clarifies that neither a shareholder nor lender of a publicly traded corporation is a "controlling person" of an assisted living facility.

A similar amendment, along with other changes to Chapter 92, was adopted with an effective date of June 1, 2010 in the May 28, 2010, issue of the *Texas Register* (35 TexReg 4471). However, that amendment was inadvertently omitted when a subsequent amendment to §92.2 was published for adoption in the August 27, 2010, issue of the *Texas Register* (35 TexReg 7877), effectively repealing the amendment on September 1, 2010. Thus, the amendment is being adopted again.

The proposed text of §92.2 contained a publication error. On page 6702, §92.2(8) should have read: "Behavioral emergency--Has the meaning given in §92.41(p)(2) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities)." This correction is included in the adoption.

Additionally, on page 6703, §92.2(36) should have read "Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person." This correction is also included in the adoption.

DADS received a written comment from one individual. A summary of the comment and the response follows.

Comment: A commenter recommended revising the definition of "immediately available" to reconsider the "600 feet" portion of the definition to reflect a shorter distance.

Response: The proposed rule amendment corrects an omission to the definition of "controlling person" in a previously filed version of §92.2 (relating to Definitions). This comment is outside of the scope of the proposed amendment, but DADS will consider this recommendation when the rule is proposed for amendment in the future.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated

by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.

§92.2. Definitions.

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

(1) Accreditation commission--Has the meaning given in Texas Health and Safety Code, §247.032.

(2) Advance directive--Has the meaning given in Texas Health and Safety Code, §166.002.

(3) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, and each person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(4) Alzheimer's facility--A type B assisted living facility that is certified to provide specialized services to residents with Alzheimer's or a related condition.

(5) Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(6) Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(7) Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(8) Behavioral emergency--Has the meaning given in §92.41(p)(2) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

(9) Change of ownership--A change of ownership is:

(A) a change of sole proprietorship that is licensed to operate a facility;

(B) a change of 50 percent or more in the ownership of the business organization that is licensed to operate the facility;

(C) a change in the federal taxpayer identification number; or

(D) relinquishment by the license holder of the operation of the facility.

(10) Commingles--The laundering of apparel or linens of two or more individuals together.

(11) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(B) any person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(12) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(13) DADS--The Department of Aging and Disability Services.

(14) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.

(15) Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(16) Disclosure statement--A DADS form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(17) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(18) Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(19) Fire suppression authority--The paid or volunteer firefighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(20) Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(21) Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(22) Immediate threat--There is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(23) Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(24) Large facility--A facility licensed for 17 or more residents.

(25) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(26) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(27) Manager--The individual in charge of the day-to-day operation of the facility.

(28) Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(29) Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(30) Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(j) of this chapter.

(31) Medication (self-administration)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(32) NFPA 101--The 1988 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(33) Ombudsman--Has the meaning given in §85.2 of this title (relating to Definitions).

(34) Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(35) Person with a disclosable interest--Any person who owns 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 247. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(36) Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(37) Physician--A practitioner licensed by the Texas Medical Board.

(38) Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice nurse.

(39) Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(40) Resident--An individual accepted for care in a facility.

(41) Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(42) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(43) Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(44) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(45) Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(46) Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(47) Short-term acute episode--An illness of less than 30 days duration.

(48) Small facility--A facility licensed for 16 or fewer residents.

(49) Staff--Employees of an assisted living facility.

(50) Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(51) Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(52) Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(53) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2011.

TRD-201105517
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: January 1, 2012
Proposal publication date: October 7, 2011
For further information, please call: (512) 438-3734

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

The Texas Department of Transportation (department) adopts amendments to §9.33, Notice of Intent and Letter of Interest; and §9.83, Notice and Letter of Interest, both concerning newspaper advertising. The amendments to §9.33 and §9.83 are adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6910) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department procures scientific services under Transportation Code, Chapter 223, Subchapter D, and professional services under Government Code, Chapter 2254, Subchapter A and 23 C.F.R. §172.5.

The Sunset Advisory Commission's Report to the 81st Legislature recommended that the department amend its rules requiring professional services contract solicitations to be advertised in local or statewide newspapers. Currently, the department posts the contract solicitations (notices) on the department's webpage and the Electronic State Business Daily. Newspaper advertisements do not contain the full solicitation, but merely refer the reader to the full notice, which is posted on the department's website.

To comply with the recommendation made by the Sunset Advisory Commission, it is necessary to amend §9.33(a) and §9.83(a)(1). Implementing this recommendation will save newspaper advertising costs and staff time while still allowing for effective notification of contracting opportunities. While newspaper advertising would no longer be mandatory, the department would retain the authority to publish notices in the newspaper when doing so is necessary and cost effective.

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §9.33

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105585
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 5, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 463-8683

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SUBCHAPTER F. CONTRACTS FOR SCIENTIFIC, REAL ESTATE APPRAISAL, RIGHT OF WAY ACQUISITION, AND LANDSCAPE ARCHITECTURAL SERVICES

43 TAC §9.83

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201105586
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 5, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 463-8683

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SUBCHAPTER H. GRANT SANCTIONS

43 TAC §9.133

The Texas Department of Transportation (department) adopts an amendment to §9.133, Procedure for Imposing Sanctions. The amendment to §9.133 is adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6913) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENT

Effective January 6, 2011, 43 TAC §1.8, Internal Ethics and Compliance Program, was repealed and the substance of that rule was moved to new 43 TAC §10.51. The transferred section establishes the minimum requirements of an internal ethics and compliance program required for entities doing business with the department, other than business under highway improvement contracts. At the time of the transfer of that rule, several references in the department's rules were changed from §1.8 to §10.51. However, the reference in §9.133 to §1.8 was overlooked and remained unchanged. The purpose of the amendment is to correct that error.

The amendment to §9.133(b) merely changes the reference from §1.8 to §10.51 to correctly cite the section that currently contains the internal ethics and compliance program requirements.

COMMENTS

No comments on the proposed amendment were received.

STATUTORY AUTHORITY

The amendment is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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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Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 5, 2012
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For further information, please call: (512) 463-8683

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CHAPTER 21. RIGHT OF WAY
SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

43 TAC §21.406

The Texas Department of Transportation (department) adopts amendments to §21.406, Exemptions for Certain Populous Counties, concerning changes to population references in the rules. The amendments to §21.406 are adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6925) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Section 56, Article III of the Texas Constitution, generally prohibits the legislature from passing local laws regulating the affairs of political subdivisions. To avoid that prohibition some statutes use population brackets to limit their application to classes of political subdivisions. Unless expressly provided otherwise, a statutory reference to population means the population according to the most recent federal census. As population data changes with the release of each federal census, the political subdivision for which a population bracket was designed may no longer be in the bracket. Therefore, it is usual for the legislature to enact a bill that updates population references in the statutes as necessary after each federal census. The bill reflecting the 2010 federal census changes is House Bill 2702 (HB 2702), 82nd Legislature. Because the bill is essentially enacted simultaneously with the release of the census information, it results in no substantive change in the law.

HB 2702 changes some statutory references that affect existing rules of the Texas Transportation Commission (commission). The amendments made by this rule are being made in conjunction with other rules that change population references in Title 43 of the Texas Administrative Code to conform those references to the changes made by HB 2702.

Amendments to §21.406(a) change "population of 2.4 million or more" to "population of 3.3 million or more" to conform to the change made to Transportation Code, §394.063(a) by Section 130 of HB 2702 and in §21.406(b) to conform to the changes made to Transportation Code, §394.061 by Section 129 of HB 2702.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to

establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §394.004, which provides the commission with the authority to establish rules relating to regulation of outdoor signs on rural roads.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 394, Subchapter D.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105588
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 5, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 463-8683

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER F. HAZARDOUS MATERIAL ROUTING DESIGNATIONS

43 TAC §25.101, §25.103

The Texas Department of Transportation (department) adopts amendments to §25.101, Purpose; and §25.103, Routing Designations by Political Subdivisions, concerning changes to population references in the rules. The amendments to §25.101 and §25.103 are adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6926) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Section 56, Article III of the Texas Constitution, generally prohibits the legislature from passing local laws regulating the affairs of political subdivisions. To avoid that prohibition some statutes use population brackets to limit their application to classes of political subdivisions. Unless expressly provided otherwise, a statutory reference to population means the population according to the most recent federal census. As population data changes with the release of each federal census, the political subdivision for which a population bracket was designed may no longer be in the bracket. Therefore, it is usual for the legislature to enact a bill that updates population references in the statutes as necessary after each federal census. The bill reflecting the 2010 federal census changes is House Bill 2702 (HB 2702), 82nd Legislature. Because the bill is essentially enacted simultaneously with the release of the census information, it results in no substantive change in the law.

HB 2702 changes some statutory references that affect existing rules of the Texas Transportation Commission (commission). The amendments made by this rule are being made in conjunction with other rules that change population references in Title 43 of the Texas Administrative Code to conform those references to the changes made by HB 2702.

Amendments to §25.103 change "population of more than 750,000" to "population of more than 850,000" to conform to the change made to Transportation Code, §644.202(b) by Section 177 of HB 2702.

Additionally, the amendments make nonsubstantive changes to §25.103, as well as §25.101, updating obsolete statutory references.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §644.201, which provides the commission with the authority to establish rules relating to the routing of nonradioactive hazardous materials.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 644, Subchapter E.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105589
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 5, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 463-8683

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CHAPTER 26. REGIONAL MOBILITY AUTHORITIES
SUBCHAPTER G. REPORTS AND AUDITS

43 TAC §§26.61 - 26.63, 26.65

The Texas Department of Transportation (department) adopts amendments to §26.61, Written Reports; §26.62, Annual Audits; and §26.63, Other Reports; and new §26.65, Annual Reports to the Commission, all concerning reports and audits of regional mobility authorities (RMA). The amendments to §§26.61 - 26.63 are adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6927) and will not be republished. New §26.65 is adopted with changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6927).

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

Transportation Code, Chapter 370, Subchapter B, provides that after approval by the Texas Transportation Commission (commission), an RMA may be created by one or more counties or by the city of El Paso, Laredo, Brownsville, McAllen, or Port Aransas. A county may become part of an existing RMA if the addition is approved by the commission. Under certain conditions, a county may be allowed to withdraw from an RMA. A county or city that is a part of an RMA has the authority to oversee the ac-

tivities of the RMA. A city that is part of an RMA is distinguished from a city that merely lies within the boundaries of an authority. Such a city has no oversight authority for the RMA.

Chapter 26, Subchapter G of the department's rules requires RMAs to file several reports with the department. These reports include the annual operating and capital budgets adopted by the RMA under the trust agreement or indenture securing bonds issued for a project and amendments or supplements to such a budget, financial information required to be disclosed under Rule 15c2-12 of the United States Securities and Exchange Commission (17 C.F.R. §240.15c2-12), statements of surplus revenue held by the RMA and the intended use of the surplus revenue, and an independent auditor's reviews of the reports of investment transactions required by law and prepared by an RMA's investment officers under Government Code, §2256.023. An RMA is also required to submit an annual financial and compliance audit of its books and records to the department and any other reports and information regarding its activities that are requested by the commission or the executive director of the department. While state statutes require commission or department approval of some activities of an RMA, such as approval of the construction of a transportation project that will connect to the state highway system or a department rail facility or approval of an application for federal highway or rail funds, neither the commission nor the department has general oversight responsibilities for an RMA. The information should more appropriately be given to the public entity or entities that oversee the operation of the RMA and the purpose of the amendments under this rule is to require an RMA to deliver the information to the public entity or entities.

Amendments to §26.61, Written Reports, change the entity to which an RMA submits certain information from the department to each county or city that is a part of the RMA. Subsection (a) applies to financial and operating reports specified in that subsection and subsection (b) applies to an independent auditor's review of specified investment reports.

Amendments to §26.62, Annual Audits, require that an annual financial and compliance audit of an RMA's books and records be submitted to each county or city that is a part of the RMA rather than to the executive director of the department, as required under the current section. The amendments also delete subsection (e), which requires audit work papers to be made available to the department.

Amendments to §26.63, Other Reports, require an RMA to provide other reports and information relating to the RMA's activities if requested by the counties or cities that are parts of the RMA rather than on request of the commission or department. The amendments also change the heading of the section to more clearly indicate the entities to which the reports are to be made.

New §26.65 relates to annual reports that an RMA is required to provide to the commission. Instead of providing the reports and audits required under §§26.61 - 26.63 to the commission, new §26.65(a) requires an RMA to submit to the executive director of the department an annual report, in the form prescribed by the department, that provides a checklist of each duty that the RMA is required to perform under Subchapter G of Chapter 26 and that indicates that the RMA has performed that requirement for that fiscal year. Each report must be approved by the board of the RMA and certified by the chief administrative officer of the RMA. New §26.65(b) requires an RMA to provide to the commission an annual progress report on each transportation project or system of projects of the RMA, including the initial project for which the RMA was created. These reports are intended to provide the commission and department with the information they need to perform their statutory duties related to RMAs.

COMMENTS

Comments on the proposed amendments and new section were received from C. Brian Cassidy of Locke Lord, LLP, who represents six of the eight RMAs in the state - the Alamo Regional Mobility Authority, Cameron County Regional Mobility Authority, Camino Real Regional Mobility Authority, Central Texas Regional Mobility Authority, Grayson County Regional Mobility Authority, and North East Texas Regional Mobility Authority.

Comment: Mr. Cassidy supports the changes to §§26.61 - 26.63. He writes that "[t]hese changes would enhance local control by ensuring that primary oversight of RMAs takes place at the local level, by those most familiar with local needs" and that they "are consistent with existing statutory requirements..." Additionally, Mr. Cassidy writes that the requirements in new §26.65 "would provide the department with information necessary to carry out its duties with regard to RMAs, while limiting the documentation that an RMA must submit to the Department." While he agrees with the intent of the new section, he suggests extending the time for filing the report under that section until at least 150 days after the end of the fiscal year to provide time for the completion and filing of the required annual audit. Mr. Cassidy supports the adoption of the amendments and additions, subject to extending the time for filing the compliance report with the department or otherwise amending proposed §26.65.

Response: The department appreciates Mr. Cassidy's comments and agrees to extend the filing deadline, so that §26.65 is amended to provide within 150 days after the end of an RMA's fiscal year, it is required to submit a report that lists each duty that it is required to perform under Subchapter G of Chapter 26 and that indicates that it has performed that requirement for that fiscal year.

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §370.038, which provides the commission with the authority to establish rules related to regional mobility authorities, and Transportation Code, §370.187, which provides the commission with the authority to establish rules for approval of a regional mobility authority's construction of a transportation project that will connect to the state highway system or to a department rail facility.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 370.

§26.65. Annual Reports to the Commission.

(a) Compliance Report. Within 150 days after the end of the fiscal year of an RMA, the RMA shall submit to the executive director a report that lists each duty that the RMA is required to perform under this subchapter and that indicates that the RMA has performed that requirement for that fiscal year. Each report submitted under this subsection must be in the form prescribed by the department, approved by official action of the board, and certified as correct by the chief administrative officer of the RMA.

(b) Project Report. Not later than December 31 of each year, an RMA shall submit to the commission a written report that describes

the progress made during that year on each transportation project or system of projects of the RMA, including the initial project for which the RMA was created.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105592
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 5, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 463-8683

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CHAPTER 27. TOLL PROJECTS

The Texas Department of Transportation (department) adopts amendments to §27.40, Purpose, §27.42, Creation, and §27.73, Commission Approval of County Toll Project, concerning changes to population references in the rules. The amendments to §§27.40, 27.42, and 27.73 are adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6929) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Section 56, Article III of the Texas Constitution, generally prohibits the legislature from passing local laws regulating the affairs of political subdivisions. To avoid that prohibition some statutes use population brackets to limit their application to classes of political subdivisions. Unless expressly provided otherwise, a statutory reference to population means the population according to the most recent federal census. As population data changes with the release of each federal census, the political subdivision for which a population bracket was designed may no longer be in the bracket. Therefore, it is usual for the legislature to enact a bill that updates population references in the statutes as necessary after each federal census. The bill reflecting the 2010 federal census changes is HB 2702, 82nd Legislature. Because the bill is essentially enacted simultaneously with the release of the census information, it results in no substantive change in the law.

HB 2702 changes some statutory references that affect existing rules of the Texas Transportation Commission (commission). The amendments made by this rule are being made in conjunction with other rules that change population references in Title 43 of the Texas Administrative Code to conform those references to the changes made by HB 2702.

Amendments to §27.40 and §27.42 change "population of 1.5 million or more" to "population of two million or more" to conform to the change made to Transportation Code, §366.031(a) by Section 127 of HB 2702.

Additional amendments to §27.42(b)(3)(A) and (c)(2) update references to the Texas Transportation Plan by changing the reference to statewide transportation plan to conform to current terminology usage.

Amendments to §27.73(a) change "population of more than 1.5 million" to "population of more than two million" to conform to the change made to Transportation Code, §362.055 by Section 126 of HB 2702.

COMMENTS

No comments were received on the proposed amendments.

SUBCHAPTER D. REGIONAL TOLLWAY AUTHORITIES

43 TAC §27.40, §27.42

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §366.031, which provides the commission with the authority to establish rules relating to the creation of a regional tollway authority.

CROSS REFERENCE TO STATUTE

Transportation Code, §362.055 and §366.031.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105590
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 5, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 463-8683

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SUBCHAPTER F. COUNTY TOLL ROADS AND FERRIES

43 TAC §27.73

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §366.031, which provides the commission with the authority to establish rules relating to the creation of a regional tollway authority.

CROSS REFERENCE TO STATUTE

Transportation Code, §362.055 and §366.031.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105591

Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 5, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 463-8683

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CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS
SUBCHAPTER G. PORT OF BROWNSVILLE PORT AUTHORITY PERMITS

43 TAC §§28.90 - 28.92

The Texas Department of Transportation (department) adopts amendments to §§28.90 - 28.92, concerning Port of Brownsville Port Authority Permits. The amendments to §§28.90 - 28.92 are adopted without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6932) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments grant the Port of Brownsville additional authority to issue permits for the operation of overweight vehicles on the designated highways within the port facilities.

Amendments to §28.90 add language to allow the Port of Brownsville to issue permits for the operation of overweight vehicles on State Highway 48/State Highway 4 past the entrance of the Port of Brownsville to any location along State Highway 48 within the port facility. This will provide the Port of Brownsville with the ability to extend its permitting process to other businesses that are within the port area.

Amendments to §28.91 add language expanding the route for the overweight permits to include any location along that highway within the Port of Brownsville. State Highway 48 travels through the Port of Brownsville and is parallel to the Brownsville Ship Channel. The extension authorized by this language change will allow the permits issued by the Port of Brownsville to be used for travel within the port area along State Highway 48. This will allow the Port to work on permitting issues with additional businesses within the area.

The language in §28.91(h) is amended to accommodate the change to the route in §28.91(g) by removing the reference to the specific starting and ending points of the route. The new language references the portions of the roadways for which the Port of Brownsville may issue a permit. This change addresses the current language revisions and will also be appropriate if future revisions become necessary.

Amendments to §28.92 are made so that it is consistent with the changes made to the route in §28.91. The changes to this section authorize the appropriate route information to be included on the permit application.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code §§623.210 - 623.219.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2011.

TRD-201105593
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 5, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 463-8683

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Board of Occupational Therapy Examiners

Title 40, Part 12

In accordance with §2001.039, Agency Review of Existing Rules, The Texas Board of Occupational Therapy Examiners submits the following plan to review their rules. The board voted to review all rules at its December 17, 2011 meeting. The Rule Review Plan will be posted again on the agenda for the next board meeting, May 18, 2012. The Board will consider all comments received at the meeting and re-adopt (or not) the reviewed rules. The public may comment in writing at any point in the process until the rules are re-adopted by the Board.

The Board will review the following chapters:

Chapter 361. Statutory Authority

Chapter 362. Definitions

Chapter 363. Consumer/Licensee Information

Chapter 364. Requirements for Licensure

Chapter 367. Continuing Education

Chapter 368. Open Records

Chapter 369. Display of Licenses

Chapter 370. License Renewal

Chapter 371. Inactive and Retired Status

Chapter 372. Provision of Services

Chapter 373. Supervision

Chapter 374. Disciplinary Actions/Detrimental Practice/Complaint Process/Code of Ethics

Chapter 375. Fees

Chapter 376. Registration of Facilities

All comments and/or questions should be directed to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, augusta@ptot.texas.gov.

TRD-201105759
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Filed: December 20, 2011

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Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 21, Interconnection Agreements for Telecommunications Service Providers, pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules.*

The commission's Chapter 21 rules concerning Interconnection Agreement (Texas Administrative Code, Title 16, Part 2) establish procedures for approving interconnection agreements and resolving open issues pursuant to the Federal Telecommunications Act of 1996 (FTA) §252. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.state.tx.us. Project Number 39950, *Agency Review of Chapter 21 - Interconnection Agreements for Telecommunications Service Providers, Pursuant to Texas Government Code §2001.039,* is assigned to this rule review project.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each section in Chapter 21 continue to exist. In addition, the commission welcomes comments on any modifications interested persons believe would improve the rules.

If it is determined during this review that any section of Chapter 21 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding; thus this notice of intention to review Chapter 21 has no effect on the sections as they currently exist.

Comments on the review of Chapter 21 may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed rule review are required to be filed pursuant to §21.71(c) of this title. When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapters and to clearly designate which section is being commented upon. All comments should refer to Project Number 39950.

The notice of intent to review Chapter 21, Procedural Rules, is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules

reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 (West 2008 and Supp. 2010) which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052; Texas Government Code §2001.039.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS.

§21.1. Purpose and Scope.

§21.3. Definitions.

§21.5. Representative Appearances.

§21.7. Standards of Conduct.

§21.9. Computation of Time.

§21.11. Suspension of Rules and Good Cause Exceptions.

SUBCHAPTER B. PLEADINGS, DOCUMENTS, AND OTHER MATERIALS.

§21.31. Filings of Pleadings, Documents, and Other Materials.

§21.33. Formal Requisites of Pleadings and Documents to be Filed with the Commission.

§21.35. Service of Pleadings and Documents.

§21.37. Examination and Correction of Pleadings and Documents.

§21.39. Amended Pleadings.

§21.41. Motions.

SUBCHAPTER C. PRELIMINARY ISSUES, ORDERS, AND PROCEEDINGS.

§21.61. Threshold Issues and Certification of Issues to the Commission.

§21.63. Interim Issues and Orders.

§21.65. Interlocutory Appeals.

§21.67. Dismissal of a Proceeding.

§21.69. Summary Decision.

§21.71. Sanctions.

§21.73. Consolidation of Dockets, Consolidation of Issues, and Joint Filings.

§21.75. Motions for Clarification and Motions for Reconsideration.

§21.77. Confidential Material.

SUBCHAPTER D. DISPUTE RESOLUTION.

§21.91. Mediation.

§21.93. Voluntary Alternative Dispute Resolution.

§21.95. Compulsory Arbitration.

§21.97. Approval of Negotiated Agreements.

§21.99. Approval of Arbitrated Agreements.

§21.101. Approval of Amendments to Existing Interconnection Agreements.

§21.103. Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i).

SUBCHAPTER E. POST-INTERCONNECTION AGREEMENT DISPUTE RESOLUTION.

§21.121. Purpose.

§21.123. Informal Settlement Conference.

§21.125. Formal Dispute Resolution Proceeding.

§21.127. Request for Expedited Ruling.

§21.129. Request for Interim Ruling Pending Dispute Resolution.

TRD-201105602
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 16, 2011

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The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 27, Rules for Administrative Services, pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules.* The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.state.tx.us. Project Number 39951, *Agency Review of Chapter 27 - Rules for Administrative Services, Pursuant to Texas Government Code §2001.039,* is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each section in Chapter 27 continue to exist. In addition, the commission welcomes comments on any modifications interested persons believe would improve the rules. The rules in Chapter 27 were adopted pursuant to Texas Government Code §2161.003, which requires the commission to adopt the Office of the Texas Comptroller of Public Accounts' rules for Historically Underutilized Businesses (HUB); Texas Government Code §2260.052, which requires the commission to develop rules to govern the negotiation and mediation of certain contract claims against the state; and Texas Government Code §2155.076, which requires the commission to develop and adopt protest procedures for vendors' protests concerning commission purchases that are consistent with the Office of the Texas Comptroller of Public Accounts' rules on the same subject. The public benefit anticipated in the adoption of these rules was a streamlined method for securing more goods and services from HUB vendors; the efficient resolution of contract disputes between contractors and the commission; and to provide readily available written protest procedures for vendors who wish to dispute issues related to agency purchases.

If it is determined during this review that any section of Chapter 27 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding; thus this notice of intention to review Chapter 27 has no effect on the sections as they currently exist. Therefore, Adriana Gonzales, Agency Rules Coordinator, has determined that this review has no fiscal implications for state or local government; no adverse effect on small businesses or micro-businesses; no economic costs to persons who are required to comply with these sections; and no effect on a local economy.

Comments on the review of Chapter 27 (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. When filing comments interested persons are requested to comment on the sections in the same order they are found

in the chapters and to clearly designate which section is being commented upon. All comments should refer to Project Number 39951.

The rules subject to this review are proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 (West 2008 and Supp. 2010) which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Government Code Chapter 2155, Subchapter B; Chapter 2161; and Chapter 2260.

SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES.

§27.31. Historically Underutilized Business Program.

SUBCHAPTER C. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES.

DIVISION 1. General.

§27.61. Purpose.

§27.63. Applicability.

§27.65. Definitions.

§27.67. Prerequisites to Suit.

§27.69. Sovereign Immunity.

DIVISION 2. Negotiation of Contract Disputes.

§27.81. Notice of Claim of Breach of Contract.

§27.83. Agency Counterclaim.

§27.85. Request for Voluntary Disclosure of Additional Information.

§27.87. Duty to Negotiate.

§27.89. Timetable.

§27.91. Conduct of Negotiation.

§27.93. Settlement Approval Procedures.

§27.95. Settlement Agreement.

§27.97. Costs of Negotiation.

§27.99. Request for Contested Case Hearing.

DIVISION 3. Mediation of Contract Disputes.

§27.111. Mediation Timetable.

§27.113. Conduct of Mediation.

§27.115. Agreement to Mediate.

§27.117. Qualifications and Immunity of the Mediator.

§27.119. Confidentiality of Mediation and Final Settlement Agreement.

§27.121. Costs of Mediation.

§27.123. Settlement Approval Procedures.

§27.125. Initial Settlement Agreement.

§27.127. Final Settlement Agreement.

§27.129. Referral to the State Office of Administrative Hearings (SOAH).

DIVISION 4. Assisted Negotiation Processes.

§27.141. Assisted Negotiation Processes.

§27.143. Factors Supporting the Use of Assisted Negotiation Processes.

§27.145. Use of Assisted Negotiation Processes.

SUBCHAPTER D. VENDOR PROTEST.

§27.161. Procedures for Resolving Vendor Protests.

TRD-201105601
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 16, 2011

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Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board files this notice of intent to review Title 31, Part 17, Chapter 520, Subchapter A, §§520.1 - 520.9, Election Procedures, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The agency finds that the reason for adopting the rules continues to exist and proposes to make one amendment, which will be published in the Proposed Rules Section of the *Texas Register* at a later date.

In §520.2(e), we will propose to amend the rule to change our physical address (in the city of Temple) from "311 North 5th Street" to "4311 South 31st Street".

As required by Government Code, §2001.039, the agency will accept comments and make a final assessment regarding whether the reason for adopting the rules continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by e-mail to risom@tsswcb.state.tx.us, or by facsimile at (254) 773-3311.

TRD-201105722
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: December 19, 2011

♦ ♦ ♦

Adopted Rule Reviews

Texas Department of Savings and Mortgage Lending

Title 7, Part 4

On behalf of the Texas Department of Savings and Mortgage Lending, the Finance Commission of Texas has completed its review and readopts without revisions Texas Administrative Code, Title 7, Part 4, Chapter 59, §59.1, relating to Foreign Building and Loan Association.

On behalf of the Texas Department of Savings and Mortgage Lending, the Finance Commission of Texas has completed its review and re-adopts with revisions Texas Administrative Code, Title 7, Part 4, Chapter 51, §§51.1 - 51.15, relating to Charter Applications; Chapter 53, §§53.1 - 53.5 and 53.7 - 53.18, relating to Additional Offices; Chapter 57, §§57.1 - 57.4, relating to Change of Office Location or Name; Chapter 61, §§61.1 - 61.3, relating to Hearings; Chapter 63, §§63.1 - 63.15, relating to Fees and Charges; Chapter 64, §§64.1 - 64.10, relating to Books, Records, Accounting Practices, Financial

Statements, Reserves, Net Worth, Examinations, Consumer Complaints; Chapter 65, §§65.1 - 65.24, relating to Loans and Investments; Chapter 67, §§67.1 - 67.4 and 67.6 - 67.17, relating to Savings and Deposit Accounts; Chapter 69, §§69.1 - 69.11, relating to Reorganization, Merger, Consolidation, Acquisition, and Conversion; Chapter 71, §§71.1 - 71.8, relating to Change of Control; Chapter 73, §§73.1 - 73.6, relating to Subsidiary Corporations; Chapter 75, Subchapter A, §§75.1 - 75.10, relating to Charter Applications; Subchapter B, §§75.25 - 75.27, relating to Expedited Applications; Subchapter C, §§75.31 - 75.36, 75.38, 75.39, and 75.41, relating to Additional Offices; Subchapter D, §§75.81 - 75.91, relating to Reorganization, Merger, Consolidation, Conversion, Purchase, and Assumption and Acquisition; Subchapter E, §§75.121 - 75.127, relating to Change of Control; Chapter 77, Subchapter A, §§77.1 - 77.11, 77.31, 77.33, 77.35, 77.51, 77.71 - 77.74, and 77.91 - 77.96, relating to Authorized Loans and Investments; and Subchapter B, §§77.113, 77.115, and 77.116, relating to Savings and Deposits; Chapter 79, Subchapter A, §§79.1 - 79.7 and 79.12, relating to Books, Records, Accounting Practices, Financial Statements and Reserves; Subchapter B, §§79.21 - 79.26, relating to Capital and Capital Obligations; Subchapter C, §§79.41 - 79.47, relating to Holding Companies; Subchapter D, §79.61, relating to Foreign Savings Banks; Subchapter E, §§79.71 - 79.73, relating to Hearings; Subchapter F, §§79.91 - 79.103 and 79.105 - 79.110, relating to Fees and Charges; Subchapter G, §79.121, relating to Statements of Policy; and Subchapter H, §79.122, relating to Consumer Complaints Procedures.

These reviews were done pursuant to Texas Government Code §2001.039. The notice of review was published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7369).

The Commission assessed whether the reasons for adopting or re-adopting these chapters continued to exist. Each section of the chapters was reviewed to determine whether they were obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Department and/or whether they were in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

There were no comments received in response to the proposed rule review.

This concludes the review of 7 TAC Chapters 51, 53, 57, 59, 61, 63, 64, 65, 67, 69, 71, 73, 75, 77, and 79.

TRD-201105616
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Filed: December 16, 2011

♦ ♦ ♦

Texas State Soil and Water Conservation Board

Title 31, Part 17

Pursuant to the notice of proposed rule review published in the August 12, 2011, issue of the *Texas Register* (36 TexReg 5105), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision, or repeal 31 TAC Part 17, Chapter 520, Subchapter B, §§520.11 - 520.13, Requirements to Receive State Funds or Administer State Programs, in accordance with Texas Government Code, §2001.039. The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and readopts this chapter without change.

TRD-201105721
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: December 19, 2011

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §51.4

"Notice is hereby given that application has been made to the Savings and Mortgage Lending [~~Loan~~] Commissioner of the State of Texas for the approval of a charter for _____ _____ Savings and Loan Association with principal office to be located at _____in the City_____, _____County, Texas.

Notice is further given that hearing on the application will be held at _____, on the ____day of _____, 20 [~~19~~]___, in the offices of the Texas Department of Savings and Mortgage Lending [~~Savings and Loan Department~~], 2601 North Lamar, Austin, Texas 78705, pursuant to authority and jurisdiction granted by the Texas Savings and Loan Act.

The nature and purpose of the hearing is to accumulate a record of pertinent information and data in support of the application and in opposition to the application, from which the commissioner shall determine whether to grant or deny the charter application.

The applicants for charter assert that:

1) the prerequisites to incorporation required by Chapter 62 of the Texas Savings and Loan Act have been satisfied;

2) the character, responsibility and general fitness of the persons named in the Articles of Incorporation command confidence and warrant belief that the business of the proposed association will be honestly and efficiently conducted in accordance with the intent and purpose of the Texas Savings and Loan Act, and that the proposed association will have qualified fulltime management;

3) there is a public need for the proposed association and the volume of business in the community in which the proposed association will conduct its business indicates a profitable operation is probable; and

4) the operation of the proposed association will not unduly harm any existing association.

Any person intending to appear and to participate in the hearing on this application may do so only if written notice of such intention is filed with and received by the commissioner at 2601 North Lamar, Suite 201, Austin, Texas 78705, and by the applicant's agent named above, at least 10 days prior to the date of such hearing. Such notice shall include the docket number of the application. If a protest is filed, the hearing on the application may be continued to a later date at the same location.

ISSUED in Austin, Texas, the _____day of _____, 20 [~~19~~]_____."

Figure: 7 TAC §79.2(b)

COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TX 78705. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 877-276-5550.

A complaint form and instructions may be downloaded and printed from the Department's website located at www.sml.texas.gov or obtained from the department upon request by mail at the address above, by telephone at its toll-free consumer hotline listed above, or by email at smlinfo@sml.texas.gov.

Figure: 7 TAC §83.6007(a)

PAYDAY LOAN—SINGLE PAYMENT

After reviewing the terms of the loan, you are not required to choose this loan, and may consider other borrowing options, including those shown on Page 2 of this document.

Borrowed Amount	$500.00
Interest Contract Rate: 10%	$2.40
Fees	$125.00
Payback Amount	$627.40

The loan information shown here is an example and may not reflect the actual fees and interest charged to a loan provided by the lender or credit access business.

How much will a two-week, $500 payday loan cost?

If I pay the loan in:	I will have to pay:
2 Weeks	$ 627.40
1 Month*	$ 754.80
2 Months*	$ 1,009.60
3 Months*	$ 1,264.40

**Payment amounts are approximated.*

How Long Could It Take to Repay a Loan?

Of 10 people who take out a new payday loan...

- **2 1/2** people will pay the loan on time and in **1 payment** *(typically two weeks)*
- **2** people will **renew** the loan **1 or 2 times**
- **1 1/2** people will **renew** the loan **3 or 4 times**
- **4** people will **renew** the loan **5 or more times**

Adapted from: Bertrand & Morse, "Information Disclosure, Cognitive Biases and Payday Borrowing", Milton Friedman Institute for Research in Economics (Oct. 2009).
Data provided above is compiled from a 2008 national survey; repayment patterns may be different.

Ask Yourself...

- **Is it necessary for me to borrow the money?**
- **Can I afford to pay this loan back in full in two weeks?**
- **Will I be able to pay my regular bills and repay this loan?**
- **Can I afford the extra charges, interest, and fees that may be applied if I miss or fail to make payment?**
- **Are other credit options available to me at this time?**

Turn Page

OFFICIAL STATE OF TEXAS NOTICE: This consumer disclosure has been provided in accordance with Section 393.223 of the TEXAS FINANCE CODE.

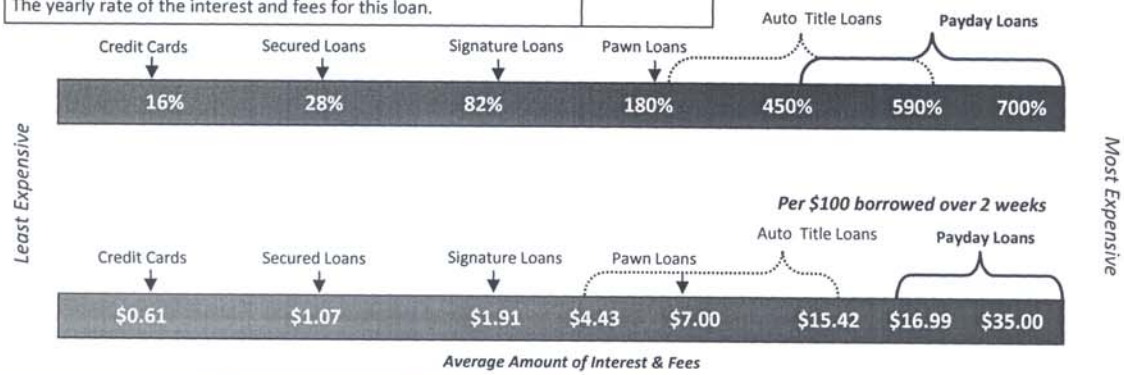
How Does a Payday Loan Compare to Other Options?

CASH ADVANCE / BORROWED AMOUNT	$500.00
INTEREST PAYMENT The amount you will pay in interest for the loan.	$2.40
TOTAL OF FEES The amount you will pay in fees for this loan.	$125.00
TOTAL OF PAYMENTS The amount you will pay if you repay the loan on time.	$627.40
ANNUAL PERCENTAGE RATE (APR) The yearly rate of the interest and fees for this loan.	664.30%

Loan Calculation

&

Cost Comparison



Payday loans are cash advances provided to a borrower to meet financial needs. As a borrower, you will be required to sign a loan agreement that tells you the amount you have requested to borrow, the annual percentage rate (APR) for that loan, the amount of interest and fees that may be charged for that loan, and the payment terms of the loan. Payday loans may be one of the more expensive borrowing options available to you. ***Payday loans may also be referred to as cash advance, delayed deposit or deferred presentment loans.***

Complaint or Concern?

If you would like to file a concern or complaint regarding a payday loan, contact the

Office of Consumer Credit Commissioner

800-538-1579

Looking for Information on Budgeting, Personal Savings, Credit Card Management, or other personal money management skills?

Visit the OCCC's Financial Literacy Resource Page

http://www.occc.state.tx.us/pages/consumer/education/Financial_Literacy_Resources.html

Additional Information

- You may be required to write checks or authorize withdrawals from personal checking accounts to cover payments for the loans.
- You can compare all loan options available and select the option that is best for you.
- You can avoid extra fees and loan renewal costs by not missing payments and by repaying loans on time.

OFFICIAL STATE OF TEXAS NOTICE: This consumer disclosure has been provided in accordance with Section 393.223 of the TEXAS FINANCE CODE.

Figure: 7 TAC §83.6007(b)

PAYDAY LOAN—MULTI-PAYMENT

After reviewing the terms of the loan, you are not required to choose this loan, and may consider other borrowing options, including those shown on Page 2 of this document.

Borrowed Amount	**$500.00**
Interest Contract Rate: 10%	$26.00
Fees	$775.00
Payment Amount	Payments #1— #9 $136.24 each Payment #10 $74.84
Payback Amount	**$1,301.00**

The loan information shown here is an example and may not reflect the actual fees and interest charged to a loan provided by the lender or credit access business.

How much will a 10-payment, bi-weekly, $500 payday loan cost?

Payment Number	Due After	Accumulated Interest & Fees	If Paid in Full... Total Paid Principal + Accumulated Interest & Fees
1	2 Weeks	$779.89	$1,279.89
2	1 Month	$784.28	$1,284.28
4	2 Months	$791.53	$1,291.53
6	3 Months	$796.74	$1,296.74
8	4 Months	$799.90	$1,299.90
10	5 Months	$801.00	$1,301.00

**Payment amounts are approximated.*

How Long Could It Take to Repay a Loan?

Of 10 people who take out a new payday loan...

2 1/2 people will pay the loan on time and in **1 payment** *(typically two weeks)*

2 people will **renew** the loan **1 or 2 times**

1 1/2 people will **renew** the loan **3 or 4 times**

4 people will **renew** the loan **5 or more times**

Adapted from: Bertrand & Morse, "Information Disclosure, Cognitive Biases and Payday Borrowing", Milton Friedman Institute for Research in Economics (Oct. 2009).
Data provided above is compiled from a 2008 national survey; repayment patterns may be different.

Ask Yourself...

- **Is it necessary for me to borrow the money?**
- **Can I afford to pay this loan back in full by the due date?**
- **Will I be able to pay my regular bills and repay this loan?**
- **Can I afford the extra charges, interest, and fees that may be applied if I miss or fail to make payment?**
- **Are other credit options available to me at this time?**

Turn Page

OFFICIAL STATE OF TEXAS NOTICE: This consumer disclosure has been provided in accordance with Section 393.223 of the TEXAS FINANCE CODE.

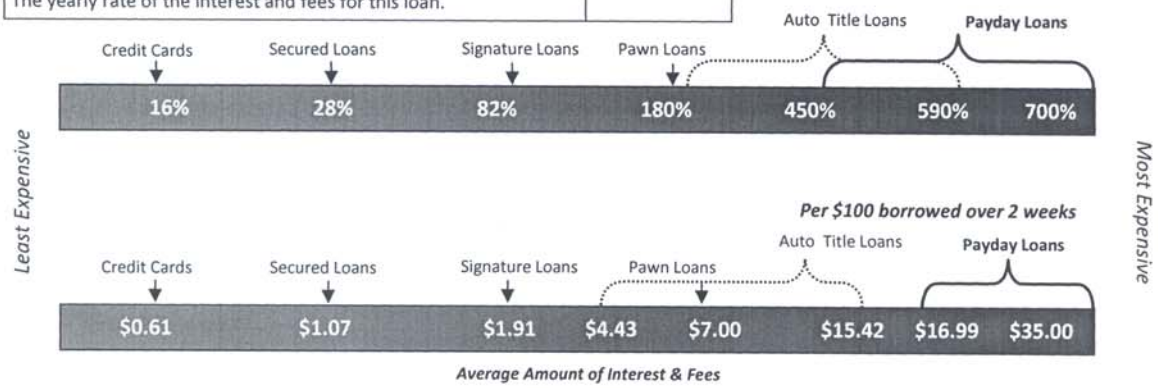
How Does a Payday Loan Compare to Other Options?

CASH ADVANCE / BORROWED AMOUNT	$500.00
INTEREST PAYMENT The amount you will pay in interest for the loan.	$26.00
TOTAL OF FEES The amount you will pay in fees for this loan.	$775.00
TOTAL OF PAYMENTS (10-PAYMENT, BI-WEEKLY LOAN) The amount you will pay if you repay the loan on time.	$1,301.00
ANNUAL PERCENTAGE RATE (APR) The yearly rate of the interest and fees for this loan.	614.51%

Loan Calculation

&

Cost Comparison



Average Amount of Interest & Fees

Payday loans are cash advances provided to a borrower to meet financial needs. As a borrower, you will be required to sign a loan agreement that tells you the amount you have requested to borrow, the annual percentage rate (APR) for that loan, the amount of interest and fees that may be charged for that loan, and the payment terms of the loan. Payday loans may be one of the more expensive borrowing options available to you. ***Payday loans may also be referred to as cash advance, delayed deposit or deferred presentment loans.***

Complaint or Concern?

If you would like to file a concern or complaint regarding a payday loan, contact the

Office of Consumer Credit Commissioner

800-538-1579

Looking for Information on Budgeting, Personal Savings, Credit Card Management, or other personal money management skills?

Visit the OCCC's Financial Literacy Resource Page

http://www.occc.state.tx.us/pages/consumer/education/Financial_Literacy_Resources.html

Additional Information

- You may be required to write checks or authorize withdrawals from personal checking accounts to cover payments for the loans.
- You can compare all loan options available and select the option that is best for you.
- You can avoid extra fees and loan renewal costs by not missing payments and by repaying loans on time.

OFFICIAL STATE OF TEXAS NOTICE: This consumer disclosure has been provided in accordance with Section 393.223 of the TEXAS FINANCE CODE.

Figure: 7 TAC §83.6007(c)

AUTO TITLE LOAN—SINGLE PAYMENT

You Can Lose Your Car

If you miss a payment or make a late payment, your car can be repossessed.

After reviewing the terms of the loan, you are not required to choose this loan, and may consider other borrowing options, including those shown on Page 2 of this document.

Borrowed Amount	$500.00
Interest Contract Rate: 10%	$5.41
Fees Includes a one-time $33 certificate of title fee.	$158.00
Payback Amount	$663.41

The loan information shown here is an example and may not reflect the actual fees and interest charged to a loan provided by the lender or credit access business.

How much will a one-month $500 auto title loan cost?

If I pay the loan in:	I will have to pay:
2 Weeks	$ 660.52
1 Month*	$ 663.41
2 Months*	$ 793.61
3 Months*	$ 923.81

**Payment amounts are approximated and based on a 30-day month.*

How Long Could It Take to Repay a Loan?

Of 10 people who take out a new auto title loan...

2.7 people will not renew their title loans

2.4 people will **renew** the loan **1 or 2 times**

1.3 people will **renew** the loan **3 or 4 times**

3.6 people will **renew** the loan **5 or more times**

Adapted from: Tennessee Department of Financial Institutions, "The 2010 Report on the Title Pledge Industry", (Mar. 2010). Data based upon title pledge agreements with a single-payment term; repayment patterns may vary.

Ask Yourself...

- **Is it necessary for me to borrow the money?**
- **Can I afford to pay this loan back <u>in full</u> in one month?**
- **Will I be able to pay my regular bills and repay this loan?**
- **Can I afford the extra charges, interest, and fees that may be applied if I miss or fail to make payment?**
- **Are other credit options available to me at this time?**

Turn Page

OFFICIAL STATE OF TEXAS NOTICE: This consumer disclosure has been provided in accordance with Section 393.223 of the TEXAS FINANCE CODE.

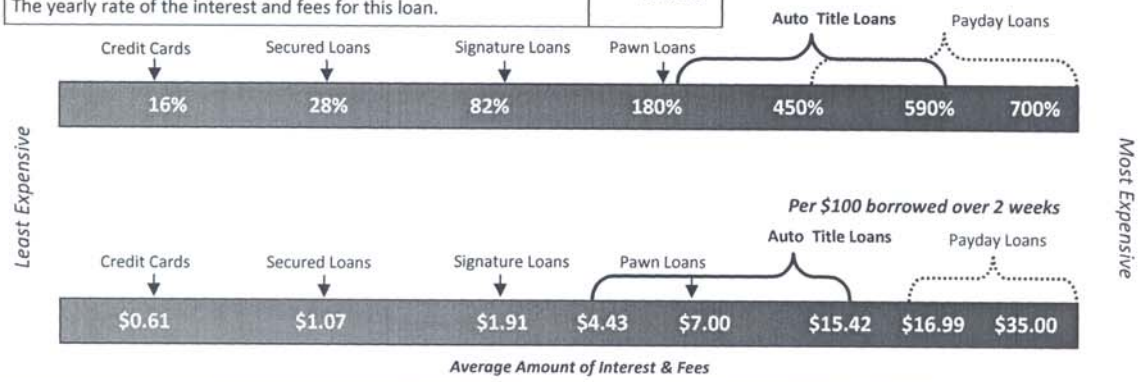
How Does an Auto Title Loan Compare to Other Options?

CASH ADVANCE / BORROWED AMOUNT	$500.00
INTEREST PAYMENT The amount you will pay in interest for the loan.	$5.41
TOTAL OF FEES The amount you will pay in fees for this loan.	$158.00
TOTAL OF PAYMENTS The amount you will pay if you repay the loan on time.	$663.41
ANNUAL PERCENTAGE RATE (APR) The yearly rate of the interest and fees for this loan.	297.68%

Loan Calculation

&

Cost Comparison



Average Amount of Interest & Fees

Auto title loans are cash advances provided to a borrower to meet financial needs. As a borrower, you will be required to use your car as collateral for the loan. You will be required to sign a loan agreement that tells you the amount you have requested to borrow, the annual percentage rate (APR) for that loan, the amount of interest and fees that may be charged for that loan, and the payment terms of the loan. Auto title loans may be one of the more expensive borrowing options available to you. *Auto title loans may also be referred to as car title loans, title loans, or title pledges.*

Complaint or Concern?

If you would like to file a concern or complaint regarding an auto title loan, contact the **Office of Consumer Credit Commissioner 800-538-1579**

Looking for Information on Budgeting, Personal Savings, Credit Card Management, or other personal money management skills?

Visit the OCCC's Financial Literacy Resource Page

http://www.occc.state.tx.us/pages/consumer/education/Financial_Literacy_Resources.html

Additional Information

- You may be required to write checks or authorize withdrawals from personal checking accounts to cover payments for the loans.
- You can compare all loan options available and select the option that is best for you.
- You can avoid extra fees and loan renewal costs by not missing payments and by repaying loans on time.

OFFICIAL STATE OF TEXAS NOTICE: This consumer disclosure has been provided in accordance with Section 393.223 of the TEXAS FINANCE CODE.

Figure: 7 TAC §83.6007(d)

AUTO TITLE LOAN—MULTI-PAYMENT

You Can Lose Your Car

If you miss a payment or make a late payment, your car can be repossessed.

After reviewing the terms of the loan, you are not required to choose this loan, and may consider other borrowing options, including those shown on Page 2 of this document.

Borrowed Amount	$500.00
Interest (Contract Rate: 10%)	$30.29
Fees (Includes a one-time $33 certificate of title fee.)	$868.00
Payment Amount	Payments #1— #10 $132.45 each Payment #11 $74.07
Payback Amount	1,398.57

The loan information shown here is an example and may not reflect the actual fees and interest charged to a loan provided by the lender or credit access business.

How much will an 11-payment, bi-weekly $500 auto title loan cost?

Payment Number	Due After	Accumulated Interest & Fees	If Paid in Full... Total Paid Principal + Accumulated Interest & Fees
1	2 Weeks	$873.25	$1,373.25
2	1 Month	$878.01	$1,378.01
4	2 Months	$886.06	$1,386.06
6	3 Months	$892.13	$1,392.13
8	4 Months	$896.21	$1,396.21
10	5 Months	$898.29	$1,398.29
11 (22 Wks)	Final Payment	$898.57	$1,398.57

*Payment amounts are approximated.

How Long Could It Take to Repay a Loan?

Of 10 people who take out a new auto title loan...

2.7 people will not renew their title loans

2.4 people will **renew** the loan **1 or 2 times**

1.3 people will **renew** the loan **3 or 4 times**

3.6 people will **renew** the loan **5 or more times**

Adapted from: Tennessee Department of Financial Institutions, "The 2010 Report on the Title Pledge Industry", (Mar. 2010). Data based upon title pledge agreements with a single-payment term; repayment patterns may vary.

Ask Yourself...

- **Is it necessary for me to borrow the money?**
- **Can I afford to pay this loan back <u>in full</u> by the due date?**
- **Will I be able to pay my regular bills and repay this loan?**
- **Can I afford the extra charges, interest, and fees that may be applied if I miss or fail to make payment?**
- **Are other credit options available to me at this time?**

Turn Page

OFFICIAL STATE OF TEXAS NOTICE: This consumer disclosure has been provided in accordance with Section 393.223 of the TEXAS FINANCE CODE.

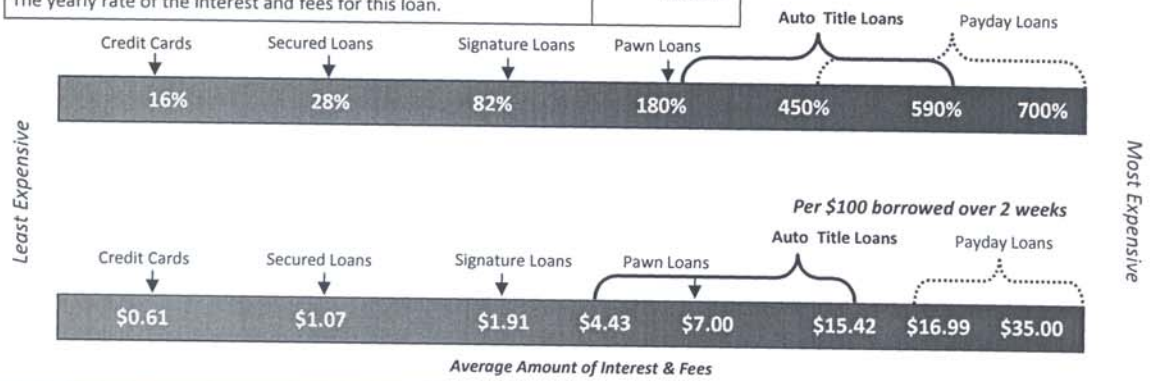
How Does an Auto Title Loan Compare to Other Options?

CASH ADVANCE / BORROWED AMOUNT	$500.00
INTEREST PAYMENT The amount you will pay in interest for the loan.	$30.29
TOTAL OF FEES The amount you will pay in fees for this loan.	$868.00
TOTAL OF PAYMENTS (11-PAYMENT, BI-WEEKLY LOAN) The amount you will pay if you repay the loan on time.	$1,398.57
ANNUAL PERCENTAGE RATE (APR) The yearly rate of the interest and fees for this loan.	564.57%

Loan Calculation

&

Cost Comparison



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Additional Information

- You may be required to write checks or authorize withdrawals from personal checking accounts to cover payments for the loans.
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- You can avoid extra fees and loan renewal costs by not missing payments and by repaying loans on time.

OFFICIAL STATE OF TEXAS NOTICE: This consumer disclosure has been provided in accordance with Section 393.223 of the TEXAS FINANCE CODE.

Figure: 7 TAC §155.2(c)(6)

PAYOFF STATEMENT FORM

Name of Mortgage Servicer
Name of Representative
Street or E-mail Address
City, State, Zip Code

REQUEST DATE:

SENT BY: ☐ Mail ☐ E-mail ☐ Facsimile

LOAN INFORMATION

MORTGAGOR: {Primary Borrower}

NEXT PAYMENT DUE DATE:

COLLATERAL: {Property Address or Legal Description}

Loan Type: {optional}

AMOUNT DUE

THIS STATEMENT REFLECTS THE TOTAL AMOUNT DUE UNDER THE TERMS OF THE NOTE/SECURITY INSTRUMENT THROUGH THE CLOSING DATE WHICH IS {INSERT CLOSING DATE}. If this obligation is not paid in full by this date, then you should obtain from us an updated payoff amount before closing.

Total Principal, Interest, and other amounts due under the Note/Security Instrument:

Unpaid Principal Balance:	$ {INSERT AMOUNT}
Interest through {insert good through date}	$ {INSERT AMOUNT}
Less Reductions in amount due	$ {INSERT AMOUNT}
{INSERT DESCRIPTION}	$ {INSERT AMOUNT}
{INSERT DESCRIPTION}	$ {INSERT AMOUNT}
{INSERT DESCRIPTION}	$ {INSERT AMOUNT}
{INSERT DESCRIPTION}	$ {INSERT AMOUNT}
TOTAL AMOUNT DUE:	$ {INSERT AMOUNT}

WHERE TO SUBMIT PAYOFF FUNDS

WIRE TRANSFER

Beneficiary Name:
Beneficiary/Receiving Bank:
Beneficiary Bank ABA:
Beneficiary Bank Account:
Special Information to Beneficiary:
{Inc. ODI Text Information required}

OVERNIGHT MAIL

{Attention}
{Name of Company}
{Street Address}
{City, State, Zip Code}

LEGAL NOTICES

TEXAS FINANCE CODE § 343.106 REQUIRES PAYOFF STATEMENT CONTAIN CLOSING DATE AND DATE THROUGH WHICH PAYOFF AMOUNT IS VALID. THESE REQUIREMENTS CANNOT BE DELETED FROM PAYOFF STATEMENT.

TEXAS FINANCE CODE § 343.106 REQUIRES THE IMPLEMENTING RULE TO ALLOW MORTGAGE SERVICERS AT LEAST SEVEN (7) BUSINESS DAYS FROM THE DATE OF RECEIPT OF PAYOFF REQUEST TO RESPOND TO A REQUEST MADE UNDER THE STATUTE.

ANY AMOUNT HELD IN ESCROW AT CLOSING WILL BE SETTLED IN ACCORDANCE WITH APPLICABLE FEDERAL LAW.

OPTIONAL SECTIONS
{This is an Adjustable Rate Mortgage. Under the terms of this loan the next Change Date for the interest rate charged is {Insert Next Rate Change Date}. We will only issue a payoff good through the next Change Date. If the closing date is past the next Change Date an updated Payoff Statement from us will be required.}
{If loan has quotable per diem interest, then "Funds received after {insert good through date} will be subject to an additional ${Insert Per Diem Amount} of interest per day."} FUNDS MUST BE RECEIVED BY {INSERT POSTING CUT OFF TIME} FOR SAME-DAY PROCESSING. PAYOFFS ARE NOT POSTED ON WEEKENDS OR HOLIDAYS. INTEREST WILL BE ADDED TO THE ACCOUNT FOR THESE DAYS.
NOTE: This Note/Security Instrument is due for payment on {Insert Next Due Date}. If payment is not received within {Insert number of days} of the current payment due date, a late charge of ${insert amount} will be assessed. Please add that amount to the payoff total.
Escrow Disbursement Amounts & Dates: {Insert Description} ${Insert Amount Held} {Insert Next Disbursement Date} {Insert Description} ${Insert Amount Held} {Insert Next Disbursement Date} {Insert Description} ${Insert Amount Held} {Insert Next Disbursement Date}
Release of Lien Processing: {Provide the Servicer's practice regarding releases (i.e. The Servicer will prepare the release of lien; the title company must prepare the release of lien. The release is mailed to the county, borrower, or Title Company for recording)}

Figure: 16 TAC §3.29(f)(3)

REQUEST TO CHALLENGE CLAIM OF ENTITLEMENT
TO TRADE SECRET PROTECTION OF HYDRAULIC FRACTURING
TREATMENT CHEMICAL COMPOSITION

I, _____(name)_____, challenge the claim of entitlement to trade secret protection for portions of the chemicals or other substances used in the hydraulic fracturing treatment of the following well:

Operator name: _____
County name: _____
API number: _____
Field Name: _____
Railroad Commission oil lease name and number: _____
Railroad Commission gas identification number: _____
Well Number: _____

The following is to be completed if the requestor is a landowner:

I certify that I am listed on the appraisal roll as owning the property on which the relevant wellhead is located or I am listed on the appraisal roll as owning property adjacent to the property on which the relevant wellhead is located.

Name of requestor: _____
Mailing address of Requestor: _____
_____
Phone number of requestor: _____
Email address of requestor (optional): _____

EMAIL ADDRESS: YOU ARE NOT REQUIRED TO PROVIDE AN EMAIL ADDRESS when completing and filing this form. Please be aware that information provided to any governmental body may be subject to disclosure pursuant to the Texas Public Information Act or other applicable federal or state legislation. IF YOU PROVIDE AN EMAIL ADDRESS, YOU AFFIRMATIVELY CONSENT TO THE RELEASE OF THAT EMAIL ADDRESS TO THIRD PARTIES. Other departments within the Railroad Commission also may use the email address you provide to communicate with you.

Signature of Requestor: _____

Date: _____

Figure: 22 TAC §1.232(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§1.62	Administrative penalty or reprimand
Practice of architecture while registration is inactive	§1.68	Administrative penalty
Failure to fulfill mandatory continuing education requirements	§1.69	Administrative penalty or suspension
Failure to use appropriate seal or signature	§1.102 §1.104(c)	Administrative penalty or reprimand
Failure to seal documents or insert statement in lieu of seal as required	§1.103(a), (d), (f), (h)(2), (i) §1.105(a)(4) §1.122(c), (e)	Administrative penalty or reprimand
Failure to mark incomplete documents as required	§1.103(b)	Administrative penalty or reprimand
Removal of seal after issuance of documents	§1.104(e)	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	§1.103(g) §1.105(b) §1.122(d)	Administrative penalty or reprimand
Failure to notify the original design professional as required	§1.103(h)(1)	Administrative penalty or reprimand
Sealing a document prepared by a person not working under the respondent's Supervision and Control	§1.103(h)(3) §1.104(a)	Suspension or revocation
Unauthorized use of a seal or modification of a document	§1.104(b)	Administrative penalty or reprimand
Violation of requirements regarding prototypical design	§1.105(a)(1), (2), (3), (5)	Administrative penalty, reprimand, or suspension
Failure to provide Statement of Jurisdiction	§1.106	Administrative penalty or reprimand
Failure to enter into a written agreement of association when required	§1.122	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the preparation of a document as required	§1.122(c)	Suspension or revocation

Failure to exercise Responsible Charge over the preparation of a document as required	§1.122(e)	Suspension or revocation
Failure of a firm, business entity, or association to register	§1.124(a) and (b)	Administrative penalty, cease and desist order, or both
Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide architecture	§1.124(c)	Administrative penalty, reprimand, or suspension
Offering or rendering the Practice of Architecture by and through a firm, business entity or association that is not duly registered	§1.124	Administrative penalty, cease and desist order, or both
Gross incompetency	§1.142	Suspension or revocation
Recklessness	§1.143	Suspension or revocation
Dishonest practice	§1.144(a), (c)	Suspension or revocation
Dishonest practice	§1.144(b)	Administrative penalty or reprimand
Conflict of interest	§1.145	Suspension or revocation
Failure to uphold responsibilities to the architectural profession	§1.146(a)	Suspension or revocation
Failure to uphold responsibilities to the architectural profession	§1.146(b), (c)	Administrative penalty or reprimand
Failure to act in a manner consistent with the Professional Services Procurement Act	§1.147	Administrative penalty or reprimand
Unauthorized practice or use of title "architect"	§1.148	Suspension, revocation, or denial
Criminal conviction	§1.149	Suspension or revocation
Violation by Applicant	§1.148 §1.149 §1.151	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply
Failure to submit a document as required by the Architectural Barriers Act	§1.170	Reprimand or administrative penalty
Failure to respond to a Board inquiry	§1.171	Administrative penalty

Figure: 22 TAC §3.232(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§3.62	Administrative penalty or reprimand
Practice of landscape architecture while registration is inactive	§3.68	Administrative penalty
Failure to fulfill mandatory continuing education requirements	§3.69	Administrative penalty or suspension
Failure to use appropriate seal or signature	§3.102 §3.104(c)	Administrative penalty or reprimand
Failure to seal documents or insert statement in lieu of seal as required	§3.103(a), (d), (f), (h)(2), (i) §3.122(c), (e)	Administrative penalty or reprimand
Failure to mark incomplete documents as required	§3.103(b)	Administrative penalty or reprimand
Removal of seal after issuance of documents	§3.104(e)	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	§3.103(g) §3.122(d)	Administrative penalty or reprimand
Failure to notify the original design professional as required	§3.103(h)(1)	Administrative penalty or reprimand
Sealing a document prepared by a person not working under the respondent's Supervision and Control	§3.103(h)(3) §3.104(a)	Suspension or revocation
Unauthorized use of a seal or modification of a document	§3.104(b)	Administrative penalty or reprimand
Failure to provide Statement of Jurisdiction	§3.105	Administrative penalty or reprimand
Failure to report a course of action taken against the respondent's advice as required	§3.105(b)	Administrative penalty, reprimand, or suspension
Failure to enter into a written agreement of association when required	§3.122	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the preparation of a document as required	§3.122(c)	Suspension or revocation

Failure to exercise Responsible Charge over the preparation of a document as required	§3.122(e)	Suspension or revocation
Failure of a firm, business entity, or association to register	§3.124(a) and (b)	Administrative penalty, cease and desist order, or both
Failure to timely notify the Board upon dissolution of a business entity or association of loss of lawful authority to offer or provide landscape architecture	§3.124(c)	Administrative penalty, reprimand, or suspension
Offering or rendering Landscape Architecture by and through a firm, business entity or association that is not duly registered	§3.124	Administrative penalty, cease and desist order, or both
Gross incompetency	§3.142	Suspension or revocation
Recklessness	§3.143	Suspension or revocation
Dishonest practice	§3.144(a), (c)	Suspension or revocation
Dishonest practice	§3.144(b)	Administrative penalty or reprimand
Conflict of interest	§3.145	Suspension or revocation
Failure to uphold responsibilities to the landscape architectural profession	§3.146(a)	Suspension or revocation
Failure to uphold responsibilities to the landscape architectural profession	§3.146(b), (c)	Administrative penalty or reprimand
Failure to act in a manner consistent with the Professional Services Procurement Act	§3.147	Administrative penalty or reprimand
Unauthorized practice or use of title "landscape architect"	§3.148	Suspension, revocation, or denial
Criminal conviction	§3.149	Suspension or revocation
Violation by Applicant	§3.148 §3.149 §3.151	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply
Failure to submit a document as required by the Architectural Barriers Act	§3.170	Reprimand or administrative penalty
Failure to respond to a Board inquiry	§3.171	Administrative penalty

Figure: 22 TAC §5.201(a)

Approved Education		Minimum Experience Required
ID-1 (Per §5.31(a)(1))	Graduation from a program granted professional status by the Council for Interior Design Accreditation (CIDA) or the National Architectural Accreditation Board (NAAB) or from an interior design education program outside the U.S. that is substantially equivalent to a CIDA-accredited or NAAB-accredited professional program	2 years
ID-2 (Per §5.31(a)(2))	A doctorate, master's degree, or baccalaureate degree in Interior Design from a degree program that does not satisfy the requirements of category ID-1	3 years
ID-3 (Per §5.31(a)(3))	A baccalaureate degree in a field other than Interior Design plus an associate's degree or a two-year or three-year certificate from an Interior Design program at an institution accredited by an agency recognized by the Texas Higher Education Coordinating Board (THECB)	3 years
ID-4 (Per §5.31(a)(4))	A baccalaureate degree in a field other than Interior Design plus an associate's degree or a two-year or three-year certificate from a foreign interior design program approved or accredited by an agency acceptable to the Board	3 1/2 years

Figure: 22 TAC §5.242(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	§5.72	Administrative penalty or reprimand
Practice of Interior Design while registration is inactive	§5.78	Administrative penalty
Failure to fulfill mandatory continuing education requirements	§5.79	Administrative penalty or suspension
Failure to use appropriate seal or signature	§5.112 §5.114(c)	Administrative penalty or reprimand
Failure to seal documents or insert statement in lieu of seal as required	§5.113(a) and (b) §5.132(c) and (e)	Administrative penalty or reprimand
Failure to mark incomplete documents as required	§5.113(b)	Administrative penalty or reprimand
Removal of seal after issuance of documents	§5.114(e)	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	§5.113(c) §5.132(d)	Administrative penalty or reprimand
Failure to make reasonable efforts to notify the original design professional as required	§5.114(d)	Administrative penalty or reprimand
Sealing a document prepared by a person not working under the respondent's Supervision and Control	§5.114(a)	Suspension or revocation
Unauthorized use of a seal or modification of a document	§5.114(b) and (c)	Administrative penalty or reprimand
Failure to provide Statement of Jurisdiction	§5.115(a)	Administrative penalty or reprimand
Failure to report a course of action taken against the respondent's advice as required	§5.115(b)	Administrative penalty, reprimand, or suspension
Failure to enter into a written agreement of association when required	§5.132	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the preparation of a document as required	§5.132(c)	Suspension or revocation
Failure to exercise Responsible Charge over the preparation of a document as required	§5.132(e)	Suspension or revocation
Failure of a firm, business entity, or association to register	§5.134(a) and (b)	Administrative penalty or reprimand

Failure to timely notify the Board upon dissolution of a business entity or association or upon loss of the entity or association to use the title "registered interior designer"	§5.134(c)	Administrative penalty, cease and desist order, or both
Representing firm, business entity or association which is not registered as Registered Interior Designer firm	§5.134	Administrative penalty, cease and desist order, or both
Gross incompetency	§5.152	Suspension or revocation
Recklessness	§5.153	Suspension or revocation
Dishonest practice	§5.154(a), (c)	Suspension or revocation
Dishonest practice	§5.154(b)	Administrative penalty or reprimand
Conflict of interest	§5.155	Suspension or revocation
Failure to uphold responsibilities to the Interior Design profession	§5.156(a)	Suspension or revocation
Failure to uphold responsibilities to the Interior Design profession	§5.156(b), (c)	Administrative penalty or reprimand
Unauthorized practice or use of title "registered interior designer"	§5.157	Suspension, revocation, or denial
Criminal conviction	§5.158	Suspension or revocation
Violation by Applicant	§5.157 §5.158 §5.160	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply
Failure to submit a document as required by the Architectural Barriers Act	§5.180	Reprimand or administrative penalty
Failure to respond to a Board inquiry	§5.181	Administrative penalty

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
Annual Business Registration	******30	******30	******30
Business Registration Renewal 1-90 days late	******45	******45	******45
Business Registration Renewal Greater than 90 days late	******60	******60	******60
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.

******Notwithstanding the amounts shown in each column, a multidisciplinary firm which renders or offers two or more of the regulated professions of architecture, landscape architecture, and interior design is required to pay only a single fee in the same manner as a firm which offers or renders services within a single profession.

Figure: 37 TAC §35.93

VIOLATION	VIOLATION DESCRIPTION	FINE AMOUNT
UNI - Uniform violation	Failed to have last name identification on outermost garment except plastic raingear	$25.00
UNI - Uniform violation	Failed to have the word "Security" on outermost garment except plastic raingear	$50.00
UNI - Uniform violation	Failed to have company name on outermost garment except plastic raingear	$50.00
FPPC- Failure to present pocket card	Failure to present pocket card upon request	$100.00
PCV - Pocket card violation	Failed to have a color photograph affixed to the pocket card	$50.00
PCV - Pocket card violation	Failed to have signature on the back of the pocket card	$25.00
RECV - Employee records violation	Full name of employee	$25.00
RECV - Employee records violation	Position of employee	$25.00
RECV - Employee records violation	Current residence of the security officer as reported by security officer	$25.00
RECV - Employee records violation	Date of employment when performing a regulated service	$25.00
RECV - Employee records violation	Address of employee as reported by employee	$25.00
RECV - Employee records violation	Social Security number	$25.00
RECV - Employee records violation	Last date of employment	$25.00
RECV - Employee records violation	Date of birth	$25.00
RECV - Employee records violation	Place of birth	$25.00
RECV - Employee records violation	One color photograph	$25.00
RECV - Employee records violation	Failed to keep employee records two years from termination	$100.00
RECV - Employee records violation	Commission only - Current duty assignment and location	$50.00
DT - RECV - Drug testing record violation	Failure to comply with drug free workplace policy within 10 working days of notice from	$500.00 per quarter
	Private Security Bureau (PSB)	
OPSL - Operating while license suspended	Failure to maintain current insurance	$500.00 every 14 days
OPSI - Operating outside scope insurance	Operating outside the scope of insurance coverage	$500 per violation
OPWI - Operating without insurance	Operating without insurance	$500 per violation
FPPI- Failure to provide proof of insurance	Failure to provide requested proof of insurance within 10 working days of notice from PSB	$100 per day
OPEL -Operating while license expired	Operating with an expired license	$500.00 every 14 days
REG - Registration violation	Failure to register employee within 5 days of employee actually beginning work	$200.00
ADDR - Address change violation	Failure to notify PSB within 14 days of change of address	$350.00
CON - Other Contract Violation	Licensee failure to provide requested written report within 7 days	$500.00
DISP - Consumer sign Violation	Failure to display the consumer sign in a prominent place	$100.00
POST - Failure to post license	Failed to post the license	$100.00
CON - Other contract	Licensee failure to provide requested written contract within 7 days	$500.00
ADV - Advertising violation	Failed to have company name as stated in board records	$100.00
ADV - Advertising violation	Failed to have company address as stated in board records	$100.00
ADV - Advertising violation	Failed to have license number as issued by the board	$100.00
PRNT - Fingerprint violation	Failed to obtain fingerprints prior to placing on post	$250.00
BRNC - Failure to notify establishment of branch office	Failed to notify board within 14 days of opening branch office	$500.00
BRNT - Failure to notify closing of branch office	Failed to notify board within 14 days of closing of branch office	$350.00
CHNG - Failure to notify board of change of license name	Failure to notify board of a change in business name	$500.00
FLAG - Business use of flag of Texas	Licensee using the State flag of Texas	$500.00
MGRQ - Failure to qualify a manager	Failed to qualify a manager within 60 days	$500.00 every 14 days
MGRS - Manager failing to control business	Manager failing to control business	$3,000.00
MGRT - Failing to notify board of manager term within 14 days	Failed to notify board of manager term withing 14 days	$500.00
OPS - Failure to notify board of a change of ownership	Failed to notify change of ownership within 14 days	$500.00 every 14 days
SEAL - Using State seal or DPS seal	Using State seal of Texas	$500.00
MGRS - Manager controlling excessive businesses	Manager controlling more than 3 companies and 2 schools	$3,000.00
RSOL - Residential solitication violation	Violation of §35.47 of this title	$1,000.00 per violation

Figure: 43 TAC §15.55(c)

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
Project is on the Interstate Highway System	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State	100% State -or- 90% Federal 10% State -or- 80% Federal 20% State
Project is on the State Highway System (except Farm to Market System, Urban Road System, Principal Arterial Street Program (PASS) or Phase 1 Trunk System Corridor)	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
Project is on the PASS except for existing US, SH, FM and UR system routes	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	50% State 50% Local -or- 80% Federal 10% State 10% Local
Project is not on the State Highway System	100% Local -or- 80% Federal 20% Local	100% Local -or- 80% Federal 20% Local	100% Local -or- 80% Federal 20% Local
Project is on the FM/UR system New FM/UR route Existing FM/UR route	100% State -or- 80% Federal 20% State 100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State 100% State -or- 80% Federal 20% State	100% Local 90% State 10% Local -or- 80% Federal 10% State 10% Local

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
Project is on a Phase 1 Trunk System Corridor, Designated Statewide Mobility Corridor, or On-System Turnpike Project	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State
State Park Road Program	100% State	100% State	100% State
On-State System Bridge Program	100% State -or- 80% Federal 20% State	100% State -or- 80% Federal 20% State	90% State 10% Local -or- 80% Federal 10% State 10% Local
Off-State System Bridge Program If bridge project connects Texas with a neighboring state	80% Federal 10% State 10% Local -or- 80% Federal 20% State #1 80% Federal 20% State	80% Federal 10% State 10% Local -or- 80% Federal 20% State #1 80% Federal 20% State	100% Local
On-State System Safety Program	100% State -or- 90% Federal 10% State	90% Federal 10% State	100% State -or- 90% Federal 10% State
Off-State System Safety Program If included in the Railroad Signal Safety Program	90% Federal 10% Local -or- 90% Federal 10% State	90% Federal 10% Local -or- 90% Federal 10% State	90% Federal 10% Local -or- 90% Federal 10% State
Transportation Enhancement Program #2	80% Federal 20% Local	80% Federal 20% Local	80% Federal 20% Local
On-State System Safe Routes to Schools Program	100% State -or- 100% Federal [~~80% Federal~~] [~~20% State~~]	100% State -or- 100% Federal [~~80% Federal~~] [~~20% State~~]	100% State -or- 100% Federal [~~80% Federal~~] [~~20% State~~]

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Eligible Utilities
			[~~-or-~~] [~~90% Federal~~] [~~10% State~~] [~~-or-~~] [~~90% State~~] [~~10% Local~~]
Off-State System Safe Routes to Schools Program	100% Federal [~~80% Federal~~] [~~20% State~~]	100% Federal [~~80% Federal~~] [~~20% State~~]	100% Local -or- 100% Federal [~~80% Federal~~] [~~20% Local~~] [~~-or-~~] [~~90% Federal~~] [~~10% Local~~]

All participation ratios shown depict the minimum local participation for eligible costs. For continuous lighting systems or safety lighting on the state highway system, refer to Chapter 25, §25.11 of this title.

NOTES:

#1 If approved in accordance with §15.55(d) of this subchapter.

#2 For projects selected in the Transportation Enhancement Program call, federal participation is limited to the amount authorized by the commission, not to exceed 80% of the eligible costs.

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 State Affordable Housing Corporation

Draft 2012 Annual Action Plan Available for Public Comment

The Texas State Affordable Housing Corporation presents for public comment its draft 2012 Annual Action Plan, which is a component of the 2012 State Low Income Housing Plan. A copy of the draft 2012 Annual Action Plan may be found on the Corporation's website at www.tsahc.org. The public comment period for the Corporation's Draft 2012 Annual Action Plan is December 30, 2011 through January 30, 2012.

Written comment may be sent to Janie Taylor, 2200 E. Martin Luther King Jr. Boulevard, Austin, Texas 78702 or by email to jtaylor@tsahc.org. Additionally, public comment may be provided at a public hearing to be held on Tuesday, January 10, 2012 at 11:00 a.m. at the Stephen F. Austin Bldg., Room 172, located at 1700 North Congress Avenue, Austin, Texas 78701.

TRD-201105775
David Long
President
Texas State Affordable Housing Corporation
Filed: December 21, 2011

♦ ♦ ♦

Texas Department of Agriculture

Notice Regarding Percentage Volume of Texas Grapes

Texas Alcoholic Beverage Code, §16.011, (§16.011), establishes an exception to the bar on the sale of alcoholic beverages in dry areas for wineries that sell or dispense wine that contains seventy-five percent (75%), by volume, of Texas grown grapes or fruit. Texas Agriculture Code, §12.039 (§12.039), provides that the commissioner of agriculture may reduce the percentage by volume of fermented juice of grapes or other fruit grown in this state that wine containing that particular variety of grape or other fruit must contain under §16.011. Due to state budget cuts, the department did not receive the Texas Grape Production and Demand Report from the Texas Wine Marketing Research Institute (TWMRI), as provided for in §12.039. The department has, however, reviewed the United States Department of Agriculture (USDA) grape production forecast report (forecast report), which was issued on October 12, 2011. The forecast report is based on a survey of Texas grape growers statewide. Upon review of the USDA forecast report and data, the department has determined that there is sufficient information to set the percentage of Texas grown grapes and fruit that is required to be in wine produced by wineries located in dry areas of Texas fifty percent (50%) for the 2012 calendar year. The setting of the percentage requirement at fifty percent (50%) is based upon several factors, although data is limited. First of all, since the TWMRI was not provided to the department to aid in the department's determination, the department looked to the USDA for grape production information. Secondly, the USDA forecast report indicates that the production forecast for Texas is 1% lower than the 5-year average of 6,260 tons and 30% lower than the previous year of 8,900 tons. Additionally, as noted below, for situations where a winery is not able to obtain enough Texas grapes to meet their needs, the department will review individual appeals for further reduction of the level set for calendar year 2012. The USDA grape forecast report issued in October, 2011, is preliminary and will be updated in January, 2012, and issued as the annual USDA grape production report. TDA staff will review the USDA annual report when it becomes available and submit to the commissioner at that time a recommendation for any needed adjustments to the 50% rate, as a result of the USDA data. The commissioner will review any such recommendation and make adjustments to the rate, as deemed necessary. Any change to the rate will be published in the *Texas Register* and posted on the Texas Department of Agriculture website.

In accordance with §12.039(g), if a winery in a dry area of Texas finds that a particular variety of grape or other fruit is not available to a level sufficient for the winery to meet the winery's planned production for the relevant year, the winery may submit documentation or other information requested by the commissioner substantiating that the winery has not been able to acquire those grapes or other fruit grown in this state in an amount sufficient to meet the winery's production needs and to comply with requirements of §16.011. If the commissioner determines that there is not a sufficient quantity of that variety of grapes or other fruit grown in this state to meet the needs of that winery, the commissioner may reduce the percentage requirement for wine bottled during the remainder of the calendar year that contains that variety of grape or fruit.

TRD-201105797
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 22, 2011

♦ ♦ ♦

Office of the Attorney General

Child Support Guidelines - 2012 Tax Charts

Pursuant to §154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

This agency hereby certifies that the tax charts have been reviewed by legal counsel and found to be within the agency's authority to publish.

Note regarding changes for 2012:

A temporary reduction of Old-Age, Survivors and Disability Insurance Taxes to 4.2% for employed persons and 10.4% for self-employed persons was provided in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312 (HR 4853). Those rates were used in the 2011 tax charts. As of December 21, 2011, the deadline for submission of the 2012 tax charts for publication in the final 2011 issue of the *Texas Register,* Congress had not extended that provision. The 2012 tax charts were prepared assuming the temporary reductions will be allowed to expire and therefore use 6.2% as the applicable tax rate for Old-Age, Survivors and Disability Insurance Taxes for employed persons and 12.4% as the applicable tax rate for Old-Age, Survivors and Disability Insurance Taxes for self-employed persons. If after December 21, 2011 federal legislation is enacted that reduces Old-Age, Survivors and Disability Insurance Taxes, the Office of the Attorney General will assess whether it is appropriate to issue revised 2012 tax charts.

EMPLOYED PERSONS
2012 TAX CHART

Monthly Gross Wages	Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (6.2%)*	Social Security Taxes: Hospital (Medicare) Insurance Taxes (1.45%)*	Federal Income Taxes**	Net Monthly Income
$100.00	$6.20	$1.45	$0.00	$92.35
$200.00	$12.40	$2.90	$0.00	$184.70
$300.00	$18.60	$4.35	$0.00	$277.05
$400.00	$24.80	$5.80	$0.00	$369.40
$500.00	$31.00	$7.25	$0.00	$461.75
$600.00	$37.20	$8.70	$0.00	$554.10
$700.00	$43.40	$10.15	$0.00	$646.45
$800.00	$49.60	$11.60	$0.00	$738.80
$900.00	$55.80	$13.05	$8.75	$822.40
$1,000.00	$62.00	$14.50	$18.75	$904.75
$1,100.00	$68.20	$15.95	$28.75	$987.10
$1,200.00	$74.40	$17.40	$38.75	$1,069.45
$1,256.67***	$77.91	$18.22	$44.42	$1,116.12
$1,300.00	$80.60	$18.85	$48.75	$1,151.80
$1,400.00	$86.80	$20.30	$58.75	$1,234.15
$1,500.00	$93.00	$21.75	$68.75	$1,316.50
$1,600.00	$99.20	$23.20	$81.88	$1,395.72
$1,700.00	$105.40	$24.65	$96.88	$1,473.07
$1,800.00	$111.60	$26.10	$111.88	$1,550.42
$1,900.00	$117.80	$27.55	$126.88	$1,627.77
$2,000.00	$124.00	$29.00	$141.88	$1,705.12
$2,100.00	$130.20	$30.45	$156.88	$1,782.47
$2,200.00	$136.40	$31.90	$171.88	$1,859.82
$2,300.00	$142.60	$33.35	$186.88	$1,937.17
$2,400.00	$148.80	$34.80	$201.88	$2,014.52
$2,500.00	$155.00	$36.25	$216.88	$2,091.87
$2,600.00	$161.20	$37.70	$231.88	$2,169.22
$2,700.00	$167.40	$39.15	$246.88	$2,246.57
$2,800.00	$173.60	$40.60	$261.88	$2,323.92
$2,900.00	$179.80	$42.05	$276.88	$2,401.27
$3,000.00	$186.00	$43.50	$291.88	$2,478.62
$3,100.00	$192.20	$44.95	$306.88	$2,555.97
$3,200.00	$198.40	$46.40	$321.88	$2,633.32
$3,300.00	$204.60	$47.85	$336.88	$2,710.67
$3,400.00	$210.80	$49.30	$351.88	$2,788.02
$3,500.00	$217.00	$50.75	$366.88	$2,865.37
$3,600.00	$223.20	$52.20	$381.88	$2,942.72
$3,700.00	$229.40	$53.65	$396.88	$3,020.07
$3,800.00	$235.60	$55.10	$416.04	$3,093.26
$3,900.00	$241.80	$56.55	$441.04	$3,160.61
$4,000.00	$248.00	$58.00	$466.04	$3,227.96
$4,250.00	$263.50	$61.63	$528.54	$3,396.33
$4,500.00	$279.00	$65.25	$591.04	$3,564.71
$4,750.00	$294.50	$68.88	$653.54	$3,733.08
$5,000.00	$310.00	$72.50	$716.04	$3,901.46
$5,250.00	$325.50	$76.13	$778.54	$4,069.83
$5,500.00	$341.00	$79.75	$841.04	$4,238.21
$5,750.00	$356.50	$83.38	$903.54	$4,406.58
$6,000.00	$372.00	$87.00	$966.04	$4,574.96
$6,250.00	$387.50	$90.63	$1,028.54	$4,743.33
$6,500.00	$403.00	$94.25	$1,091.04	$4,911.71
$6,750.00	$418.50	$97.88	$1,153.54	$5,080.08
$7,000.00	$434.00	$101.50	$1,216.04	$5,248.46
$7,500.00	$465.00	$108.75	$1,341.04	$5,585.21
$8,000.00	$496.00	$116.00	$1,467.54	$5,920.46
$8,500.00	$527.00	$123.25	$1,607.54	$6,242.21
$9,000.00	$558.00	$130.50	$1,747.54	$6,563.96
$9,500.00	$568.85****	$137.75	$1,887.54	$6,905.86
$10,000.00	$568.85	$145.00	$2,027.54	$7,258.61
$10,342.15*****	$568.85	$149.96	$2,123.34	$7,500.00
$10,500.00	$568.85	$152.25	$2,167.54	$7,611.36
$11,000.00	$568.85	$159.50	$2,307.54	$7,964.11
$11,500.00	$568.85	$166.75	$2,447.54	$8,316.86
$12,000.00	$568.85	$174.00	$2,587.54	$8,669.61
$12,500.00	$568.85	$181.25	$2,727.54	$9,022.36
$13,000.00	$568.85	$188.50	$2,867.54	$9,375.11
$13,500.00	$568.85	$195.75	$3,007.54	$9,727.86
$14,000.00	$568.85	$203.00	$3,147.54	$10,080.61
$14,500.00	$568.85	$210.25	$3,287.54	$10,433.36
$15,000.00	$568.85	$217.50	$3,427.54	$10,786.11

Footnotes to Employed Persons 2012 Tax Chart:

* An employed person not subject to the Old-Age, Survivors and Disability Insurance/Hospital (Medicare) Insurance taxes will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption ($3,800.00) and taking the standard deduction ($5,950.00).

*** The amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage ($7.25 per hour) for a 40-hour week for a full year. $7.25 per hour x 40 hours per week x 52 weeks per year equals $15,080.00 per year. One-twelfth (1/12) of $15,080.00 equals $1,256.67.

**** For annual gross wages above $110,100.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2012 maximum Old-Age, Survivors and Disability Insurance tax of $6,826.20 per person (6.2% of the first $110,100.00 of annual gross wages equals $6,826.20). One-twelfth (1/12) of $6,826.20 equals $568.85.

***** This amount represents the point where the monthly gross wages of an employed individual would result in $7,500.00 of net resources.

* *

References Relating to Employed Persons 2012 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice appearing in 76 Fed. Reg. 66111 (October 25, 2011)

      (2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b). Tax Rate

      (1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(a))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(b))

3. Federal Income Tax

(a) Tax Rate Schedule for 2012 for Single Taxpayers

(1) Revenue Procedure 2011-52, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2011-45, dated November 7, 2011

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2011-52, Section 3.11(1), which appears in Internal Revenue Bulletin 2011-45, dated November 7, 2011

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Revenue Procedure 2011-52, Section 3.19, which appears in Internal Revenue Bulletin 2011-45, dated November 7, 2011

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

SELF-EMPLOYED PERSONS
2012 TAX CHART

Monthly Net Earnings From Self-Employment*	Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (12.4%)**	Social Security Taxes: Hospital (Medicare) Insurance Taxes (2.9%)**	Federal Income Taxes***	Net Monthly Income
$100.00	$11.45	$2.68	$0.00	$85.87
$200.00	$22.90	$5.36	$0.00	$171.74
$300.00	$34.35	$8.03	$0.00	$257.62
$400.00	$45.81	$10.71	$0.00	$343.48
$500.00	$57.26	$13.39	$0.00	$429.35
$600.00	$68.71	$16.07	$0.00	$515.22
$700.00	$80.16	$18.75	$0.00	$601.09
$800.00	$91.61	$21.43	$0.00	$686.96
$900.00	$103.06	$24.10	$2.39	$770.45
$1,000.00	$114.51	$26.78	$11.69	$847.02
$1,100.00	$125.97	$29.46	$20.98	$923.59
$1,200.00	$137.42	$32.14	$30.27	$1,000.17
$1,300.00	$148.87	$34.82	$39.57	$1,076.74
$1,400.00	$160.32	$37.49	$48.86	$1,153.33
$1,500.00	$171.77	$40.17	$58.15	$1,229.91
$1,600.00	$183.22	$42.85	$67.45	$1,306.48
$1,700.00	$194.67	$45.53	$78.86	$1,380.94
$1,800.00	$206.13	$48.21	$92.80	$1,452.86
$1,900.00	$217.58	$50.88	$106.74	$1,524.80
$2,000.00	$229.03	$53.56	$120.68	$1,596.73
$2,100.00	$240.48	$56.24	$134.62	$1,668.66
$2,200.00	$251.93	$58.92	$148.56	$1,740.59
$2,300.00	$263.38	$61.60	$162.50	$1,812.52
$2,400.00	$274.83	$64.28	$176.44	$1,884.45
$2,500.00	$286.29	$66.95	$190.38	$1,956.38
$2,600.00	$297.74	$69.63	$204.32	$2,028.31
$2,700.00	$309.19	$72.31	$218.26	$2,100.24
$2,800.00	$320.64	$74.99	$232.20	$2,172.17
$2,900.00	$332.09	$77.67	$246.14	$2,244.10
$3,000.00	$343.54	$80.34	$260.08	$2,316.04
$3,100.00	$354.99	$83.02	$274.02	$2,387.97
$3,200.00	$366.44	$85.70	$287.96	$2,459.90
$3,300.00	$377.90	$88.38	$301.90	$2,531.82
$3,400.00	$389.35	$91.06	$315.84	$2,603.75
$3,500.00	$400.80	$93.74	$329.78	$2,675.68
$3,600.00	$412.25	$96.41	$343.73	$2,747.61
$3,700.00	$423.70	$99.09	$357.67	$2,819.54
$3,800.00	$435.15	$101.77	$371.61	$2,891.47
$3,900.00	$446.60	$104.45	$385.55	$2,963.40
$4,000.00	$458.06	$107.13	$399.49	$3,035.32
$4,250.00	$486.68	$113.82	$453.48	$3,196.02
$4,500.00	$515.31	$120.52	$511.56	$3,352.61
$4,750.00	$543.94	$127.21	$569.65	$3,509.20
$5,000.00	$572.57	$133.91	$627.73	$3,665.79
$5,250.00	$601.20	$140.60	$685.82	$3,822.38
$5,500.00	$629.83	$147.30	$743.90	$3,978.97
$5,750.00	$658.46	$153.99	$801.99	$4,135.56
$6,000.00	$687.08	$160.69	$860.07	$4,292.16
$6,250.00	$715.71	$167.38	$918.16	$4,448.75
$6,500.00	$744.34	$174.08	$976.24	$4,605.34
$6,750.00	$772.97	$180.78	$1,034.32	$4,761.93
$7,000.00	$801.60	$187.47	$1,092.41	$4,918.52
$7,500.00	$858.86	$200.86	$1,208.58	$5,231.70
$8,000.00	$916.11	$214.25	$1,324.75	$5,544.89
$8,500.00	$973.37	$227.64	$1,440.92	$5,858.07
$9,000.00	$1,030.63	$241.03	$1,569.51	$6,158.83
$9,500.00	$1,087.88	$254.42	$1,699.62	$6,458.08
$10,000.00	$1,137.70****	$267.82	$1,830.77	$6,763.71
$10,500.00	$1,137.70	$281.21	$1,968.89	$7,112.20
$11,000.00	$1,137.70	$294.60	$2,107.02	$7,460.68
$11,056.41*****	$1,137.70	$296.11	$2,122.60	$7,500.00
$11,500.00	$1,137.70	$307.99	$2,245.15	$7,809.16
$12,000.00	$1,137.70	$321.38	$2,383.27	$8,157.65
$12,500.00	$1,137.70	$334.77	$2,521.40	$8,506.13
$13,000.00	$1,137.70	$348.16	$2,659.52	$8,854.62
$13,500.00	$1,137.70	$361.55	$2,797.65	$9,203.10
$14,000.00	$1,137.70	$374.94	$2,935.77	$9,551.59
$14,500.00	$1,137.70	$388.33	$3,073.90	$9,900.07
$15,000.00	$1,137.70	$401.72	$3,212.02	$10,248.56

Footnotes to Self-Employed Persons 2012 Tax Chart:

* Determined without regard to Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12)) (the "Code").

** In calculating each of the Old-Age, Survivors and Disability Insurance tax and the Hospital (Medicare) Insurance tax, net earnings from self-employment are reduced by the deduction under Section 1402(a)(12) of the Code. The deduction under Section 1402(a)(12) of the Code is equal to net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) multiplied by one-half (1/2) of the sum of the Old-Age, Survivors and Disability Insurance tax rate (12.4%) and the Hospital (Medicare) Insurance tax rate (2.9%). The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). The deduction can be computed by multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 92.35%. This gives the same deduction as multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 7.65% and then subtracting the result.

For example, the Social Security taxes imposed on monthly net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) of $2,500.00 are calculated as follows:

(i) Old-Age, Survivors and Disability Insurance Taxes:

$2,500.00 x 92.35% x 12.4% = $286.29

(ii) Hospital (Medicare) Insurance Taxes:

$2,500.00 x 92.35% x 2.9% = $66.95

*** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption ($3,800.00) and taking the standard deduction ($5,950.00).

In calculating the annual federal income tax, gross income is reduced by the deduction under Section 164(f) of the Code. For example, monthly net earnings from self-employment of $8,500.00 times 12 months equals $102,000.00. The Old-Age, Survivors and Disability Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $9,796.49 ($102,000.00 x .9235 x 12.4% = $11,680.43). The Hospital (Medicare) Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $2,731.71 ($102,000.00 x .9235 x 2.9% = $2,731.71). The deduction under Section 164(f) of the Code for 2012 is equal to $7,206.08 (($11,680.43 x 0.5) + ($2,731.72 x 0.5) = $7,206.08).

**** For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above $110,100.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2012 maximum Old-Age, Survivors and Disability Insurance tax of $13,652.40 per person (12.4% of the first $110,100.00 of net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) equals $13,652.40). One-twelfth (1/12) of $11,459.40 equals $1,137.70.

***** This amount represents the point where the monthly net earnings from self-employment of a self-employed individual would result in $7,500.00 of net resources.

* *

References Relating to Self-Employed Persons 2012 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice appearing in 76 Fed. Reg. 66111 (October 25, 2011)

      (2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b) Tax Rate

      (1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(a))

   (c) Deduction Under Section 1402(a)(12)

      (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

   (b) Tax Rate

      (1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(b))

   (c) Deduction Under Section 1402(a)(12)

      (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

3. Federal Income Tax

   (a) Tax Rate Schedule for 2012 for Single Taxpayers

(1) Revenue Procedure 2011-52, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2011-45, dated November 7, 2011

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2011-52, Section 3.11(1), which appears in Internal Revenue Bulletin 2011-45, dated November 7, 2011

(1) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Revenue Procedure 2011-52, Section 3.19, which appears in Internal Revenue Bulletin 2011-45, dated November 7, 2011

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

(d) Deduction Under Section 164(f)

(1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 164(f))

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201105788
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: December 21, 2011

♦ ♦ ♦

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 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 acting on behalf of the Texas Commission on Environmental Quality v. VAM USA, L.L.C.*, Cause No. 2011-50608; in the 133rd Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant operates a pipe and coupling treating facility in Harris County. Defendant is authorized to discharge treated wastes from its facility in accordance with its permit as issued by the TCEQ. Investigations by Harris County Pollution Control Services found that on numerous occasions the Defendant discharged waste containing pollutant levels, including heavy metals, in excess of its permit levels.

Proposed Agreed Judgment: The Agreed Final Judgment orders the Defendant to pay $145,000 in civil penalties, with $72,500 to be divided equally between Harris County and the State of Texas, and $72,500 to be paid as a Supplemental Environmental Project to the Bayou Land Conservancy's Spring Creek Greenway Project. In addition, the Defendant will pay $5,000 in attorney's fees to Harris County, and $2,000 in attorneys fees to the State of Texas, plus all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, 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-201105596

Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: December 16, 2011

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil - November 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 November 2011, as required by Tax Code, §202.058, is $66.80 per barrel for the three-month period beginning on August 1, 2011, and ending October 31, 2011. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of November 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 November 2011, as required by Tax Code, §201.059, is $2.97 per mcf for the three-month period beginning on August 1, 2011, and ending October 31, 2011. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of November 2011, from a qualified Low-Producing Well, is eligible for 50% 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 November 2011, is $97.16 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 November 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 November 2011, is $3.56 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 November 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-201105776
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: December 21, 2011

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Notice of No Contract Award

The Comptroller of Public Accounts announces there will be no contract award under the Request for Proposals (RFP #202e) for outside bond counsel services.

The notice of issuance of the Request for Proposals was published in the November 11, 2011, issue of the *Texas Register* (36 TexReg 7691).

TRD-201105579
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 15, 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 12/26/11 - 01/01/12 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 12/26/11 - 01/01/12 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/12 - 01/31/12 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 01/01/12 - 01/31/12 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-201105756
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 20, 2011

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Summary of Interpretation Number 2011-01

Under Texas Finance Code, §14.108, the consumer credit commissioner may issue interpretations of Subtitle A or B, Title 4, after approval of the interpretation by the Finance Commission of Texas. The provisions of Texas Government Code, Chapter 2001 that relate to the adoption of an administrative rule do not apply to the issuance of an interpretation under this section.

Interpretation Number 2011-01. Request from Brian C. Potter, of Austin, Texas, regarding the prohibition on credit card surcharges in Texas Finance Code, §339.001. Mr. Potter asked the following two questions:

1) Is a debit card that can trigger access to an "open-end" account such as a line of credit, or a "margin" account considered a "credit card" as contemplated by §339.001 of the Texas Finance Code?

2) If a retailer places a surcharge on a transaction on a card that can trigger access to an "open-end" account, regardless of whether it is processed as "debit" or "credit" card transaction, is the retailer in violation of §339.001 of the Texas Finance Code, and subject to penalties?

The interpretation concludes that for purposes of the credit-card-surcharge prohibition in §339.001, a credit card is a payment device that accesses extensions of credit from an open-end account. In an open-end account, the borrower accesses repeated extensions of credit as long as the balance is repaid. By contrast, a debit card is a payment device that accesses an asset account, such as a demand deposit account, a transaction account, or a savings account.

If a merchant imposes a surcharge for the use of a card that functions as a credit card, then the merchant violates §339.001, even if the card is labeled as a debit card. In this situation, the Finance Commission of Texas would be able to assess an administrative penalty against the merchant. Whether the merchant violates §339.001 depends on whether the card functions as a credit card in the specific transaction where a surcharge is imposed, not on how the card generally functions. Distinguishing between credit card transactions and debit card transactions creates certain challenges, and merchants should take care to ensure that they do not impose a surcharge on a credit card transaction.

This interpretation was approved by the Finance Commission of Texas on December 16, 2011.

TRD-201105664
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 16, 2011

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Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a name change was received from Waco Postal Credit Union, Waco, Texas. The credit union is proposing to change its name to Linkage Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201105598
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 16, 2011

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Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from First Class American Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship in and businesses located in Tarrant County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter_1. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201105599
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 16, 2011

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

First Service Credit Union (#1), Houston, Texas - See *Texas Register* Issue dated September 30, 2011.

First Service Credit Union (#2), Houston, Texas - See *Texas Register* Issue dated September 30, 2011.

First Service Credit Union, Houston, Texas - See *Texas Register* Issue dated October 28, 2011.

TRD-201105600
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 16, 2011

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Texas Education Agency

Correction of Error

The Texas Education Agency (TEA) proposed amendments to 19 TAC §74.1 and §74.3 and new rules §§74.71-74.74, concerning Curriculum Requirements, in the December 16, 2011, issue of the *Texas Register* (36 TexReg 8482). Due to an error in the TEA submission, referencing errors occurred in §74.74(b)(2)(A)(xii) and (3)(A)(xiv) on page 8490. In each instance, the concluding word "subparagraph" should be "clause" and the final sentence of each clause should read as follows:

". . . The Texas Education Agency (TEA) shall maintain a current list of courses approved under this clause."

TRD-201105666

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Notice of Correction: Request for Applications Concerning Open-Enrollment Charter Guidelines and Application

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-11-108 Concerning Open-Enrollment Charter Guidelines and Application in the August 5, 2011, issue of the *Texas Register* (36 TexReg 5026).

The TEA is amending the notice to reflect a change in the room number of the TEA Document Control Center. Applications must be received in the TEA Document Control Center, Room 1-108, 1701 North Congress Avenue, Austin, Texas 78701-1494, on or before 5:00 p.m. (Central Time), Thursday, February 23, 2012, to be eligible for review. This correction reflects a change from the original room number of Room 6-108.

Further Information. For clarifying information about the RFA, contact Mary Perry, Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or mary.perry@tea.state.tx.us.

TRD-201105789
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 21, 2011

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Federal Emergency Management Agency

Public Notice - FEMA-1999-DR-TX

The Federal Emergency Management Agency (FEMA) hereby gives notice to the public of its intent to reimburse eligible applicants for eligible costs for emergency work and to repair and/or replace facilities damaged by the extreme wildfire threat from April 6 to August 29, 2011. This notice applies to the Public Assistance (PA), Individual Assistance (IA), and Hazard Mitigation Grant programs implemented under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121-5206.

Under a major disaster declaration (FEMA-1999-DR-TX), signed by the President on July 1, 2011, the following 102 counties, and additional counties as amended, have been declared as eligible for PA under Category B (emergency protective measures) for reimbursement of eligible costs (as determined by FEMA) resulting from wildfires that posed a significant threat to life and property: Anderson, Andrews, Archer, Armstrong, Bailey, Bastrop, Baylor, Blanco, Brewster, Briscoe, Brooks, Brown, Burnett, Callahan, Carson, Cass, Castro, Childress, Clay, Cochran, Coke, Coleman, Concho, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dawson, Deaf Smith, Dickens, Donley, Duval, Eastland, Fisher, Foard, Franklin, Frio, Garza, Glasscock, Gonzales, Hall, Hansford, Hardeman, Hardin, Harrison, Hartley, Haskell, Hemphill, Hockley, Houston, Howard, Hutchinson, Irion, Jack, Jasper, Jeff Davis, Jim Hogg, Jones, Kent, Kimble, King, Knox, Lamar, Lamb, Lampasas, Lee, Leon, Live Oak, Lynn, Marion, Martin, Mason, Menard, Mills, Mitchell, Montague, Moore, Morris, Motley, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Pecos, Potter, Presidio, Randall, Reagan, Red River, Roberts, Rusk, Sabine, San Augustine, San Saba, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Tom Green, Trinity, Tyler, Upton, Val Verde, Walker, Wheeler, Wilbarger, Winkler, and Young, with a 75/25 cost share. Furthermore, Brewster, Childress, Cochran, Crockett, Deaf Smith, Fisher, Hartley, Jeff Davis, Kent, King, Menard, Moore, Palo Pinto, Presidio, Scurry, Stonewall, Young, and additional counties as amended, have been declared eligible for all categories of work (Categories A-G) under the Public Assistance program. All declared counties have been designated as eligible for the Hazard Mitigation Grant Program (HMGP). Additional counties and categories of work may be designated for assistance at a later date.

This public notice concerns activities that may affect historic properties, activities that are located in or affect wetland areas or the 100-year floodplain, and critical actions within the 500-year floodplain. Such activities may adversely affect the historic property, floodplain or wetland, or may result in continuing vulnerability to flood damage.

Presidential Executive Orders 11988 and 11990 require that all federal actions in or affecting the floodplain or wetlands be reviewed for opportunities to relocate, and evaluated for social, economic, historical, environmental, legal and safety considerations. Where there is no opportunity to relocate, FEMA is required to undertake a detailed review to determine what measures can be taken to minimize future damages. The public is invited to participate in the process of identifying alternatives and analyzing their impacts.

FEMA has determined that for certain types of facilities there are normally no alternatives to restoration in the floodplain/wetland. These are facilities that meet all of the following criteria: 1) FEMA's estimate of the cost of repairs is less than 50% of the cost to replace the entire facility, and is less than $100,000; 2) the facility is not located in a floodway; 3) the facility has not sustained major structural damage in a previous Presidentially declared flooding disaster or emergency; and 4) the facility is not critical (e.g., the facility is not a hospital, generating plant, emergency operations center, or a facility that contains dangerous materials). FEMA intends to provide assistance for the restoration of these facilities to their pre-disaster condition, except that certain measures to mitigate the effects of future flooding or other hazards may be included in the work. For example, a bridge or culvert restoration may include a larger waterway opening to decrease the risk of future washouts.

For routine activities, this will be the only public notice provided. Other activities and those involving facilities that do not meet the four criteria are required to undergo more detailed review, including study of alternate locations. Subsequent public notices regarding such projects will be published if necessary, as more specific information becomes available.

In many cases, an applicant may have started facility restoration before federal involvement. Even if the facility must undergo detailed review and analysis of alternate locations, FEMA will fund eligible restoration at the original location if the facility is functionally dependent on its floodplain location (e.g., bridges and flood control facilities), or the project facilitates an open space use, or the facility is an integral part of a larger network that is impractical or uneconomical to relocate, such as a road. In such cases, FEMA must also examine the possible effects of not restoring the facility, minimize floodplain/wetland impacts, and determine both that an overriding public need for the facility clearly outweighs the Executive Order requirements to avoid the floodplain/wetland, and that the site is the only practicable alternative. The State of Texas and local officials will confirm to FEMA that proposed actions comply with all applicable State and local floodplain management and wetland protection requirements.

FEMA also intends to provide HMGP funding to the State of Texas to mitigate future disaster damages. These projects may include construction of new facilities, modification of existing, undamaged facilities, relocation of facilities out of floodplains, demolition of structures, or other types of projects to mitigate future disaster damages. In the course of developing project proposals, subsequent public notices will be published if necessary, as more specific information becomes available.

The National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties. Those actions or activities affecting buildings, structures, districts or objects 50 years or older or that affect archeological sites or undisturbed ground will require further review to determine if the property is eligible for listing in the National Register of Historic Places (Register). If the property is determined to be eligible for the Register, and FEMA's undertaking will adversely affect it, FEMA will provide additional public notices. For historic properties not adversely affected by FEMA's undertaking, this will be the only public notice.

As noted, this may be the only public notice regarding the above-described actions under the PA and HMGP programs. Interested persons may obtain information about these actions or a specific project by writing to the Federal Emergency Management Agency, 800 North Loop 288, Denton, Texas 76209 or calling (940) 898-5144. Comments

should be sent in writing to Kevin Hannes, Federal Coordinating Officer, at the above address within 15 days of the date of this notice.

TRD-201105604
Kevin Hannes
Federal Coordinating Officer
Federal Emergency Management Agency
Filed: December 16, 2011

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Public Notice - FEMA-4029-DR-TX

The Federal Emergency Management Agency (FEMA) hereby gives notice to the public of its intent to reimburse eligible applicants for eligible costs for emergency work and to repair and/or replace facilities damaged by the extreme wildfire threat from August 30, 2011 and continuing. This notice applies to the Public Assistance (PA), Individual Assistance (IA), and Hazard Mitigation Grant Programs implemented under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121-5206.

Under a major disaster declaration (FEMA-4029-DR-TX), signed by the President on September 21, 2011, with seven (7) amendments. The following counties have been designated for Individual Assistance (IA): Bastrop, Colorado, Houston, Leon, Travis, Williamson, Hill, Gregg, Grimes, Montgomery, Walker, Waller, Cass, Marion, Harrison, Smith, Upshur, Anderson, Caldwell, Fayette, Henderson, and Rusk. The following 31 counties, and additional counties as amended, have been declared eligible for all categories of work, Categories A-G under the Public Assistance program, for reimbursement of eligible costs (as determined by FEMA) resulting from wildfires that posed a significant threat to life and property: Anderson, Bastrop, Briscoe, Cass, Cherokee, Clay, Colorado, Coryell, Edwards, Gregg, Hall, Harrison, Henderson, Hill, Houston, Howard, Kimble, Leon, Marion, Menard, Montague, Morris, Navarro, Nolan, Panola, Rusk, Smith, Sutton, Upshur, Walker, and Wise with a 75/25 cost share. All declared counties have been designated as eligible for assistance under the Hazard Mitigation Grant Program (HMGP). Additional counties and categories of work may be designated for assistance at a later date.

This public notice concerns activities that may affect historic properties, activities that are located in or affect wetland areas or the 100-year floodplain, and critical actions within the 500-year floodplain. Such activities may adversely affect the historic property, floodplain or wetland, or may result in continuing vulnerability to flood damage.

Presidential Executive Orders 11988 and 11990 require that all federal actions in or affecting the floodplain or wetlands be reviewed for opportunities to relocate, and evaluated for social, economic, historical, environmental, legal and safety considerations. Where there is no opportunity to relocate, FEMA is required to undertake a detailed review to determine what measures can be taken to minimize future damages. The public is invited to participate in the process of identifying alternatives and analyzing their impacts.

FEMA has determined that for certain types of facilities there are normally no alternatives to restoration in the floodplain/wetland. These are facilities that meet all of the following criteria: 1) FEMA's estimate of the cost of repairs is less than 50% of the cost to replace the entire facility, and is less than $100,000; 2) the facility is not located in a floodway; 3) the facility has not sustained major structural damage in a previous Presidentially declared flooding disaster or emergency; and 4) the facility is not critical (e.g., the facility is not a hospital, generating plant, emergency operations center, or a facility that contains dangerous materials). FEMA intends to provide assistance for the restoration of these facilities to their pre-disaster condition, except that certain measures to mitigate the effects of future flooding or other hazards may be included in the work. For example, a bridge or culvert restoration may include a larger waterway opening to decrease the risk of future washouts.

For routine activities, this will be the only public notice provided. Other activities and those involving facilities that do not meet the four criteria are required to undergo more detailed review, including study of alternate locations. Subsequent public notices regarding such projects will be published if necessary, as more specific information becomes available.

In many cases, an applicant may have started facility restoration before federal involvement. Even if the facility must undergo detailed review and analysis of alternate locations, FEMA will fund eligible restoration at the original location if the facility is functionally dependent on its floodplain location (e.g., bridges and flood control facilities), or the project facilitates an open space use, or the facility is an integral part of a larger network that is impractical or uneconomical to relocate, such as a road. In such cases, FEMA must also examine the possible effects of not restoring the facility, minimize floodplain/wetland impacts, and determine both that an overriding public need for the facility clearly outweighs the Executive Order requirements to avoid the floodplain/wetland, and that the site is the only practicable alternative. The State of Texas and local officials will confirm to FEMA that proposed actions comply with all applicable State and local floodplain management and wetland protection requirements.

FEMA also intends to provide HMGP funding to the State of Texas to mitigate future disaster damages. These projects may include construction of new facilities, modification of existing, undamaged facilities, relocation of facilities out of floodplains, demolition of structures, or other types of projects to mitigate future disaster damages. In the course of developing project proposals, subsequent public notices will be published if necessary, as more specific information becomes available.

The National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties. Those actions or activities affecting buildings, structures, districts or objects 50 years or older or that affect archeological sites or undisturbed ground will require further review to determine if the property is eligible for listing in the National Register of Historic Places (Register). If the property is determined to be eligible for the Register, and FEMA's undertaking will adversely affect it, FEMA will provide additional public notices. For historic properties not adversely affected by FEMA's undertaking, this will be the only public notice.

As noted, this may be the only public notice regarding the above-described actions under the PA and HMGP programs. Interested persons may obtain information about these actions or a specific project by writing to the Federal Emergency Management Agency, 800 North Loop 288, Denton, Texas 76209 or calling (940) 898-5144. Comments should be sent in writing to Kevin Hannes, Federal Coordinating Officer, at the above address within 15 days of the date of this notice.

TRD-201105603
Kevin Hannes
Federal Coordinating Officer
Federal Emergency Management Agency
Filed: December 16, 2011

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Employees Retirement System of Texas

Request for Qualification for the 401(k) and 457 Plans of the Texa$aver Program Real Assets Fund

The Employees Retirement System of Texas ("ERS") is issuing a Request for Qualification ("RFQ") from qualified Investment Man-

agers/Firms ("Vendors") to obtain a Proposal (a "Proposal") for the Real Assets Fund for the 401(k) and 457 Plans of the Texa$aver Program ("Program") beginning on or after July 1, 2012 and extending through a term as determined by ERS. Vendors shall provide the level of benefits required in the RFQ and meet other requirements.

All qualified Vendors wishing to submit a Proposal to this request must meet the following minimum qualifications: 1) Vendor shall qualify, and provide documentation evidencing its status as, an SEC-registered investment advisor, a national banking organization subject to the oversight of the Office of the Comptroller of the Currency ("OCC"), or otherwise provide evidence of exemption; 2) Vendor shall have managed tax-exempt assets for at least five (5) years as of September 30, 2011; 3) Vendor shall not be the sub-advisor if the proposed investment vehicle is a mutual fund or collective/commingled fund (this requirement does not apply to separate account investment vehicles); 4) Vendor shall serve as a fiduciary for the Program, with an additional requirement for a proposed vehicle that is a non-mutual fund (i.e., collective/commingled fund) to have the Program assets held in a fiduciary capacity consistent with 12 CFR Part 9 (Fiduciary Activities of National Banks) and guidelines promulgated by the OCC; 5) Vendor shall not have been subject to any major enforcement activities by Federal or any state regulators or been involved in any significant litigation surrounding investment management-only activities over the past three (3) years; and 6) Vendors involved in formal complaints by the SEC regarding market timing, and short-term trading, or other federal or state securities violations will be evaluated based on the degree of the complaint.

The RFQ will be available on or after January 5, 2012 from ERS' website, and all Proposals must be received at ERS by 12:00 Noon (CT) on February 9, 2012. To access the RFQ from the website, qualified Vendors shall email their request to the attention of iVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall include the Vendor's full legal name and street address, as well as phone and fax numbers of an immediate Vendor's contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting Vendor that will permit access to the secure RFQ.

General questions concerning the RFQ and/or ancillary bid materials should be sent to the iVendor Mailbox where responses, if applicable, are updated frequently.

ERS is not required to select the lowest bid or investment fund but shall take into consideration other relevant criteria, including ability to service contracts, past experience, and other criteria as referenced in Article II of the RFQ. ERS reserves the right to select none, one, or more than one Vendor when it is determined that such action would be in the best interest of ERS, the Program, its Participants or the state of Texas.

ERS reserves the right to reject any or all Proposals and call for new Proposals if deemed by ERS to be in the best interests of ERS, the Program, its Participants or the state of Texas. ERS also reserves the right to reject any Proposal submitted that does not fully comply with the RFQ's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFQ and will not pay any costs incurred by any entity in responding to this notice or the RFQ or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFQ and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the Program, its Participants or the state of Texas.

TRD-201105778

Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: December 21, 2011

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Request for Qualification for the 401(k) and 457 Plans of the Texa$aver Program Short-Term Government/Treasury Bond Fund

The Employees Retirement System of Texas ("ERS") is issuing a Request for Qualification ("RFQ") from qualified Investment Managers/Firms ("Vendors") to obtain a Proposal (a "Proposal") for the Short-Term Government/Treasury Bond Fund for the 401(k) and 457 Plans of the Texa$aver Program ("Program") beginning on or after July 1, 2012 and extending through a term as determined by ERS. Vendors shall provide the level of benefits required in the RFQ and meet other requirements.

All qualified Vendors wishing to submit a Proposal to this request must meet the following minimum qualifications: 1) Vendor shall qualify, and provide documentation evidencing its status as, an SEC-registered investment advisor, a national banking organization subject to the oversight of the Office of the Comptroller of the Currency ("OCC"), or otherwise provide evidence of exemption; 2) Vendor shall have managed tax-exempt assets for at least five (5) years as of September 30, 2011; 3) Vendor shall not be the sub-advisor if the proposed investment vehicle is a mutual fund or collective/commingled fund (this requirement does not apply to separate account investment vehicles); 4) Vendor shall serve as a fiduciary for the Program, with an additional requirement for a proposed vehicle that is a non-mutual fund (i.e., collective/commingled fund) to have the Program assets held in a fiduciary capacity consistent with 12 CFR Part 9 (Fiduciary Activities of National Banks) and guidelines promulgated by the OCC; 5) Vendor shall not have been subject to any major enforcement activities by Federal or any state regulators or been involved in any significant litigation surrounding investment management-only activities over the past three (3) years; and 6) Vendors involved in formal complaints by the SEC regarding market timing, and short-term trading, or other federal or state securities violations will be evaluated based on the degree of the complaint.

The RFQ will be available on or after January 5, 2012 from ERS' website, and all Proposals must be received at ERS by 12:00 Noon (CT) on February 9, 2012. To access the RFQ from the website, qualified Vendors shall email their request to the attention of iVendor Mailbox at: ivendorquestions@ers.state.tx.us. The email request shall include the Vendor's full legal name and street address, as well as phone and fax numbers of an immediate Vendor's contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting Vendor that will permit access to the secure RFQ.

General questions concerning the RFQ and/or ancillary bid materials should be sent to the iVendor Mailbox where responses, if applicable, are updated frequently.

ERS is not required to select the lowest bid or investment fund but shall take into consideration other relevant criteria, including ability to service contracts, past experience, and other criteria as referenced in Article II of the RFQ. ERS reserves the right to select none, one, or more than one Vendor when it is determined that such action would be in the best interest of ERS, the Program, its Participants or the state of Texas.

ERS reserves the right to reject any or all Proposals and call for new Proposals if deemed by ERS to be in the best interests of ERS, the Program, its Participants or the state of Texas. ERS also reserves the

right to reject any Proposal submitted that does not fully comply with the RFQ's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFQ and will not pay any costs incurred by any entity in responding to this notice or the RFQ or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFQ and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, the Program, its Participants or the state of Texas.

TRD-201105777
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: December 21, 2011

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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 January 30, 2012. 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 January 30, 2012. 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: Ace World Companies Ltd.; DOCKET NUMBER: 2011-1351-AIR-E; IDENTIFIER: RN102267721; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: crane manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions of a Permit by Rule; 40 Code of Federal Regulations (CFR) §63.3910(b), 30 TAC §101.20(2) and §113.960, and THSC, §382.085(b), by failing to submit an initial notification for 40 CFR Part 63, Subpart MMMM; 40 CFR §63.3910(c), 30 TAC §101.20(2) and §113.960, and THSC, §382.085(b), by failing to submit the notification for compliance status for 40 CFR Part 63, Subpart MMMM; 40 CFR §63.3920(a), 30 TAC §101.20(2) and §113.960, and THSC, §382.085(b), by failing to submit semi-annual compliance reports for 40 CFR Part 63, Subpart MMMM; and 30 TAC §115.421(a)(9)(A)(ii) and THSC, §382.085(b), by failing to use coating that complies with the volatile organic compounds content limit of 3.5 pounds per gallon; PENALTY: $18,900; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Arari 1 Enterprise dba MPA Kwik Stop; DOCKET NUMBER: 2011-1497-PST-E; IDENTIFIER: RN102275013; LOCATION: Denison, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide release detection for the piping associated with the USTs; PENALTY: $2,629; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: CHARLIE BROWNS LEARNING CENTER; DOCKET NUMBER: 2011-1509-PWS-E; IDENTIFIER: RN102678430; LOCATION: Idalou, Lubbock County; TYPE OF FACILITY: day care center with a public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis; 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *escherichia coli* samples from all sources within 24 hours of being notified of a distribution total coliform-positive result; and 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected; PENALTY: $3,590; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(4) COMPANY: City of Hewitt; DOCKET NUMBER: 2011-1923-PWS-E; IDENTIFIER: RN101260545; LOCATION: Hewitt, McLennan County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notice (BWN) within 24 hours of a water outage using the prescribed notification format as specified in 30 TAC §290.47(e), and by failing to provide a copy of a BWN to the executive director; PENALTY: $630; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: CMH Parks, Incorporated; DOCKET NUMBER: 2011-1820-MWD-E; IDENTIFIER: RN102916574; LOCATION: Culleoka, Collin County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014967001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with the permitted effluent limitations; PENALTY: $1,070; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: David Maddox dba M and M Food Mart; DOCKET NUMBER: 2011-1553-PST-E; IDENTIFIER: RN104551429; LOCA-

TION: Mabank, Kaufman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tank; PENALTY: $2,004; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Elena Hernandez; DOCKET NUMBER: 2011-0410-PST-E; IDENTIFIER: RN102283975; LOCATION: San Benito, Cameron County; TYPE OF FACILITY: property with two temporarily out of service underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.54(c)(1) and §334.49(a)(2) and TWC, §26.3475(d), by failing to adequately protect a temporarily out of service UST system from corrosion; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Eola Water Supply Corporation; DOCKET NUMBER: 2011-1451-MLM-E; IDENTIFIER: RN102673183; LOCATION: Eola, Concho County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a Drought Contingency Plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher groundwater license; 30 TAC §290.39(d)(3)(C), by failing to notify the executive director in writing upon completion of all work; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with 16 mesh or finer corrosion resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.43(c)(4), by failing to provide the ground storage tank with a liquid level indicator located at the tank site; 30 TAC §290.43(d)(3), by failing to provide a device to readily determine the air to water ratio for the pressure tank; 30 TAC §290.46(f)(3)(A)(ii)(III) and (B)(iii) and §290.110(c)(4)(D), by failing to keep on file and make available for commission review, a record of water works operation and maintenance activities; 30 TAC §290.46(n)(3), by failing to provide a copy of the well completion data; 30 TAC §290.46(s)(1), by failing to calibrate the well meter at least once every three years; 30 TAC §290.110(d)(1), by failing to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 milligrams per liter using methods approved by the executive director; and 30 TAC §290.121(b)(6), by failing to develop and maintain an up to date chemical and microbiological monitoring plan; PENALTY: $2,225; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(9) COMPANY: Fallbrook Business Incorporated dba POWER MART Number 16; DOCKET NUMBER: 2011-1734-PST-E; IDENTIFIER: RN102379203; 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 every month (not to exceed 35 days between each monitoring); PENALTY: $4,500; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: HOULETTE PETROLEUM, INCORPORATED; DOCKET NUMBER: 2011-1888-PST-E; IDENTIFIER: RN100526417; LOCATION: Friona, Parmer 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; 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: $1,988; ENFORCEMENT COORDINATOR: Charlie Lockwood, (512) 239-1653; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: Hudson Products Corporation; DOCKET NUMBER: 2011-1480-AIR-E; IDENTIFIER: RN101864924; LOCATION: Beasley, Fort Bend County; TYPE OF FACILITY: fiberglass fan blade and fan hub manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O0157, General Terms and Conditions (GTC), by failing to submit the semi-annual deviation report for the January 25, 2010 - July 24, 2010 reporting period; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O0157, GTC, by failing to report all deviations in the semi-annual deviation report for the July 25, 2010 - January 24, 2011 reporting period; PENALTY: $5,180; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Jackie Wheeler and Becky Wheeler; DOCKET NUMBER: 2011-1357-PST-E; IDENTIFIER: RN101798312; LOCATION: Paris, Lamar County; TYPE OF FACILITY: property with four underground storage tanks (USTs); RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of USTs; 30 TAC §334.8(c)(4)(B) and (5)(B)(ii), by failing to submit a properly completed UST registration and self-certification form in a timely manner; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; and 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(b) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and also by failing to provide release detection for the suction piping associated with the USTs; PENALTY: $8,667; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Karen Reeves; DOCKET NUMBER: 2011-1240-PWS-E; IDENTIFIER: RN101175552 (Pleasant Ridge) and RN101272433 (Timber Creek); LOCATION: Sadler, Cooke County; TYPE OF FACILITY: public water supplies; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter at the Pleasant Ridge and Timber Creek facilities; 30 TAC §290.106(e) and §290.113(e), by failing to provide the results of triennial minerals and disinfectant byproduct level sampling to the executive director at the Timber Creek facility; 30 TAC §§290.106(e), 290.108(e), and 290.113(e), by failing to provide the results of triennial metal, mineral, radionuclide, volatile organic contaminants (VOC) and disinfectant byproduct level sampling to the executive director at the Pleasant Ridge facility; 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director at the Pleasant Ridge

and Timber Creek facilities; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to submit to the executive director by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data at the Pleasant Ridge and Timber Creek facilities; and 30 TAC §290.107(e), by failing to provide the six-year period monitoring results for VOC sampling to the TCEQ's executive director at the Timber Creek facility; PENALTY: $6,121; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Kevin Lokey dba Lokey Earth Moving; DOCKET NUMBER: 2011-0946-MSW-E; IDENTIFIER: RN105791172; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: recycling; RULE VIOLATED: 30 TAC §328.5(b), by failing to limit storage of material to be recycled to the maximum amount specified on the facility's notice of intent (NOI) and prevent acceptance of material for recycling that is not listed on the NOI; 30 TAC §328.4(b)(3), by failing to recycle during each subsequent six month period at least 50% by weight or volume of each material accumulated at the beginning of the period; 30 TAC §328.5(c)(2)(A), by failing to provide a revised, written cost estimate to close a facility which includes disposition of all processed and unprocessed material; 30 TAC §37.921(a) and §328.5(d), by failing to provide adequate financial assurance for combustible material stored outdoors at the facility; and 30 TAC §330.15(a), by failing to process municipal solid waste in a manner so as to prevent creation or maintenance of a nuisance; PENALTY: $68,845; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(15) COMPANY: KISMAT, Incorporated dba A N V Quick Stop; DOCKET NUMBER: 2011-1535-PST-E; IDENTIFIER: RN102342797; LOCATION: Fort Worth, Tarrant 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 every month (not to exceed 35 days between each monitoring); PENALTY: $2,550; ENFORCEMENT COORDINATOR: Marcia Alonso, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: KM Liquids Terminals LLC; DOCKET NUMBER: 2011-1726-AIR-E; IDENTIFIER: RN100224815; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: storage terminal; RULE VIOLATED: Federal Operating Permit Number O984, General Terms and Conditions, 30 TAC §122.143(4) and §122.145(2)(A), and Texas Health and Safety Code, §382.085(b), by failing to submit a complete and accurate semi-annual deviation report; PENALTY: $224; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: LANCASTER EXPRESS, INCORPORATED; DOCKET NUMBER: 2011-1494-PST-E; IDENTIFIER: RN101447357; LOCATION: Lancaster, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.51(b)(2) and TWC, §26.3475(c)(2), by failing to equip the UST system with spill containment and overfill prevention equipment; PENALTY: $4,590; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Larry W. Whiteside; DOCKET NUMBER: 2011-1811-LII-E; IDENTIFIER: RN103714580; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a) and §344.30(e), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an active license to inspect irrigation systems under a local municipality's landscape irrigation ordinance; PENALTY: $225; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: MAHESH INVESTMENTS LAKE FORK, L.L.C.; DOCKET NUMBER: 2011-1376-MWD-E; IDENTIFIER: RN101513638; LOCATION: Alba, Wood County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013975001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports for the monitoring periods ending January 31, 2011, February 28, 2011, March 30, 2011, and April 31, 2011; and 30 TAC §305.125(17) and TPDES Permit Number WQ0013975001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010; PENALTY: $570; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: Meghna Enterprise, Incorporated dba Four Corners Exxon; DOCKET NUMBER: 2011-1591-PST-E; IDENTIFIER: RN102783644; LOCATION: Brenham, Washington 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 every month (not to exceed 35 days between each monitoring); PENALTY: $4,500; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: MLLCA INCORPORATED dba Kathys Shell; DOCKET NUMBER: 2011-1953-PST-E; IDENTIFIER: RN101432862; LOCATION: Decatur, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: $3,986; ENFORCEMENT COORDINATOR: Charlie Lockwood, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Mohammad Saleem dba Cleburne Stop; DOCKET NUMBER: 2011-1234-PST-E; IDENTIFIER: RN102408317; LOCATION: Cleburne, 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: $2,250; ENFORCEMENT COORDINATOR: Charles Lockwood, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Mosheim Water Supply Corporation; DOCKET NUMBER: 2011-1571-PWS-E; IDENTIFIER: RN101457570; LOCATION: Mosheim, Bosque County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of Well Number 2; 30 TAC §290.46(n)(2), by failing to provide an accurate and up to date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(f)(2), (3)(A)(iv) and (E)(i), by failing to maintain facility operation and maintenance records and have them available for review by commission personnel during an investigation; 30 TAC §290.42(l), by failing to maintain a thorough and up to date plant operations manual for operator review and reference; 30 TAC §290.41(c)(3)(N), by failing to provide each well with a flow measuring device to measure production yields and provide for the accumulation of water production data; and 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock in pastures are not allowed within 50 feet of a water supply well; PENALTY: $360; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(24) COMPANY: N and S TRADING LLC dba N and S Food Mart; DOCKET NUMBER: 2011-1877-PST-E; IDENTIFIER: RN102255213; LOCATION: Haltom City, Tarrant 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: $2,500; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: NEW WEST AMERICAN INCORPORATED dba Circle A Food Mart; DOCKET NUMBER: 2011-1398-PST-E; IDENTIFIER: RN102238409; LOCATION: Crowley, 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 timely 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 USTs; and 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure that a corrosion protection system is operating and maintained in a manner that will ensure continuous corrosion protection to all underground components of the UST system; PENALTY: $4,610; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: S. W. Greer Company, Incorporated; DOCKET NUMBER: 2011-1447-PST-E; IDENTIFIER: RN101433266; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Texas A&M University; DOCKET NUMBER: 2011-1832-MWD-E; IDENTIFIER: RN102079506; LOCATION: China, Jefferson County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011211001, Sludge Provisions, by failing to timely submit the annual sludge reports to the TCEQ Compliance Monitoring Section and Beaumont Regional Office for the monitoring periods ending July 31, 2008, July 31, 2009, and July 31, 2010; 30 TAC §305.125(5) and §317.5(e)(5) and TPDES Permit Number WQ0011211001, Operational Requirements Number 1, by failing to ensure at all times that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(5) and TPDES Permit Number WQ0011211001, Operational Requirements Number 1, by failing to ensure at all times that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; $2,403; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Thomas Mike Macon dba Charlies Exxon and Grocery; DOCKET NUMBER: 2011-1527-PST-E; IDENTIFIER: RN102282514; LOCATION: Ennis, Ellis 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 (UST) system; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; PENALTY: $5,129; ENFORCEMENT COORDINATOR: Charlie Lockwood, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: WEST END INTERESTS, INCORPORATED dba West End Food Mart; DOCKET NUMBER: 2011-1513-PST-E; IDENTIFIER: RN101891448; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in house Stage II vapor recovery system training regarding the purpose and correct operation of the Stage II equipment; PENALTY: $2,837; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: WOLFENSON ELECTRIC, INCORPORATED; DOCKET NUMBER: 2011-1802-PST-E; IDENTIFIER: RN102964947; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling; 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 every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201105746
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 19, 2011

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Correction of Error

The Texas Commission on Environmental Quality adopted amendments to §§115.110, 115.112 - 115.114, and 115.119; the repeal of §§115.115 - 115.117; and new §§115.111 and 115.115 - 115.118 in the December 23, 2011, issue of the *Texas Register* (36 TexReg 8862). Following is a list of errors that occurred in the notice of rulemaking and the corrected text for each error.

Preamble Corrections

1. In the Section by Section Discussion, on page 8865, second column, sixth paragraph, which starts with "Adopted new paragraph (10)", the citation "§115.112(e)(4)" is incorrect. It should read "§115.112(e)(4)(B)(i)".

2. On page 8866, first column, first full paragraph, which starts with "Adopted new paragraph (11)", the citation "§115.112(e)(4)" is incorrect. It should read "§115.112(e)(4)(B)(ii)".

3. On page 8873, second column, fourth paragraph, which starts with "The commission adopts paragraph (2)", the citation "(e)(3)(A)" is incorrect. It should read "(e)(3)(C)".

4. On page 8876, second column, first full paragraph, which starts with "Adopted subsection (a)", the citation "paragraphs (1) - (3)" is incorrect. It should read "paragraphs (1) and (2)".

Rule Language Corrections

1. In §115.111(a), on page 8887, the phrase "paragraphs (2), (9) - (11)" should read "paragraphs (2) and (9) - (11)".

2. In §115.111(a)(10), on page 8888, the citation "§115.112(e)(4)(B)" should be "§115.112(e)(4)(B)(i)".

3. In §115.111(a)(11), on page 8888, the citation "§115.112(e)(4)(B)" should be "§115.112(e)(4)(B)(ii)".

4. In §115.116(a)(2), on page 8894, the citation "(e)(3)(A)" should be "(e)(3)(C)".

5. In §115.119(b)(1)(C), on page 8896, the citation "§115.112(e)(4)(B) and (5)(B)" should be "§115.112(e)(4)(B)(ii) and (5)(B)(ii)".

TRD-201105783

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Enforcement Orders

An agreed order was entered regarding Bisma-Zaeem, Inc. dba B-Z Mart, Docket No. 2009-1555-MLM-E on December 12, 2011 assessing $13,468 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.

A default order was entered regarding Gilbert Wayne Perry Jr., Docket No. 2009-1687-IHW-E on December 12, 2011 assessing $4,700 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 Bluff Springs Enterprises Inc. dba Texan Food Mart, Docket No. 2010-0616-PST-E on December 12, 2011 assessing $11,897 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 Jerome H. Jansky, Docket No. 2010-0664-PST-E on December 12, 2011 assessing $6,300 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 Dallas MSA, Inc. dba Fina, Docket No. 2010-0823-PST-E on December 12, 2011 assessing $12,012 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. 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 DAFFRON PARTNERS, LTD., Docket No. 2010-0937-WQ-E on December 12, 2011 assessing $1,050 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 T S RANCH & RETREAT, Inc., Docket No. 2010-1069-PWS-E on December 12, 2011 assessing $910 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.

An agreed order was entered regarding OGHI ENTERPRISES, INC. dba Stop-N-Drive 3, Docket No. 2010-1094-PST-E on December 12, 2011 assessing $13,074 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 AM JA, INC. dba Comanche Cleaners, dba Comet Cleaners, dba Hillcrest Cleaners, Docket No. 2010-1145-DCL-E on December 12, 2011 assessing $2,655 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 Stone Hedge Utility Co., Inc., Docket No. 2010-1185-MWD-E on December 12, 2011 assessing $13,994 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. 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 Roy L. Guillory and C & C Demo, Inc., Docket No. 2010-1420-MSW-E on December 12, 2011 assessing $10,50 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. 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 Ismael Arreola dba Arreola Paint & Body Shop, Docket No. 2010-1440-AIR-E on December 12, 2011 assessing $6,300 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 Tom Green County, Docket No. 2010-1516-PST-E on December 12, 2011 assessing $3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PX Feeders LLC, Docket No. 2010-1534-AGR-E on December 12, 2011 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTHWEST PETROLEUM LP dba San Marcos Shell, Docket No. 2010-1588-PST-E on December 12, 2011 assessing $8,004 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Sabinal, Docket No. 2010-1656-MWD-E on December 12, 2011 assessing $10,720 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Loyal Lybarger dba Ponderosa Mobile Home Park, Docket No. 2010-1755-MLM-E on December 12, 2011 assessing $2,620 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 Meadowland Utility Corporation, Docket No. 2010-1767-MWD-E on December 12, 2011 assessing $132,302 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 Highland Park Water Supply Corporation, Docket No. 2010-1944-PWS-E on December 12, 2011 assessing $650 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.

An agreed order was entered regarding Quang Dang Pham dba Sunmart 302, Docket No. 2010-1948-PST-E on December 12, 2011 assessing $2,871 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zapata County, Docket No. 2010-1950-MWD-E on December 12, 2011 assessing $74,860 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding M & K PANTRY, LLC, Docket No. 2010-2021-PST-E on December 12, 2011 assessing $3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E.Y.C. Corporation, Docket No. 2010-2026-PST-E on December 12, 2011 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. 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 City Concrete, Inc., Docket No. 2010-2071-WR-E on December 12, 2011 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DESI GROUP, INC. dba Fina Mart, Docket No. 2011-0005-PST-E on December 12, 2011 assessing $44,085 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-0701, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lee Stafford and LUBBOCK INDUSTRIES, INC., Docket No. 2011-0006-MSW-E on December 12, 2011 assessing $5,500 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 PK-RE DEVELOPMENT COMPANY, INC., Docket No. 2011-0027-MWD-E on December 12, 2011 assessing $4,177 in administrative penalties with $835 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 Thomas L. Barnes, Jr. dba The GreenHouse Center, Docket No. 2011-0031-LII-E on December 12, 2011 assessing $312 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 OSKI LLC dba Oski's, Docket No. 2011-0045-PST-E on December 12, 2011 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Juan Castro, Docket No. 2011-0054-MSW-E on December 12, 2011 assessing $5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANMOL INVESTMENT, INC. dba McCarty Food Store, Docket No. 2011-0059-PST-E on December 12, 2011 assessing $2,550 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 A L Nizamani Inc. dba A L Food Store, Docket No. 2011-0071-PST-E on December 12, 2011 assessing $2,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. 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 A & H PETROLEUM, INC. dba Beverage Warehouse, Docket No. 2011-0078-PST-E on December 12, 2011 assessing $5,000 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 Sona Ventures, Inc. dba Fuel Depot 6, Docket No. 2011-0109-PST-E on December 12, 2011 assessing $5,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cavalier Golden Group, Inc. dba Cavalier Food Mart and Akbarali Momin dba Cavalier Food Mart, Docket No. 2011-0117-PST-E on December 12, 2011 assessing $2,500 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 Jason Class dba Class Ready Mix, Docket No. 2011-0161-IWD-E on December 12, 2011 assessing $14,501 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.

An agreed order was entered regarding HASHIR INVESTMENTS, INC. dba Del Valle Food Mart, Docket No. 2011-0180-PST-E on December 12, 2011 assessing $2,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, 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 Alvin Cloud, Docket No. 2011-0189-MSW-E on December 12, 2011 assessing $5,160 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.

An agreed order was entered regarding City of La Joya, Docket No. 2011-0244-MWD-E on December 12, 2011 assessing $16,700 in administrative penalties with $3,340 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.

A default order was entered regarding Alex Zamora, Docket No. 2011-0304-OSI-E on December 12, 2011 assessing $736 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 TIRETEX, INC. and Jerry Waller, Docket No. 2011-0307-MSW-E on December 12, 2011 assessing $43,260 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Eduardo Valdez, Docket No. 2011-0315-OSS-E on December 12, 2011 assessing $1,100 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 Hunt County, Docket No. 2011-0319-MSW-E on December 12, 2011 assessing $10,000 in administrative penalties.

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.

A default order was entered regarding K & A Retail Inc. dba Skillman Diamond Shamrock, Docket No. 2011-0340-PST-E on December 12, 2011 assessing $3,154 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, 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 Dilley, Docket No. 2011-0347-MWD-E on December 12, 2011 assessing $5,290 in administrative penalties with $1,058 deferred.

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.

A default order was entered regarding Felix Rodriguez and Robert Rodriguez, Docket No. 2011-0349-PST-E on December 12, 2011 assessing $6,300 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 TLALOC OUTDOORS, INC. dba Del Rio Fisherman's Headquarters, Docket No. 2011-0361-PWS-E on December 12, 2011 assessing $1,163 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 Jerry Bruton dba Bruton's Chevron, Docket No. 2011-0386-PST-E on December 12, 2011 assessing $2,625 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 Anna S. Fuller dba Fuller Oil Co., Tony "Dude" Fuller dba Fuller Oil Co., and Prissy F. Knighten dba Fuller Oil Co., Docket No. 2011-0394-IHW-E on December 12, 2011 assessing $19,650 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 AL-MUSEER, INC., Docket No. 2011-0444-PST-E on December 12, 2011 assessing $4,025 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 Exxon Mobil Corporation, Docket No. 2011-0450-AIR-E on December 12, 2011 assessing $30,000 in administrative penalties with $6,000 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.

A default order was entered regarding Alfredo Solalinde dba Pine Oak Forest Water System, Docket No. 2011-0469-PWS-E on December 12, 2011 assessing $1,478 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.

An agreed order was entered regarding Harris County Municipal Utility District 420, Docket No. 2011-0480-UTL-E on December 12, 2011 assessing $475 in administrative penalties with $95 deferred.

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 Robert M. Youngblood, Docket No. 2011-0482-PST-E on December 12, 2011 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, 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 Consumers Water Inc., Docket No. 2011-0501-UTL-E on December 12, 2011 assessing $10,946 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.

An agreed order was entered regarding City of Port Aransas, Docket No. 2011-0512-MLM-E on December 12, 2011 assessing $13,925 in administrative penalties with $2,785 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, 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 Ahefaz, LLC dba Saveway Food Market, Docket No. 2011-0566-PST-E on December 12, 2011 assessing $9,694 in administrative penalties with $1,938 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 Petroleum Wholesale, L.P., Docket No. 2011-0571-IWD-E on December 12, 2011 assessing $13,125 in administrative penalties with $2,625 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 Trailer, Wheel & Frame Co., Docket No. 2011-0579-OSS-E on December 12, 2011 assessing $1,756 in administrative penalties with $351 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.

An agreed order was entered regarding MIR BROTHERS INC. dba Almeda Citgo, Docket No. 2011-0586-PST-E on December 12, 2011 assessing $2,162 in administrative penalties with $432 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 Sebastian Municipal Utility District, Docket No. 2011-0594-MWD-E on December 12, 2011 assessing $2,457 in administrative penalties with $491 deferred.

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 CROWN ENTERPRISES, INC. dba Central Transport, Docket No. 2011-0631-PST-E on December 12, 2011 assessing $10,879 in administrative penalties with $2,175 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 Hossain Makvandi dba Heath Market Place, Docket No. 2011-0632-PST-E on December 12, 2011 assessing $3,879 in administrative penalties with $775 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SAVS Investments, Inc. dba Friday's General Store, Docket No. 2011-0635-PWS-E on December 12, 2011 assessing $2,597 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Leopoldo E. Galindo dba Leo's Tire Service aka Crane Texaco, Docket No. 2011-0646-PST-E on December 12, 2011 assessing $65,000 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.

An agreed order was entered regarding E. I. Du Pont de Nemours and Company, Docket No. 2011-0648-AIR-E on December 12, 2011 assessing $30,102 in administrative penalties with $6,020 deferred.

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.

A default order was entered regarding Gilbert Benavides, Docket No. 2011-0649-LII-E on December 12, 2011 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding IZ, INC. dba IZ Food Mart, Docket No. 2011-0653-PST-E on December 12, 2011 assessing $16,780 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 MURPHY OIL USA, INC. and Hereford Renewable Energy, LLC, Docket No. 2011-0664-IWD-E on December 12, 2011 assessing $1,000 in administrative penalties with $200 deferred.

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 TCA INTERNATIONAL INVESTMENTS, INC. dba Al's Food Mart, Docket No. 2011-0668-PST-E on December 12, 2011 assessing $13,600 in administrative penalties with $2,720 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Walker, Enforcement Coordinator at (512) 239-2596, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LONE STAR CONVENIENCE STORES, INC. dba Dukes 7, Docket No. 2011-0669-PST-E on December 12, 2011 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Jamie Geil, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KAUSER ENERGY INC. dba Kaiser Food Mart, Docket No. 2011-0670-PST-E on December 12, 2011 assessing $4,210 in administrative penalties with $842 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 ABF FREIGHT SYSTEM, INC., Docket No. 2011-0672-PST-E on December 12, 2011 assessing $2,500 in administrative penalties with $500 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 Bilma Public Utility District, Docket No. 2011-0683-MWD-E on December 12, 2011 assessing $990 in administrative penalties with $198 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 Devon Gas Services, L.P., Docket No. 2011-0685-AIR-E on December 12, 2011 assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NuStar Terminals Partners TX L.P., Docket No. 2011-0689-AIR-E on December 12, 2011 assessing $4,300 in administrative penalties with $860 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 City of Houston, Docket No. 2011-0699-PST-E on December 12, 2011 assessing $14,475 in administrative penalties with $2,895 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.

A default order was entered regarding Marcelino Rico dba Ricos Tires, Juan J. Vasquez, and Rosa Vasquez, Docket No. 2011-0700-MSW-E on December 12, 2011 assessing $10,000 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.

An agreed order was entered regarding FEMAYO ENTERPRISES, LLC dba Dixi Quick Stop, Docket No. 2011-0702-PST-E on December 12, 2011 assessing $14,078 in administrative penalties with $2,815 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 Addison Enterprises Inc dba Prime Travel, Docket No. 2011-0704-PST-E on December 12, 2011 assessing $3,500 in administrative penalties with $700 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 L. H. Lacy Company, LTD., Docket No. 2011-0705-AIR-E on December 12, 2011 assessing $2,100 in administrative penalties with $420 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 University of Texas of The Permian Basin, Docket No. 2011-0709-PWS-E on December 12, 2011 assessing $913 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Byington, Enforcement Coordinator at (512) 239-2579, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NAFISA INC. dba New Texaco Food Mart, Docket No. 2011-0715-PST-E on December 12, 2011 assessing $3,570 in administrative penalties with $714 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 Con-Way Freight Inc. dba Con-Way Freight LHO, Docket No. 2011-0716-PST-E on December 12, 2011 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jorge Burgos dba Burgos Lawn Care, Docket No. 2011-0725-MSW-E on December 12, 2011 assessing $2,500 in administrative penalties with $500 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 Equistar Chemicals, LP, Docket No. 2011-0727-AIR-E on December 12, 2011 assessing $20,550 in administrative penalties with $4,110 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MSBK, LLC dba Exxon Deli, Docket No. 2011-0732-PST-E on December 12, 2011 assessing $8,448 in administrative penalties with $1,689 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 National Oilwell Varco, L.P., Docket No. 2011-0742-IWD-E on December 12, 2011 assessing $1,380 in administrative penalties with $276 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 Albert Khoa Corp dba Mike's Pit Stop 6, Docket No. 2011-0750-PST-E on December 12, 2011 assessing $2,555 in administrative penalties with $511 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 E. I. Du Pont de Nemours and Company, Docket No. 2011-0757-AIR-E on December 12, 2011 assessing $9,075 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FONDREN ADP, LTD. dba Fondren Mobil, Docket No. 2011-0760-PST-E on December 12, 2011 assessing $3,050 in administrative penalties with $610 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 TEXAS UNITED ENTERPRISE, INC. dba Park In Beverage, Docket No. 2011-0761-PST-E on December 12, 2011 assessing $5,129 in administrative penalties with $1,025 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 Vachana S. Mao dba N V Food Mart, Docket No. 2011-0762-PST-E on December 12, 2011 assessing $1,155 in administrative penalties with $231 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 WHITE CLEANERS & LAUNDRY INC., Docket No. 2011-0766-DCL-E on December 12, 2011 assessing $3,015 in administrative penalties with $603 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding I-TEX GROCERY, INC. dba Jacks Grocery 5, Docket No. 2011-0769-PST-E on December 12, 2011 assessing $4,130 in administrative penalties with $826 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Stone Hedge Utility Co., Inc., Docket No. 2011-0776-MWD-E on December 12, 2011 assessing $40,347 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 Valero Refining-Texas, L.P., Docket No. 2011-0781-AIR-E on December 12, 2011 assessing $26,880 in administrative penalties with $5,376 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 Lyondell Chemical Company, Docket No. 2011-0784-AIR-E on December 12, 2011 assessing $6,625 in administrative penalties with $1,325 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prestige Gunite of North Texas, Ltd., Docket No. 2011-0785-IWD-E on December 12, 2011 assessing $4,460 in administrative penalties with $892 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 Esperanza Water Service Company, Inc., Docket No. 2011-0791-IWD-E on December 12, 2011 assessing $4,857 in administrative penalties with $971 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 Lajitas Municipal Services Company LLC, Docket No. 2011-0793-MWD-E on December 12, 2011 assessing $1,260 in administrative penalties with $252 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 City of Lawn, Docket No. 2011-0798-PWS-E on December 12, 2011 assessing $1,732 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 Austin Independent School District, Docket No. 2011-0799-PST-E on December 12, 2011 assessing $1,125 in administrative penalties with $225 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 City of Lone Star, Docket No. 2011-0812-MWD-E on December 12, 2011 assessing $4,120 in administrative penalties with $824 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 Gerald Osterkamp and Mary Beth Osterkamp, Docket No. 2011-0813-OSS-E on December 12, 2011 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ASHFAQUE ENTERPRISES, INC. dba LJ'S Food Store, Docket No. 2011-0814-PST-E on December 12, 2011 assessing $3,835 in administrative penalties with $767 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 Height's Exxon, Inc. dba Heights Mobil, Docket No. 2011-0815-PST-E on December 12, 2011 assessing $3,379 in administrative penalties with $675 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 Joe Johs, Jr., Docket No. 2011-0820-PST-E on December 12, 2011 assessing $4,025 in administrative penalties.

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 City of Kerrville, Docket No. 2011-0825-PWS-E on December 12, 2011 assessing $695 in administrative penalties.

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 City of Lott, Docket No. 2011-0833-MWD-E on December 12, 2011 assessing $9,579 in administrative penalties with $1,915 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 Kashmir Road Lines LLC dba Texaco Foodmart 147, Docket No. 2011-0834-PST-E on December 12, 2011 assessing $5,748 in administrative penalties with $1,149 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 Midwest Engine, Inc., Docket No. 2011-0842-AIR-E on December 12, 2011 assessing $3,150 in administrative penalties with $630 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 R.J. Dairy, L.L.C. and Arturo Rodriguez and Hector Jimenez dba RJ Dairy, Docket No. 2011-0846-AGR-E on December 12, 2011 assessing $8,090 in administrative penalties with $1,618 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 MUCKLAI INVESTMENTS, INC. dba C-Store #1, Docket No. 2011-0852-PST-E on December 12, 2011 assessing $4,600 in administrative penalties with $920 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quang Dang Pham dba Sunmart 302, Docket No. 2011-0853-PST-E on December 12, 2011 assessing $3,406 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, 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 Whitney, Docket No. 2011-0856-PWS-E on December 12, 2011 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (325) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2011-0861-AIR-E on December 12, 2011 assessing $9,875 in administrative penalties with $1,975 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pecan Pipeline Company, Docket No. 2011-0870-AIR-E on December 12, 2011 assessing $15,860 in administrative penalties with $3,172 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 Country Club Retirement Community, L.P., Docket No. 2011-0883-MWD-E on December 12, 2011 assessing $990 in administrative penalties with $198 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.

An agreed order was entered regarding City of Dell City, Docket No. 2011-0884-MLM-E on December 12, 2011 assessing $9,138 in administrative penalties with $1,827 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.

A default order was entered regarding Mardoche Abdelhak dba Big Trees Trailer City, Docket No. 2011-0888-PWS-E on December 12, 2011 assessing $8,697 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 TRINITY INDUSTRIES, INC., Docket No. 2011-0898-PST-E on December 12, 2011 assessing $3,141 in administrative penalties with $628 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kashmir Road Lines LLC dba Chevron Foodmart 159, Docket No. 2011-0903-PST-E on December 12, 2011 assessing $4,104 in administrative penalties with $820 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. Army Corps of Engineers, Docket No. 2011-0908-MWD-E on December 12, 2011 assessing $14,700 in administrative penalties with $2,940 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.

An agreed order was entered regarding City of Ackerly, Docket No. 2011-0917-PWS-E on December 12, 2011 assessing $825 in administrative penalties with $165 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 Jarrell Independent School District, Docket No. 2011-0919-MWD-E on December 12, 2011 assessing $6,930 in administrative penalties with $1,386 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 LAKESIDE COUNTRY CLUB, Docket No. 2011-0920-PST-E on December 12, 2011 assessing $2,250 in administrative penalties with $450 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 Guardian Industries Corp., Docket No. 2011-0933-AIR-E on December 12, 2011 assessing $3,075 in administrative penalties with $615 deferred.

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 Howard T. Nelius dba Coushatte Campground, Docket No. 2011-0937-PWS-E on December 12, 2011 assessing $2,697 in administrative penalties.

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 Harris County Hospital District, Docket No. 2011-0938-PST-E on December 12, 2011 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Center, Docket No. 2011-0951-PWS-E on December 12, 2011 assessing $855 in administrative penalties with $171 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NAQIB BUSINESS CORPORATION dba Fuel Depot 16, Docket No. 2011-0952-PST-E on December 12, 2011 assessing $2,350 in administrative penalties with $470 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STK Food, Inc. dba STK All Season, Docket No. 2011-0960-PST-E on December 12, 2011 assessing $5,200 in administrative penalties with $1,040 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 Lucite International, Inc., Docket No. 2011-0967-IHW-E on December 12, 2011 assessing $10,000 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 Vinod Nagi dba Park N Sak II, Docket No. 2011-0994-PST-E on December 12, 2011 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAVE N MORE CORPORATION dba Save One Stop, Docket No. 2011-0999-PST-E on December 12, 2011 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jupiter Food Mart, LLC dba ABC Mini Mart, Docket No. 2011-1005-PST-E on December 12, 2011 assessing $2,375 in administrative penalties with $475 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 Robert W. Pixley, Docket No. 2011-1010-OSI-E on December 12, 2011 assessing $225 in administrative penalties with $45 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 Charles C. Crowley, Docket No. 2011-1014-LII-E on December 12, 2011 assessing $188 in administrative penalties with $37 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 Earthgrains Baking Companies, Inc., Docket No. 2011-1027-AIR-E on December 12, 2011 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JP Morgan Chase, Docket No. 2011-1041-PST-E on December 12, 2011 assessing $6,555 in administrative penalties with $1,311 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.

A default order was entered regarding Richard Billings dba Oak Hills Ranch Water Company, Docket No. 2011-1046-PWS-E on December 12, 2011 assessing $1,531 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.

An agreed order was entered regarding Lejo Management, Inc. dba Buy The Way, Docket No. 2011-1055-PST-E on December 12, 2011 assessing $3,050 in administrative penalties with $610 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HILL COUNTRY TELEPHONE COOPERATIVE, INC., Docket No. 2011-1058-PST-E on December 12, 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 JACK & JEFF, INC. dba Jack's Grocery 18, Docket No. 2011-1059-PST-E on December 12, 2011 assessing $8,137 in administrative penalties with $1,627 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 Main Street Business, Inc. dba Sunrise Food Mart, Docket No. 2011-1068-PST-E on December 12, 2011 assessing $8,850 in administrative penalties with $1,770 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 Arkema Inc., Docket No. 2011-1069-AIR-E on December 12, 2011 assessing $20,300 in administrative penalties with $4,060 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Killeen, Docket No. 2011-1072-WQ-E on December 12, 2011 assessing $5,000 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 INEOS USA LLC, Docket No. 2011-1081-AIR-E on December 12, 2011 assessing $10,496 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 agreed order was entered regarding 5 STAR FORTUNE INC. dba Sunnys Food, Docket No. 2011-1085-PST-E on December 12, 2011 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Charles Lockwood, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JYKM UNION, INC. dba Granger Food Store, Docket No. 2011-1110-PST-E on December 12, 2011 assessing $2,500 in administrative penalties with $500 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 FH&S ENTERPRISES, INC. dba Penny Saver, Docket No. 2011-1113-PST-E on December 12, 2011 assessing $1,540 in administrative penalties with $308 deferred.

Information concerning any aspect of this order may be obtained by contacting Charles Lockwood, Enforcement Coordinator at (512) 239-1653, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZEE GLOBAL ENTERPRISE, INC. dba Pop Corner, Docket No. 2011-1130-PST-E on December 12, 2011 assessing $2,429 in administrative penalties with $485 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, Edward W. Sibley dba Memorial Conoco Car Care, Docket No. 2011-1147-PST-E on December 12, 2011 assessing $2,350 in administrative penalties with $470 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 LN CORPORATION dba Almeda Food Store, Docket No. 2011-1148-PST-E on December 12, 2011 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Walker, Enforcement Coordinator at (512) 239-2596, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crane County Hospital District dba Crane Memorial Hospital, Docket No. 2011-1177-PST-E on December 12, 2011 assessing $4,875 in administrative penalties with $975 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 Charles Kenneth Horn dba Charlies Country Store and Café Docket No. 2011-1192-PWS-E on December 12, 2011 assessing $1,376 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding L. H. CHANEY MATERIALS, INC. dba Chaney Trucking, Docket No. 2011-1250-PST-E on December 12, 2011 assessing $3,876 in administrative penalties with $775 deferred.

Information concerning any aspect of this order may be obtained by contacting Marcia Alonso, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mount Vernon, Docket No. 2011-1257-MWD-E on December 12, 2011 assessing $1,520 in administrative penalties with $304 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 FIRESTONE POLYMERS, LLC, Docket No. 2011-1258-IWD-E on December 12, 2011 assessing $7,900 in administrative penalties with $1,580 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 JAMES WOOD MOTORS, INC., Docket No. 2011-1276-PST-E on December 12, 2011 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Walker, Enforcement Coordinator at (512) 239-2596, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Arthur Thompson Post No. 8905 Veterans of Foreign Wars of the United States, Cypress, Texas, Docket No. 2010-1241-PWS-E on December 12, 2011 assessing $4,375 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.

A field citation was entered regarding Robert Goodman, Docket No. 2011-1319-PWS-E on December 12, 2011 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding William Sterling Hicks, Docket No. 2011-1465-WOC-E on December 12, 2011 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Travis W. Armstrong, Docket No. 2011-1466-WOC-E on December 12, 2011 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Thomas H. MacGinnis, Docket No. 2011-1467-WOC-E on December 12, 2011 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding New Birmingham Resources LLC, Docket No. 2011-1361-WQ-E on December 12, 2011 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201105780
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 21, 2011

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. 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 opportunity to comment must be pub-

lished 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 **January 30, 2012.** 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 30, 2012.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: ACI Partners, LLC; DOCKET NUMBER: 2010-0756-AIR-E; TCEQ ID NUMBER: RN105804413; LOCATION: 2035 Ackerman Road, San Antonio, Bexar County; TYPE OF FACILITY: unauthorized air curtain incinerator (ACI); RULES VIOLATED: 30 TAC §101.20(1) and §116.110(a), 40 Code of Federal Regulations §60.2260(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating an ACI to burn construction debris waste, by failing to properly notify the TCEQ that the ACI was going to be moved to the site, by failing to provide an approximate start-up date for the ACI, and by failing to describe the types of materials to be burned in the ACI; PENALTY: $3,000; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Arkema Inc.; DOCKET NUMBER: 2010-1235-AIR-E; TCEQ ID NUMBER: RN100216373; LOCATION: 2810 Gulf States Road, Beaumont, Jefferson County; TYPE OF FACILITY: organic chemicals plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b), 30 TAC §101.20(3), §116.115(b)(2)(F) and (c), and §122.143(4), Air Permits Numbers 865A and PSD-TX-1016, Special Conditions (SC) 2, Federal Operating Permit (FOP) Number O1636, SC 13, and General Terms and Conditions (GTC), by failing to maintain emissions at or below the rates listed in the maximum allowable emission rate table for the thermal oxidizer, Emission Point Number SULFOX-TO; and THSC, §382.085(b), 30 TAC §§111.111(a)(4)(A), 116.115(c), and 122.143(4), FOP Number O1636, SC 13 and GTC, and Air Permits Numbers 865A and PSD-TX-1016, SC 10A, by failing to operate the flare with no visible emissions except for periods that do not exceed a total of five minutes in any two consecutive hours; PENALTY: $34,650, Supplemental Environmental Project offset amount of $17,325 applied to South East Texas Regional Planning Commission - Meteorological and Air Quality Monitoring Network; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: ARSH Trading, Inc. dba Lake Hills Grocery; DOCKET NUMBER: 2011-0107-PST-E; TCEQ ID NUMBER: RN101494581; LOCATION: 1500 North Cuernavaca Drive, Austin, Travis County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,000; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Fouad Matar dba Bingle Chevron; DOCKET NUMBER: 2011-1030-PST-E; TCEQ ID NUMBER: RN101778884; LOCATION: 2901 Bingle Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,050; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: GK SINGH ENTERPRISES, L.L.C. dba Express EZ Mart; DOCKET NUMBER: 2011-0404-PST-E; TCEQ ID NUMBER: RN102347879; LOCATION: 820 East Lamar Street, Sherman, Grayson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of USTs; PENALTY: $3,372; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: SIMONE STORES INC. dba Millennium Grocery; DOCKET NUMBER: 2010-2032-PST-E; TCEQ ID NUMBER: RN101874600; LOCATION: 770 South Pine Street, Kountze, Hardin County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 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 §115.246(1) and THSC, §382.085(b), by failing to maintain Stage II records at the Station; 30 TAC §115.245(6) and THSC, §382.085(b), by failing to submit the Stage II vapor recovery system test results to the appropriate regional office or the local air pollution control program with jurisdiction within 10 working days of the completion of the tests; 30 TAC §115.242(3)(C) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; 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 and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self certification form; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least

once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight, and free of liquid and debris; and 30 TAC §334.7(f), by failing to provide accurate information on the UST registration and self-certification form; PENALTY: $8,622; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201105747
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 19, 2011

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 30, 2012.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 30, 2012.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Carlos Reyes dba Chucos Tire Shop and James A. Wilson; DOCKET NUMBER: 2011-0448-PST-E; TCEQ ID NUMBER: RN102253937; LOCATION: 1106 North Dallas Avenue, Lancaster, Dallas County; TYPE OF FACILITY: inactive underground storage tank (UST) system and a tire and muffler repair facility; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b)(1) and (2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation upgrade implementation date, a UST system from which any applicable component of the system is not brought into timely compliance with the upgrade requirements, by failing to maintain all vent lines open and functioning, and by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $2,750; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Chris G. Moreno dba Knights Irrigation; DOCKET NUMBER: 2011-0809-LII-E; TCEQ ID NUMBER: RN105012041; LOCATION: 4431 Newmore Avenue, Dallas, Dallas County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing oneself to the public as a holder of a license or registration unless in possession of a current license or registration or unless employing an individual who holds a current license; PENALTY: $262; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Curtis White dba El Pinon Estates Water System; DOCKET NUMBER: 2011-1333-PWS-E; TCEQ ID NUMBER: RN102675303; LOCATION: five miles south of Highway 83 on Farm-to-Market Road 705, Broaddus, San Augustine County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum containment level of 0.080 milligrams per liter for total trihalomethanes based on the running annual average; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.106(e), by failing to provide results of annual nitrate sampling to the executive director; 30 TAC §§290.106(e), 290.107(e) and 290.108(e), by failing to provide the results of triennial sampling for metals, minerals, volatile organic contaminants and radionuclide levels to the executive director; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay Public Health Service Fees for TCEQ Financial Administration Account Number 92030013 for Fiscal Year 2011; PENALTY: $2,077; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: David Fenoglio dba Sunset Water System; DOCKET NUMBER: 2011-0824-PWS-E; TCEQ ID NUMBER: RN102693579; LOCATION: the northwest corner of the intersection of West Front Street and Cottage Grove Drive, Sunset, Montague County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 30 days using chlorine solutions of known concentrations; 30 TAC §290.45(b)(1)(C)(ii) and TCEQ Agreed Order Docket Number 2007-1711-PWS-E, Ordering Provision Number 2.e.i., by failing to provide a total storage capacity of at least 200 gallons per connection; 30 TAC §290.43(c)(3) and TCEQ Agreed Order Docket Number 2007-1711-PWS-E, Ordering Provision Number 2.c.i., by failing to provide roof openings on the ground storage tanks that are at least 30 inches in diameter; 30 TAC §290.46(n)(3) and TCEQ Agreed Order Docket Number 2007-1711-PWS-E, Ordering Provision Number 2.c.ii., by failing to keep on file and make available for review copies of well completion data; and 30 TAC §290.46(u) and TCEQ Agreed Order Docket Number 2007-1711-PWS-E, Ordering Provision Number 2.e.ii., by failing to plug abandoned wells or submit test results proving that the wells are in a non-deteriorated condition; PENALTY: $4,238; STAFF ATTORNEY: Kari L. Gilbreth, Litigation

Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Gerald Fisher dba Turneco Oil and Service; DOCKET NUMBER: 2010-1608-IHW-E; TCEQ ID NUMBER: RN101060663; LOCATION: 8214 Coastway Lane, Houston, Harris County; TYPE OF FACILITY: used oil transportation company; RULES VIOLATED: 30 TAC §335.11(a) and 40 Code of Federal Regulations (CFR) §263.20, by failing to obtain a properly completed manifest for hazardous waste; and 30 TAC §335.6(d) and 40 CFR §263.11, by failing to notify the TCEQ prior to transporting hazardous waste; PENALTY: $2,200; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: John Duncan dba A Plus Construction and Lawn; DOCKET NUMBER: 2011-0021-AIR-E; TCEQ ID NUMBER: RN105937064; LOCATION: 4713 Massey Ranch Road, Manvel, Brazoria County; TYPE OF FACILITY: tree cutting service; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by failing to comply with the general prohibition requirements for outdoor burning; PENALTY: $6,147; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Laxmiben Lalbhai Patel; DOCKET NUMBER: 2011-0177-MWD-E; TCEQ ID NUMBER: RN101518843; LOCATION: south of Michael Street at a point approximately 180 feet west of the intersection of McGruder and Michael Streets, Cleveland, Liberty County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012161001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and TCEC Agreed Order Docket Number 2009-0671-MWD-E, Ordering Provision Number 3.c., by failing to comply with permitted effluent limitations; 30 TAC §305.125(17) and TPDES Permit Number WQ0012161001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2009; 30 TAC §305.125(1), TPDES Permit Number WQ0012161001, Definitions and Standard Permit Conditions Number 2.f. and TCEQ Agreed Order Docket Number 2009-0671-MWD-E, Ordering Provision Number 3.a.ii., by failing to properly calculate daily average loading; 30 TAC §305.125(1) and §319.7(c), TPDES Permit Number WQ0012161001, Monitoring and Reporting Requirements Number 3.b. and TCEQ Agreed Order Docket Number 2009-0671-MWD-E, Ordering Provision Number 3.a.i., by failing to have all required monitoring and reporting records available for review upon request; 30 TAC §305.125(1) and (11)(B), TPDES Permit Number WQ0012161001, Sludge Provisions Section II.E and TCEQ Agreed Order Docket Number 2009-0671-MWD-E, Ordering Provision Number 3.a.i., by failing to maintain sludge management records; 30 TAC §§305.125(17), 319.1, 319.7(d), TPDES Permit Number WQ0012161001, Monitoring and Reporting Requirements Number 1 and TCEQ Agreed Order Docket Number 2009-0671-MWD-E, Ordering Provision Number 3.a.vi.2., by failing to timely submit discharge monitoring reports by the 20th day of the following month; 30 TAC §305.125(1), TPDES Permit Number WQ0012161001, Monitoring and Reporting Requirements Number 7.c. and TCEQ Agreed Order Docket Number 2009-0671-MWD-E, Ordering Provision Number 3.a.vi.1., by failing to submit noncompliance notification reports for effluent violations which deviate from the permitted effluent limitation by more than 40%; and 30 TAC §305.125(17), TPDES Permit Number WQ0012161001, Sludge Provisions and TCEQ Agreed Order Docket Number 2009-0671-MWD-E, Ordering Provision Number 3.a.iii., by failing to submit the annual sludge reports for the monitoring periods ending July 31, 2007 and July 31, 2008; PENALTY: $52,627; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Ms. Molly's LLC; DOCKET NUMBER: 2011-0764-PWS-E; TCEQ ID NUMBER: RN104909882; LOCATION: 1005 County Road 107, Columbus, Colorado County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d), 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and TCEQ Default Order Number 2009-1443-PWS-E, Ordering Provision Number 2.a.ii, by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to collect routine samples; PENALTY: $3,476; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Paula Roark dba Naconiches Farm; DOCKET NUMBER: 2011-0225-IHW-E; TCEQ ID NUMBER: RN105944524; LOCATION: 269 Holly Springs Road, Garrison, Nacogdoches County; TYPE OF FACILITY: poultry business; RULES VIOLATED: 30 TAC §335.25(c), by failing to prevent the unauthorized disposal of industrial hazardous waste; PENALTY: $1,050; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: RASHID INC. dba Harvest Food Store 1; DOCKET NUMBER: 2011-0730-PST-E; TCEQ ID NUMBER: RN100925064; LOCATION: 4626 Yale Street, Houston, Harris County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.246(1), (3), and (4) - (6), by failing to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel; PENALTY: $1,350; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Riverside Texas Enterprises, Inc. dba Riverside Shell; DOCKET NUMBER: 2011-0977-PST-E; TCEQ ID NUMBER: RN101547669; LOCATION: 3101 Airport Freeway, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $6,600; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: SLC Construction, LLC; DOCKET NUMBER: 2010-1019-MLM-E; TCEQ ID NUMBERS: RN105600837 and RN105717524; LOCATIONS: 1165 Rodeo Drive, Aransas Pass, Aransas County (Aransas Pass Site) and the intersection of Interstate Highway 37 and North Port Avenue, in Corpus Christi, Nueces County (North Port Site); TYPE OF FACILITY: construction and sand mining operations; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain proper authorization prior to conducting the rock crushing operations at the Aransas Pass Site; TWC, §26.121 and 30

TAC §335.2 and §335.4, by failing to obtain proper authorization prior to commencing activities involving industrial solid waste at the Aransas Pass Site; THSC, §382.085(b) and 30 TAC §111.201, by failing to comply with the general prohibition requirements for outdoor burning at the Aransas Pass Site; 30 TAC §324.6 and 40 Code of Federal Regulations (CFR) §279.22(c), by failing to label used oil containers as "Used Oil" at the Aransas Pass Site; TWC, §26.121, 30 TAC §324.6 and 40 CFR §279.22(d), by failing to prevent and abate releases of used oil at the Aransas Pass Site; 30 TAC §281.25(a)(4), 40 CFR §122.26(c), Multi-Sector General Permit Number TXR05Y203, Part III, Section A.1.(a), and commission Order Docket Number 2008-1583-WQ-E, Ordering Provision Number 2.c., by failing to develop and implement a storm water pollution prevention plan at the Aransas Pass Site before submitting a Notice of Intent for coverage under the Multi-Sector General Permit; THSC, §382.085(b), 30 TAC §116.115(b) and §116.615(2), and Air Quality Standard Permit for Temporary Rock and Concrete Crushers, General Requirements (2)(F), by failing to remove the crusher after exhausting the 45 non-consecutive calendar days on-site limit at the North Port Site; and THSC, §382.085(b), 30 TAC §116.615(8), and Air Quality Standard Permit for Temporary Rock and Concrete Crushers, General Requirements (1)(M), by failing to comply with the record keeping and recording requirements for the operation of a rock crusher at the North Port Site; PENALTY: $35,600; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201105748
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 19, 2011

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 30, 2012.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 30, 2012.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: KACHMAR ENTERPRISES, INC. dba Snook Lane Citgo; DOCKET NUMBER: 2011-1087-PST-E; TCEQ ID NUMBER: RN102342987; LOCATION: 23227 Snook Lane, Tomball, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.8(c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to make Stage II records immediately available for review upon request by agency personnel; 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; and 30 TAC §115.242(3)(J) and THSC, §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; PENALTY: $24,065; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201105749

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 19, 2011

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Notice of Water Quality Applications

The following notices were issued on December 9, 2011 through December 16, 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

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 170 has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012121001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 11202 Steepleway Boulevard, approximately 600 feet west of Jones Road, 5,300 feet south of Farm-to-Market Road 1960 and adjacent to Whiteoak Bayou in Harris County, Texas 77065.

KINDER MORGAN PETCOKE LP which operates the Deepwater Terminal, a bulk material storage and handling facility, has applied for a renewal with a major amendment to TPDES Permit No. WQ0004301000 to authorize facility will be adding an impoundment to provide additional holding capacity for storm water associated with coal storage to discharge via Outfall 001. The current permit authorizes the discharge of process wastewater and storm water on an intermittent and flow variable basis via Outfall 001. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies. The facility is located at 4207 Pasadena Freeway, just south of the Houston Ship Channel, and approximately 1.0 mile northeast of the intersection of East Beltway and State Highway 225, in the City of Pasadena, Harris County, Texas 77503.

AIR LIQUIDE LARGE INDUSTRIES US LP which operates the Bayport Complex, an air separation and cogeneration facility, has applied for a renewal of TPDES Permit No. WQ0004330000, which authorizes the discharge of steam condensate, maintenance wash water, fire equipment test water, and storm water at a daily average flow not to exceed 72,000 gallons per day via Outfall 001; steam condensate and storm water on an intermittent and flow variable basis via Outfall 002; and steam condensate, fire equipment test water, and storm water on an intermittent and flow variable basis via Outfalls 003 and 004. The facility is located at 11777 Bay Area Boulevard, approximately 1.6 miles south of Fairmont Parkway and approximately three miles southeast of the City of La Porte, Harris County, Texas 77507.

BONO BROTHERS INC has applied for a new permit, Proposed TCEQ Permit No.WQ0004896000, to authorize the land application of sewage sludge for beneficial use on 177 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge land application site will be located at 9827 Harlem Road, approximately 5.5 miles north of Highway 90, in Fort Bend County, Texas 77407.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0010221001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 41,000,000 gallons per day. The facility is located at 3500 Lawson Road, approximately 0.5 mile south of the intersection of Lawson Road and Cartwright Road in the southeast portion of the City of Mesquite in Dallas County, Texas 75181.

CITY OF STREETMAN has applied for a renewal of TPDES Permit No. WQ0010471001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located west of Farm-to-Market Road 80 and east of the Fort Worth & Denver Railway (F W & D RR) on the north bank of Sloan Creek in the southern portion of the City of Streetman in Freestone County, Texas 75859.

THE CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495139, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 995,000 gallons per day. The facility is located approximately 250 feet west of the intersection of Genard Road and Steffani Lane in Harris County, Texas 77041.

HOOKS MOBILE HOME PARK LTD has applied for a renewal of TPDES Permit No. WQ0012083001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 12019 Aldine Westfield Road, approximately 1.75 miles south of the intersection of Aldine Mail Road and Aldine Westfield Road and approximately 1.75 miles north of the intersection of Hopper Street and Aldine Westfield Road in Harris County, Texas 77093.

THE CITY OF LINDSAY has applied for a major amendment to TPDES Permit No. WQ0010923001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 66,000 gallons per day to a daily average flow not to exceed 200,000 gallons per day. The facility is located at 100 Sycamore Street, approximately 600 feet east of the Farm-to-Market Road 3108 bridge over Elm Fork Trinity River, southeast of Lindsay, in Cooke County, Texas 76250.

CITY OF MISSOURI CITY has applied for a major amendment to TPDES Permit No. WQ0012701001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 950,000 gallons per day to an annual average flow not to exceed 3,000,000 gallons per day. The facility is located approximately 500 feet west and 1,000 feet north of the intersection of Trammel-Fresno Road and the Fort Bend Parkway Toll Road in Fort Bend County, Texas 77459.

LIVINGSTON CARE ASSOCIATES INC AND POLK HEALTH HOLDINGS LLC have applied for a renewal of TPDES Permit No. WQ0013388001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located at 4001 Highway 59 North, on the west side of U.S. Highway 59 approximately 3.5 miles northeast of the City of Livingston and south of the town of Marston in Polk County, Texas 77351.

THE SALVATION ARMY has applied for a renewal of TPDES Permit No. WQ0013904001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 8060 Singleton Road, on the southern portion of Camp Hoblitzelle, approximately 1.5 miles south of the intersection of Farm-to-Market Road 875 and Farm-to-Market Road 663, south of the Town of Midlothian in Ellis County, Texas 76065.

KATY-HOCKLEY CORP has applied for a renewal of TPDES Permit No. WQ0014109001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located at 25005 Morton Ranch Road, approximately 300 feet southeast of the intersection of Katy Hockley Cutoff Road and Morton Road in Harris County, Texas 77493.

CITY OF DENTON has applied for a renewal of TPDES Permit No. WQ0014416001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility will be located approximately 1,200 feet east of Farm-to-Market Road 1428 and north of Hartlee Field Road in Denton County, Texas 76208.

FOSTER UTILITIES LLC has applied for a renewal of TCEQ Permit No. WQ0014723001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day via non-public access subsurface drip irrigation system with a minimum area of 41.34 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located within the 35 Business Park development, approximately 2,500 feet east of the IH 35 access road and approximately 150 feet north of County Road 196 in Williamson County, Texas 78626.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of TPDES Permit No. WQ0010322001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located at 320 Veterans Way, approximately 1,000 feet east of U.S. Highway 69 and 3,000 feet south of U.S. Highway 190, in Woodville in Tyler County, Texas 75979.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, 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-201105779
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 21, 2011

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Texas Facilities Commission

Request for Proposals #303-3-20320

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-3-20320. TFC seeks a five (5) or ten (10) year lease of approximately 12,164 square feet of office space in Houston, Harris County, Texas.

The deadline for questions is January 20, 2012 and the deadline for proposals is February 3, 2012 at 3:00 p.m. The award date is February 24, 2012. 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, Jana D. Walp, at (512) 463-3160. 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=98176.*

TRD-201105784
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 21, 2011

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Grand Prairie	Texas General Hospital, L.P.	L06440	Grand Prairie	00	12/09/11
Houston	Memorial Hermann Hospital System dba Memorial Hermann Texas Medical Center	L06439	Houston	00	11/23/11
Houston	Houston MRI & Diagnostic Center, Inc.	L06441	Houston	00	12/13/11

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Anderson	National Oilwell Varco, L.P.	L06094	Anderson	07	12/13/11
Arlington	Hunter Well Science, Inc.	L06413	Arlington	01	12/06/11
Austin	Seton Healthcare dba Seton Medical Center Austin	L02896	Austin	124	12/02/11
Austin	ECS-Texas, L.L.P.	L05319	Austin	08	12/08/11
Austin	Cardiotexas, P.L.L.C.	L06330	Austin	02	12/09/11
Carrollton	Trinity MC, L.L.C. dba Baylor Medical Center at Carrollton	L03765	Carrollton	66	12/06/11
Crowley	National Inspection Services, L.L.C.	L05930	Crowley	32	11/30/11
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L04758	El Paso	29	12/13/11
Fort Worth	Baylor All Saints Medical Center dba Baylor Medical Center at Southwest Fort Worth	L04105	Fort Worth	32	12/01/11
Freeport	BASF Corporation	L01021	Freeport	56	12/13/11
Houston	Houston Refining, L.P.	L00187	Houston	68	12/12/11
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	170	12/02/11
Houston	The Methodist Hospital	L00457	Houston	181	12/09/11
Houston	Memorial Hermann Hospital System dba Memorial Hospital Memorial City	L01168	Houston	130	12/09/11
Houston	Gammatron, Inc.	L02148	Houston	23	12/07/11
Houston	Gulf Coast Cancer and Diagnostic Center at Southeast, Inc. dba Gulf Coast Cancer Center at Southeast	L05194	Houston	15	12/06/11
Houston	U.T. Physicians	L05465	Houston	10	12/05/11
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	72	12/06/11
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	23	11/23/11
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	24	12/13/11
Houston	Sightline West Houston IMRT, L.L.C. dba Sightline West Houston	L06299	Houston	05	11/17/11
Humble	Memorial Hermann Hospital Systems dba Memorial Hermann Northeast	L02412	Humble	86	12/09/11
Ingleside	Oceaneering International, Inc.	L04463	Ingleside	79	12/12/11
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	90	12/07/11
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	91	12/13/11
Jacksonville	Mother Frances Hospital Jacksonville	L05362	Jacksonville	29	12/09/11
Kilgore	Marco Inspection Services, L.L.C.	L06072	Kilgore	37	12/12/11
La Porte	Ineos USA, L.L.C.	L00088	La Porte	60	12/12/11

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
La Porte	Invista Sarl	L05719	La Porte	05	12/06/11
Longview	Diagnostic Clinic of Longview, P.A.	L05817	Longview	12	12/06/11
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	55	12/08/11
N. Richland Hills	Dallas Cardiology Associates dba Heartplace North Richland Hills	L05548	N. Richland Hills	16	12/05/11
Odessa	Etech Environmental & Safety Solutions, Inc.	L05957	Odessa	02	12/12/11
Pasadena	CHCA Bayshore, L.P. dba Bayshore Medical Center	L00153	Pasadena	95	12/08/11
Plano	Texas Health Presbyterian Hospital Plano	L04467	Plano	62	11/30/11
Plano	Texas Heart Hospital of the Southwest, L.L.P. dba The Heart Hospital Baylor Plano	L06004	Plano	17	12/02/11
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	134	12/05/11
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	135	12/13/11
San Antonio	Cardiology Clinic of San Antonio, P.L.L.C.	L04489	San Antonio	41	12/05/11
San Antonio	The University of Texas Health Science Center at San Antonio	L05217	San Antonio	18	12/06/11
San Antonio	The University of Texas Health Science Center at San Antonio Edinburg	L06029	San Antonio	07	12/06/11
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	41	12/01/11
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	42	12/05/11
Spring	Vintage Park Cardiovascular Associates, P.A.	L06438	Spring	01	12/06/11
Sweetwater	Rolling Plains Memorial Hospital	L02550	Sweetwater	26	12/08/11
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	88	12/09/11
Throughout TX	Fox NDE, L.L.C.	L06411	Abilene	01	12/06/11
Throughout TX	STS Construction Material Testing	L06280	Denison	02	12/12/11
Throughout TX	RLN Corporation	L06433	Hitchcock	01	12/05/11
Throughout TX	Professional Service Industries, Inc.	L00203	Houston	131	12/14/11
Throughout TX	Baker Hughes Oilfield Operations, Inc. dba Baker Atlas	L00446	Houston	165	12/08/11
Throughout TX	Paradigm Consultants, Inc.	L04875	Houston	07	12/05/11
Throughout TX	Qisi, Inc. dba Quality Inspection Services	L06219	LaPorte	09	12/07/11
Throughout TX	Techcorr USA, L.L.C. dba AUT Specialists, L.L.C.	L05972	Palestine	86	12/08/11
Throughout TX	D & S Engineering Labs, P.L.L.C.	L06353	Sanger	02	12/05/11
Throughout TX	Absolute Integrity Testing, L.L.C.	L06367	Spring	01	12/05/11
Throughout TX	Advanced Inspection Technologies, L.L.C.	L06423	Spring	02	12/01/11
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	126	12/08/11
Throughout TX	NRG Texas Power, L.L.C.	L02063	Thompsons	72	12/06/11

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Consolidated Technologies, Inc.	L02045	Austin	25	12/01/11
Austin	Lower Colorado River Authority	L02738	Austin	48	12/05/11
Throughout TX	Chappell Hill Logging Systems, Inc.	L05522	Chappell Hill	05	12/08/11
Throughout TX	Shell Oil Products U.S. dba Deer Park Refining Limited Partnership	L04554	Deer Park	33	12/01/11
Throughout TX	Radiographic Specialists, Inc.	L02742	Houston	62	12/05/11
Throughout TX	U.S. Ecology Texas, Inc.	L05518	Robstown	11	11/30/11

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201105774
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: December 21, 2011

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Texas Department of Housing and Community Affairs

Announcement of the Public Hearing for Public Comment on Proposed New §1.25 Concerning Right of First Refusal at Fair Market Value

The Texas Department of Housing and Community Affairs (the "Department") announces the opening of the public comment period for the proposed new §1.25, Right of First Refusal at Fair Market Value. The public comment period will be held from December 30, 2011 through January 20, 2012 at 5:00 p.m.

The proposed new section provides guidance to implement requirements to offer certain Housing Tax Credit properties for sale to nonprofits at fair market value.

A public hearing will be held on January 18, 2012 at 9:00 a.m. at the Rusk State Office Building, 208 East 10th Street, Austin, Texas 78701. The proposed new section will be available on the Department's website on December 22, 2011 at www.tdhca.state.tx.us and will be published in the December 30, 2011 publication of the *Texas Register*. A hard copy may be requested by contacting the Department's Compliance and Asset Oversight Division at P.O. Box 13941, Austin, TX 78711-3941 or by calling (512) 475-3140.

Written comments concerning the proposed new section may be sent by mail to the Texas Department of Housing and Community Affairs, Compliance and Asset Oversight Division, P.O. Box 13941, Austin, TX 78711-3941; by email to tdhcarulecomments@tdhca.state.tx.us; or by facsimile to (512) 475-3359.

TRD-201105773
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 20, 2011

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Texas Department of Insurance

Notice of Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2731 at 9:30 a.m. on Wednesday, February 1, 2012, in Room 100 of the William P. Hobby, Jr., State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the annual private passenger and commercial automobile insurance rate filing made by the Texas Automobile Insurance Plan Association (TAIPA) pursuant to Insurance Code §2151.202. Insurance Code §2151.206(c) clarifies that this will not be a contested case hearing.

The TAIPA rate filing is available for review during regular business hours in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. For further information, or to request a copy of the filing, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Petition No. A-1211-11).

If you wish to submit written comments, analyses, or other information related to the filing, please do so prior to the hearing on Wednesday, February 1, 2012. You will need to provide two copies of your submission. Submit one copy to Nancy Simpson, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Additional copy to J'ne Byckovski, Chief Actuary, Property and Casualty, P.O. Box 149104, Mail Code 105-5F, Austin, Texas 78714-9104.

Under Insurance Code §2151.206(a), you may also present written or oral comments related to the filing at the hearing. Moreover, Insurance Code §2151.206(b) permits TAIPA, the Office of Public Insurance Counsel, and any other interested person or entity that submits proposed changes or actuarial analyses to ask questions of any person testifying at the hearing.

TRD-201105781
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Filed: December 21, 2011

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Proposed FY 2012 Research Agenda - Workers' Compensation Research and Evaluation Group

Labor Code §405.0026 requires the Commissioner of Insurance (commissioner) to adopt an annual research agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance (TDI). To accomplish this, TDI must publish a proposed research agenda in the *Texas Register* for public review and comment. Upon request, the commissioner will hold a public hearing on the proposed research agenda.

In October 2011, on TDI's website, the REG requested research agenda suggestions from stakeholders and the general public. The REG also queried legislative offices for input regarding the FY 2012 Research Agenda. The REG evaluated the responses using the following criteria:

Is the proposed research project required by statute or likely to be part of an upcoming legislative review?

Will the results of the proposed research project address the information needs of multiple stakeholder groups and/or legislative committees?

Are there available data to complete the project or can data be obtained easily and economically to complete the project?

Does the REG have sufficient resources to complete the project within FY 2012?

Based upon the responses received and the criteria outlined above, the REG proposes the following set of projects for the FY 2012 Research Agenda.

1. Completion and publication of the sixth edition of Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502(a) - (d) and Labor Code §405.0025(b)).

2. An annual examination of the frequency of employers and workers' compensation claims participating in certified health care delivery networks (required under Insurance Code §2053.012(a) and Labor Code §405.0025(b)).

3. An annual update of return-to-work outcomes for injured workers, including an examination of the characteristics associated with injured workers and employers who could benefit most from return-to-work outreach and coordination efforts (required under Labor Code §405.0025(a)(4)).

4. An update of the 2010 analysis of injured worker access to medical care provided under the workers' compensation system, including an analysis of access to medical care through Department-certified workers' compensation health care networks (required under Labor Code §405.0025(a) and (b)).

5. An update of the 2010 biennial study to estimate employer participation in the Texas workers' compensation system (required by Insurance Code §2053.012(a) and Labor Code §405.0025(a)(6)). The report is due on December 1, 2012.

6. An update of the 2010 Setting the Standard biennial report on the impact of the 2005 House Bill (HB) 7 legislative reforms on the Texas workers' compensation system. In accordance with Insurance Code §2053.012(a) and Labor Code §405.0025(b), this report presents results on the affordability and availability of workers' compensation insurance for Texas employers as well as the impact of certified workers' compensation health care networks on return-to-work outcomes, medical costs, quality of care issues and medical dispute resolution. The report is due on December 1, 2012.

The REG will consider expanding the scope of listed projects and/or conducting additional projects to accommodate stakeholder suggestions, pending resource and data availability.

REQUEST FOR PUBLIC COMMENT OR PUBLIC HEARING. If you wish to comment on the proposed FY 2012 Research Agenda or to request a public hearing, you must do so in writing no later than 5:00 p.m. on January 30, 2012. A hearing request must be on a separate page from any written comments. TDI requires two copies of your comments or hearing request. Send one copy to Nancy Simpson, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to DC Campbell, Director, Workers' Compensation Research and Evaluation Group, Mail Code 105-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. If a hearing is held, written and oral comments presented at the hearing will be considered. The proposed research agenda is on TDI's website at www.tdi.texas.gov. Send questions regarding the proposed agenda to DC Campbell at wcresearch@tdi.state.tx.us.

TRD-201105652
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Filed: December 16, 2011

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Texas Lottery Commission

Instant Game Number 1433 "$200 Million Cash Spectacular"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1433 is "$200 MILLION CASH SPECTACULAR". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1433 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 1433.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, CLOVER SYMBOL, $100 BURST SYMBOL, STAR SYMBOL, COIN SYMBOL, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $200, $400, $1,000, $10,000, $100,000 and $1MILL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1433 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
CLOVER SYMBOL	DOUBLE
$100 BURST SYMBOL	WIN$100
STAR SYMBOL	WINX5
COIN SYMBOL	WIN10X
$10.00	TEN$
$15.00	FIFTN

$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$400	FOR HUND
$1,000	ONE THOU
$10,000	10 THOU
$100,000	HUN THOU
$1MILL	ONE MILL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $40.00, $100, $200 or $400.

H. High-Tier Prize - A prize of $1,000, $10,000, $100,000 or $1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1433), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1433-0000001-001.

K. Pack - A pack of "$200 MILLION CASH SPECTACULAR" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$200 MILLION CASH SPECTACULAR" Instant Game No. 1433 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$200 MILLION CASH SPECTACULAR" Instant Game is determined once the latex on the ticket is scratched off to expose 65 (sixty-five) play symbols. If a player matches any of the YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE for that number. If a player reveals a "Clover" play symbol, the player wins DOUBLE the PRIZE for that symbol. If a player a reveals a "$100 Burst" play symbol, the player wins $100 instantly. If a player reveals a "Star" play symbol, the player wins 5 TIMES the PRIZE for that symbol. If a player reveals a "Coin" play symbol, the player wins 10 TIMES the PRIZE for that symbol! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 65 (sixty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 65 (sixty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 65 (sixty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 65 (sixty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. A ticket may have up to four duplicate non-winning prize symbols unless otherwise restricted by the prize structure.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 10 and $10).

G. The "CLOVER" (doubler), "$100 STARBURST" ($100 auto win), "STAR" (win x 5), and "COIN" (win x 10) play symbols will only appear as dictated by the prize structure.

H. The "$100 STARBURST" ($100 auto win) play symbol will only appear with the $100 prize symbol.

I. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "$200 MILLION CASH SPECTACULAR" Instant Game prize of $10.00, $15.00, $20.00, $30.00, $40.00, $100, $200 or $400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $40.00, $100, $200 or $400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "$200 MILLION CASH SPECTACULAR" Instant Game prize of $1,000, $10,000, $100,000 or $1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$200 MILLION CASH SPECTACULAR" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$200 MILLION CASH SPECTACULAR" Instant Game, the Texas Lottery

shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$200 MILLION CASH SPECTACULAR" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 28,080,000 tickets in the Instant Game No. 1433. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1433 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	3,369,600	8.33
$15	1,123,200	25.00
$20	1,965,600	14.29
$30	561,600	50.00
$40	254,124	110.50
$100	561,600	50.00
$200	28,080	1,000.00
$400	18,252	1,538.46
$1,000	3,042	9,230.77
$10,000	220	127,636.36
$100,000	10	2,808,000.00
$1,000,000	10	2,808,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1433 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1433, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201105757
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 20, 2011

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Instant Game Number 1434 "Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1434 is "BREAK THE BANK". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1434 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1434.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, STACK OF MONEY SYMBOL, $2.00, $4.00, $6.00, $10.00, $20.00, $50.00, $200, $1,000, $3,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1434 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
STACK OF MONEY SYMBOL	MONEY
$2.00	TWO$
$4.00	FOUR$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$1,000	ONE THOU
$3,000	THR THOU
$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $200.

H. High-Tier Prize - A prize of $1,000, $3,000 or $30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1434), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1434-0000001-001.

K. Pack - A pack of "BREAK THE BANK" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BREAK THE BANK" Instant Game No. 1434 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 19 (nineteen) play symbols. If the player matches any of YOUR NUMBERS play symbols to any of the 3 LUCKY NUMBERS play symbols, the player wins the PRIZE for that number. If the player reveals a "stack of money" play symbol, the player wins the PRIZE instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 19 (nineteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 19 (nineteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No duplicate LUCKY NUMBERS play symbols on a ticket.

D. There will be no correlation between the matching symbols and the prize amount.

E. The "MONEY" (auto win) play symbol will never appear more than once on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK" Instant Game prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket

and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK" Instant Game prize of $1,000, $3,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code, §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 50,160,000 tickets in the Instant Game No. 1434. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1434 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	4,915,680	10.20
$4	2,909,280	17.24
$6	802,560	62.50
$8	200,640	250.00
$10	501,600	100.00
$12	601,920	83.33
$20	300,960	166.67
$50	186,010	269.66
$200	34,903	1,437.13
$1,000	1,045	48,000.00
$3,000	257	195,175.10
$30,000	33	1,520,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1434 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1434, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201105677
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 19, 2011

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Texas Department of Motor Vehicles

Notice of Opportunity to Participate in Discussion

The Texas Department of Motor Vehicles (department) announces the creation of the Motor Vehicle License Advisory Committee and announces its intent to hold a committee meeting.

The Motor Vehicle Advisory Committee meeting is open to public participation of any interested person. The meeting will be held on January 11, 2012, at 10:00 a.m. CST in the department's Board Room located at 200 Riverside Drive, Building 150, First Floor.

The discussion will focus on ways to simplify existing TxDMV licensing rules and to modernize the process of obtaining a license. Documents will be distributed to interested persons before the Committee Meeting to facilitate discussion. Please bring your ideas, questions, concerns, and rule text suggestions.

Additional questions regarding this Committee meeting may be directed to Ms. Kelly Bowen at MVD_Exchange@txdmv.gov or (512) 416-4910. If you plan to attend, please RSVP to Ms. Bowen at MVD_Exchange@TxDMV.gov so that all participants may be accommodated.

Any individual who plans to attend this meeting requiring auxiliary aids or services should notify Kelly Bowen as far in advance as possible so that appropriate arrangements may be made.

TRD-201105782
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Filed: December 21, 2011

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7210).

The selected consultant will perform technical and professional work to provide onsite transit management services for Collin County Area Regional Transit, a division of the Collin County Committee on Aging, in McKinney, Texas. The consultant selected for this project is First

Transit, Inc., 600 Vine Street, Suite 1400, Cincinnati, Ohio 45202. The amount of the award is not to exceed $175,000.

TRD-201105790
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: December 21, 2011

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 15, 2011, to amend 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 Arklaoktex, LLC d/b/a Reach Broadband to Amend its State-Issued Certificate of Franchise Authority, Project Number 39998.

The requested amendment is to reduce the service area footprint by removing the municipalities of Idalou, Lubbock, Meadow, New Deal, Ropesville, Shallowater, Smyer, Wolfforth, and Celeste, Texas; and the unincorporated area of Irion County, Texas known as Sherwood.

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 39998.

TRD-201105755
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2011

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Notice of Application for Waiver from Requirements in P.U.C. Substantive Rule §26.125(c)(1) for Renewal of Automatic Dial Announcing Devices (ADAD) Application Form

Notice is given to the public of an application filed on December 16, 2011, with the Public Utility Commission of Texas (commission) for waiver of the requirement to file its ADAD permit renewal application 90 days prior to the expiration date of the current permit.

Docket Style and Number: Application of Real Time Resolutions, Inc. for a Waiver to Requirement in P.U.C. Subst. R. 26.125(c)(1) for Renewal of Automatic Dial Announcing Devices (ADAD) Application Form, Docket Number 40006.

The Application: Real Time Resolutions holds ADAD permit number 100107 and its current permit expires March 17, 2012. Pursuant to P.U.C. Subst. R. 26.125(c)(1), an application for a renewal permit shall be filed not less than 90 days prior to the expiration date of the current permit. Question 11(e) of the permit application requires the Federal Registration Number (FRN) issued to the ADAD manufacturer or programmer either by the Federal Communications Commission (FCC) or Administrative Council Terminal Attachments (ACTA). RTR stated that its vendor, Five9, Inc. does not have a FRN issued by the FCC.

Persons wishing to comment on the action sought or intervene 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 Docket Number 40006.

TRD-201105772
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 20, 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 December 13, 2011, for waiver of denial by the Pooling Administrator (PA) of Verizon Southwest's (Verizon) request for assignment of five (5) thousand-blocks of numbers on behalf of its customer, Enterprise Products in the Mont Belvieu rate center.

Docket Title and Number: Petition of Verizon Southwest for Waiver of Denial of Numbering Resources in the Mont Belvieu Rate Center, Docket Number 39992.

The Application: Verizon requested five (5) thousand-blocks of numbers on behalf of its customer, Enterprise Products in the Mont Belvieu rate center. Applicant stated that the numbers are needed by January 15, 2012. Verizon submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because Verizon 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 January 5, 2012. 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 39992.

TRD-201105565
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2011

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State Securities Board

Correction of Error

The State Securities Board adopted new 7 TAC §116.17, Custody of Funds or Securities of Clients by Registered Investment Advisers, in the December 16, 2011, issue of the *Texas Register* (36 TexReg 8510). The section was adopted with changes to the proposed version and republished. On page 8512, first column, an opening parenthesis before the phrase "as defined in this section" was omitted from the rule text in subsection (c)(1). The corrected text reads as follows:

(1) Shares of an open-end company. With respect to shares of an open-end company (as defined in this section), the investment adviser

may use the open-end company's transfer agent in lieu of a qualified custodian for purposes of complying with subsection (b) of this section.

TRD-201105767

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of San Antonio, 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 architectural design services described below.

Airport Sponsor: City of San Antonio. TxDOT CSJ No.: 12CTSTSON. Scope: Provide architectural/engineering design services to replace the air traffic control tower.

The HUB goal is 3%. The 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 "Stinson 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 **February 7, 2012, 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 Beverly Longfellow.**

The consultant selection committee will be composed of Aviation Division staff members. 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 Evaluation Criteria for Architect Proposals can be found at http://www.txdot.gov/business/projects/aviation.htm under the Notice to Consultants link. 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.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

TRD-201105758
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 20, 2011

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Stephen F. Austin State University

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254. Stephen F. Austin State University, Nacogdoches, Texas, requests responses from individuals to provide consulting services as requested for the Talented Teachers in Training for Texas (T4) project funded by the National Science Foundation. The consultant will have thorough knowledge of the Talented Teachers in Training for Texas (T4) program. Specifically, the consultant will have the knowledge and ability to provide project evaluation including implementation, review and formative and summative evaluations in addition to providing mentoring to T4 leadership during research, as well as monthly reporting to the project director. The consultant must have obtained all necessary permissions and/or licenses necessary to conduct training in the program. The individual selected to perform this project will be chosen on the basis of competitive responses received.

Proposals must be received in the office of Dr. Carrie Brown, Director ORSP, Stephen F. Austin State University, P.O. Box 13024, SFA Station, Nacogdoches, Texas 75962, by January 31, 2012 in order to be considered. Please contact Dr. Carrie Brown at (936) 468-6606 for further information.

TRD-201105771
Damon C. Derrick
General Counsel
Stephen F. Austin State University
Filed: December 20, 2011

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Open Meetings

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

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

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

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

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

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

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

Additional information about state government may be found here:
http://www.texas.gov

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

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)*